



August 11, 2003

RECEIVED

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

AUG 11 2003
**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter dated July 15, 2003, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the Clovis Unified School District asking the Commission to determine whether specified costs are incurred by the school district as required by statute in participating in the Deferred Maintenance Program (DMP) (Claim Number 02-TC-44). Following please find responses to the questions addressed in your letter:

- 1. Do the provisions listed in the notice impose a new program or higher level of service within an existing program upon local entities within the meaning of Section 6, Article XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?**

Participation in the DMP, established through Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5, is voluntary on the part of school districts. EC Section 17582 states that "...a district *may* establish an account to be known as the "district deferred maintenance account..." No requirement is made in statute that a district is required to establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district raised funds. The program elements described in the test claim are only required if a district chooses to participate in the program. Therefore, it is our opinion that the declaration on page 55 of the test claim that the DMP Handbook is an "Executive Order" as defined in Government Code Section 17516 is unfounded, as it only applies to districts choosing to participate in the DMP.

- 2. Does Government Code Section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the State?**

Yes. It appears that Government Code Section 17556(d) precludes the Commission from finding that any provisions of the test claim impose costs mandated by the State.

Education Code Section 17556(d):

The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increase level of service.

Statute allows a school district the authority to raise program costs through the passage of local bonds, other revenue sources including developer fees for capital outlay needs.

3. Have funds been appropriated for this program (e.g. state budget) or are there any other sources of funding available? If so, what is the source?

The DMP receives its funding annually. Funding is made available primarily from three sources:

- Excess repayments from the State School Building Aid Program (SSBAP)
- State School Site Utilization Fund
- Funds provided through the Budget Act, when applicable.

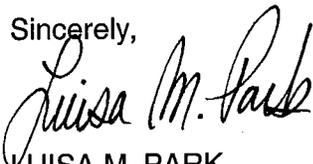
In recent years, program funding has mainly relied on the funds provided through the Budget Act. This is due to the decrease of funding in the SSBAP and site utilization funds as repayments into these programs dwindle. Following is breakdown of the funding from the program from the last two fiscal years:

Funds Available 2002/2003 Fiscal Year	
Excess Repayments (SSBAP)	\$13,952,845
Estimated Site Utilization**	\$2,000,000
2003/2004 Budget Act	\$76,818,000
TOTAL	\$92,770,845
**As of 8/8/03 figure unknown	

Funds Available 2001/2002 Fiscal Year	
Excess Repayments (SSBAP)	\$15,566,143
Site Utilization	\$2,368,921
2002/2003 Budget Act	\$205,548,000
TOTAL	\$223,483,064

If you have any questions regarding this letter, please contact Ms. Elizabeth Dearstyne, Project Manager, at edearsty@dgs.ca.gov or (916) 323-0073.

Sincerely,



LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:ED:rm

Enclosure

cc: Commission's Parties and Interested Parties List as of 7/8/2003 (Enclosure)

Commission on State Mandates

Original List Date: 7/8/2003

Mailing Information: Completeness Determination

Last Updated:

Mailing List

List Print Date: 07/15/2003

Claim Number: 02-TC-44

Issue: Deferred Maintenance Programs

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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