

# SixTen and Associates

## Mandate Reimbursement Services

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September 13, 2003

Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814



Re: Test Claim 02-TC-44  
Clovis Unified School District and  
Deferred Maintenance Programs

Dear Ms. Higashi:

I have received the comments of Department of General Services (DGS) by the Office of Public School Construction, dated August 11, 2003, and the State Superintendent of Public Instruction (SPI) dated August 11, 2003 to which I now respond on behalf of the test claimant.

None of the objections generated by SPI are included in the statutory exceptions set forth in Government Code Section 17556. DGS cites subdivision (b) of Section 17556 incorrectly. The objections stated additionally fail for the following reasons:

1. **The Comments of the DGS and SPI are Incompetent and Should be Excluded**

Test claimant objects to the Comments of the DGS and SPI, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

“...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative’s personal knowledge or information and belief.”

The DGS and SPI comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made by DGS in part 3 of its comments under point 3 wherein statements are made about amounts of funding in past years since it has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

**2. The Deferred Maintenance Program is not Discretionary**

Both DGS and SPI claim the entire program is discretionary. This is not true. For example Education Code Section 17584.1<sup>1</sup> requires the following:

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<sup>1</sup> Education Code Section 17584.1, added by Chapter 390, Statutes of 1999, Section 3:

"(a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

- (a) Subdivision (a) provides that the governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.
- (b) Subdivision (b) provides that, in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.
- (c) Subdivision (c) provides that the report required pursuant to subdivision (b) shall include all of the following:
  - (1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.
  - (2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.
  - (3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.
- (d) Subdivision (d) provides that copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

Therefore, parts of the test claim legislation are clearly mandatory.

### 3. Allowing for Matching Funds is not a Viable Option

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(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.”

Subdivision (e) of Education Code Section 17584.1 provides that the purposes of the requirements set forth above is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard. Local Accountability is the key phrase of that provision.

DGS, in its Deferred Maintenance Program Handbook (January 2003)<sup>2</sup> describes the program as follows:

“The Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the education process may safely continue....Applicant districts are responsible for complying will all laws and regulations for any project undertaken pursuant to the requirements of the DMP.”

Now, to obtain these dollar-for-dollar funds, school districts need only comply with the requirements of the test claim legislation. DGS and SPI suggest that establishing an account to receive those matching funds “for major repair or replacement of existing school building components so that the education process may safely continue” is a discretionary act and school districts have the option of paying for these needed repairs all by themselves. In view of the “local accountability” feature of the legislation, this is not a viable option.

#### **4. Bond Revenues are not Service Charges, Fees or Assessments**

DGS offers Government Code Section 17556, subdivision (d)<sup>3</sup> for the proposition that test claimants are precluded from recovery because the mandated costs can be paid for by local bonds or other revenue sources, including developer fees. Bond revenues and other revenue sources are not “service charges, fees or assessments”, as that term has been interpreted in the field of mandate reimbursements. Bond revenues are not service charges, fees or assessments.

In addition, Section 17556 presupposes the existence of a mandate which is

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<sup>2</sup> Chapter 1 - Deferred Maintenance Program Overview, at page 1

<sup>3</sup> Government Code Section 17556, subdivision (d), precludes a finding of mandated costs if the school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

contrary to the state's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. Finally, the levy of service charges, fees and assessment against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The responses of the DGS and SPI should be ignored as legally incompetent for their failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, the test claim should be approved as submitted because their comments are both factually and legally incorrect.

### CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

# Commission on State Mandates

Original List Date: 7/8/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 07/15/2003

## Mailing List

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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Ms. Luisa M. Park (A-17)  
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Fax:

## DECLARATION OF SERVICE

RE: Deferred Maintenance Programs  
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 13, 2003, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278



**U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.



**OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

\_\_\_\_\_(Describe)



**FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.



A copy of the transmission report issued by the transmitting machine is attached to this proof of service.



**PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/16/03, at San Diego, California.

  
\_\_\_\_\_  
Diane Bramwell