

ITEM 7
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6

Vehicle Code Sections 22112, 22454, 27316, 27316.5

Statutes 1999, Chapter 647 (AB 1573); Statutes 1999, Chapter 648 (AB 15);

Statutes 2001, Chapter 581 (SB 568); Statutes 2002, Chapter 360 (AB 2681);

Statutes 2002, Chapter 397 (SB 1685)

School Bus Safety III

03-TC-01

San Diego Unified School District, Claimant

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03-TC-01 Test Claim Filing and Attachments, dated July 2, 20033

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Department of Education Comments on 03-TC-01, dated August 12, 200362

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Prior Commission Decision:

- Commission Statement of Decision for *School Bus Safety II* (97-TC-22) (Remand),
March 30, 2005

Cases:

- *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251
- *Estate of Griswold* (2001) 25 Cal.4th 904
- *State of California Department of Finance v. Commission on State Mandates*
(02CS00994)
 - Peremptory Writ of Mandamus, dated February 3, 2004
 - Judgment, dated December 22, 2003

- Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), dated July 9, 2002

State Statutes:

- Education Code section 39800
- Education Code section 39806
- Education Code section 39807

State Regulations:

- California Code of Regulations, title 13, section 1201 (Register 2007, No. 41)

Federal Statutes:

- Title 20 United States Code section 1400
- Title 20 United States Code section 1401
- Title 20 United States Code section 1414

Federal Regulations:

- 34 Code of Federal Regulations part 300.24(b)(15), as amended by 64 FR 12418 (March 12, 1999)
- 34 Code of Federal Regulations part 300.34(c)(16), as amended by 71 FR 46753 (Aug. 14, 2006)

Other:

- California Department of Education “Special Education Transportation Guidelines” at <<http://www.cde.ca.gov/sp/se/lr/trnsprtgdlns.asp>> as of February 23, 2011.



SAN DIEGO CITY SCHOOLS

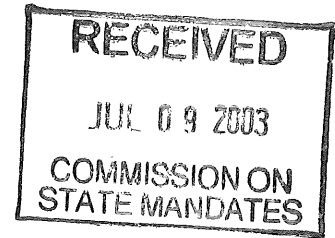
EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-8363

(619) 725-7565
Fax (619) 725-7569

OFFICE OF SCHOOL SITE SUPPORT
Mandated Cost Unit, Room 3159
apalkowitz@sandi.net

July 2, 2003

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



Re: TEST CLAIM of San Diego Unified School District
Chapter 647, 648 Statutes of 1999
Chapter 581, Statutes of 2001
Chapter 360, 397 Statutes of 2002
BUS SAFETY III

Dear Ms. Higashi:

Enclosed are the original and seven copies of the San Diego Unified School District Test Claim for the above reference mandate.

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Arthur M. Palkowitz

AMP/at
Enclosure

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
916-323-3562
CSM

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STATE MANDATES

TEST CLAIM FORM

Claim No. 03-TC-01

Local Agency of School District Submitting Claim

SAN DIEGO UNIFIED SCHOOL DISTRICT

Contact Person

Arthur M. Palkowitz

Telephone No: 619-725-7565

Fax: 619-725-7569

Address

San Diego Unified School District
4100 Normal St., Room 3159
San Diego, CA 92103

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517

Fax: 916-446-2011

This test claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

School Bus Safety III

Chapter 647, Statutes of 1999

Education Code Section 38048, 39831.5 Vehicle Code Section 22112, 22454

Chapter 648, Statutes of 1999

Education Code Section 38047.5, 38048, 39831.5 Vehicle Code Sec. 27316

Chapter 581, Statutes of 2001

Vehicle Code Section 27316

Chapter 360,397 Statutes of 2002

Education Code Section 38047.6, Vehicle Code Section 27316.5

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

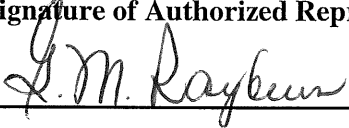
Gamy Rayburn
Accounting Director

Telephone No: 619-725-7560

Fax: 619-725-7564

Signature of Authorized Representative

Date: June 30, 2003



BEFORE THE
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:) No. CSM _____
)
San Diego School District) Chapter 647, Statutes of 1999 (AB 1573)
) Chapter 648, Statutes of 1999 (AB 15)
) Chapter 581, Statutes of 2001 (SB 568)
) Chapter 360, Statutes of 2002 (AB 2681)
) Chapter 397, Statutes of 2002 (SB 1685)
) Education Codes Sections 38048, 38048.5,
) 39831.5, 38047.5, 38047.6
) Vehicle Code Sections 22112, 22454,
) 27316, 27316.5
) Title 13, California Code of Regulations
)
) School Bus Safety III

AUTHORITY FOR THE CLAIM

The Commission on State Mandates ("Commission") has the authority pursuant to Government Code Section 17551(a) to hear and decide upon a claim by a school district that the school district is entitled to be reimbursed by the state for costs mandated by the state as required by section 6 of article XIII B of the California Constitution. San Diego School District ("Claimant") is a school district as defined in Government Code section 17519. This test claim is filed pursuant to title 2, California Code of Regulations section 1183.

