JACK O'CONNELL
State Superintendent of Public Instruction

CALIFORNIA DEPARTMENT OF EDUCATION
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RECEIVED
AUG 11 2003
COMMISSION ON STATE MANDATES

August 11, 2003

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requests comments from interested parties on a number of test claims submitted by the Clovis Unified School District. The test claims are: School Facilities Funding Requirements (02-TC-30), Design Build Contracts (02-TC-45), Developer Fees (02-TC-42), and Deferred Maintenance Programs (02-TC-44). Due to the fact that the comments for these test claims are generally due at the same time and the test claims generally deal with facilities or related issues, we have consolidated our comments into one piece of correspondence. Our comments for each test claim are as follows.

School Facilities Funding Requirements (02-TC-30)

This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.

Design Build Contracts (02-TC-45)

This is not a mandated program. It is one of several delivery options that school districts can choose to pursue, if school districts elect to enter into design build contracts. Other factual inaccuracies in this claim include:

Page 13, line 10 of the claim states: Education Code Section 17250.35, subdivision (a), requires the school district governing board to retain the services of an architect or structural engineer to monitor compliance with the established performance criteria and design standards.

This is incorrect. The Education Code states that the governing board *may*, and is *strongly encouraged* to, retain the services of an architect or structural engineer throughout the course of the project.

Page 14, line 6 of the claim states: Subdivision (d) assigns all liability for the facility to the design-build entity.

This is incorrect. The Education Code states that the design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

Page 15, line 5 of the claim states: To the extent that these guidelines are adopted, districts would be required to comply.

This is incorrect. The Education Code only states that the governing board shall review the guidelines. The Education Code does not require compliance with the guidelines. It should be noted that the claimant correctly interpreted this provision on page 5, line 4 of the test claim.

Developer Fees (02-TC-42)

This is not a mandated program. This is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities. Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, and/or dedications.

Deferred Maintenance Programs (02-TC-44)

This is not a mandated program. School district elect to participate in this program in order to receive funding for deferred maintenance and for the removal and containment of asbestos or lead. Any requirements regarding this program are applicable only after districts elect to participate in the program.

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Facilities Funding Requirements, Design Build Contracts, Developer Fees, and Deferred Maintenance Programs

Claim Number: (02-TC-30), (02-TC-45), (02-TC-42), (02-TC-44)

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On August 11, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 11, 2003, at Sacramento, California.

Juan Sanchez

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