STATEMENT OF THE CLAIM

This test claim alleges reimbursable costs mandated by the state by Chapter 647, Statutes of 1999 (AB 1573), Chapter 648, Statutes of 1999 (AB 15), Chapter 581, Statutes of 2001 (SB 568) Chapter 397, Statutes of 2002 (SB 1685) Chapter 360, Statutes of 2002 (AB 2681) Chapter 397, Statutes of 2002 (SB 1685)¹ requires (among other things) school buses to use flashing

¹Chapter 647, Statutes of 1999 is attached as Exhibit A. Chapter 648, Statutes of 1999 is attached as Exhibit B. Chapter 581, Statutes of 1999 is attached as Exhibit C. Chapter 360, Statutes of 2002 is attached as Exhibit D. Chapter 397, Statutes of 2002 is attached as Exhibit E.

lights, be equipped with passenger restraint systems and safety instruction be provided to students.

A. ACTIVITIES REQUIRED UNDER PRIOR LAW; PRIOR COMMISSION DECISIONS

The activities require prior to January 1, 1975 and prior to the enactment of Chapters 647/99, 648/99, 581/2001 and 360/2002 were described in detail in test claims filed by San Jose Unified School District in the *School Bus Safety* test claim (CSM-4433) and by Clovis Unified School District in the *School Bus Safety II* test claim (CSM 97-TC-22). The Commission, in its Statement of Decision in the *School Bus Safety* test claim dated February 24, 1994, determined that Education Code section 39831.5 and Vehicle Code section 22112, as added by Chapter 642, Statutes of 1992, imposed a reimbursable state-mandated new program or higher level of service.²

The Commission, in its Statement of Decision in the *School Bus Safety II* test claim, dated July 29, 1999, determined that the following code sections imposed a reimbursable state-mandated new program or higher level of service:

- Education Code section 39831.3, as added by Chapter 739, Statutes of 1997.
- Education Code section 39831.5, as amended by Chapter 831, Statutes of 1994, renumbered as Education Code section 38048 by Chapter 277, Statutes of 1996, and amended by Chapter 739, Statutes of 1997.
- Vehicle Code section 22112, as amended by Chapter 831, Statutes of 1994 and Chapter 739, Statutes of 1997.³

²Chapter 642, Statutes of 1992 is not attached as an exhibit to this test claim. This statute is part of the Commission's administrative record in CSM-4433.

³Chapter 831, Statutes of 1994, Chapter 277, Statutes of 1996, and Chapter 739, Statutes of 1997 are not attached as exhibits to this test claim. These statutes are part of the Commission's administrative record in CSM 97-TC-22.

Education Code sections 38048, 39831.5 and Vehicle Code section 22112 were amended by the test claim statutes, as set forth in Section B below.

B. ACTIVITIES REQUIRED UNDER STATUTE CONTAINING MANDATES.

Section 1 of Chapter 647/99 amended Education Code section 39048 and renumbered this section as Education Code section 39831.5.⁴ The amendment added a requirement that

⁴Section 1 of Chapter 647/99 amended Education Code section 38048 and renumbered this section as Education Code section 39831.5 to read as follows:

(a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in school bus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a school bus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on school bus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of school bus stops near each pupil's home.
- (B) General rules of conduct at school bus loading zones.
- (C) Red light crossing instructions.
- (D) School bus danger zone.
- (E) Walking to and from school bus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver and how to safely cross the street, highway, or private road, proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the school bus through emergency exit doors.

(3) Prior to departure on a school activity trip, all pupils riding on a school bus or school pupil activity bus shall receive safety instruction which includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 1.5. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a school bus or school pupil activity bus shall receive instruction in school bus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a school bus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on school bus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of school bus stops near each pupil's home.
- (B) General rules of conduct at school bus loading zones.
- (C) Red light crossing instructions.
- (D) School bus danger zone.
- (E) Walking to and from school bus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver and how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the school bus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a school bus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
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- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

Section 2 of Chapter 647/99 amended Vehicle Code section 22112 to read as follows.

(a) On approach to a school bus stop where pupils are loading or unloading from a school bus, the driver of the school bus shall activate an approved flashing amber light warning system, if the school bus is so equipped, beginning 200 feet before the school bus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the school bus, at all times when the school bus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be

school districts instruct all pupils in prekindergarten, kindergarten, and grades 1 through 8 who receive home-to-school transportation how to safely cross the street, highway, or private road.

Section 2 of Chapter 647/99 amended Vehicle Code section 22112. Chapter 647/99 deleted paragraphs (3), (4), and (5) from subdivision (c) and moved these requirements to a new subdivision (d), as paragraphs (1), (2), and (3). The substance of this change is to continue to require school bus drivers to perform the activities formerly in paragraphs (3), (4), and (5) of

operated at any place where traffic is controlled by a traffic officer. The school bus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a school bus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a school bus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the school bus.

(d) When a school bus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the school bus and it is safe to move before setting the school bus in motion.

(e) Except at a location where pupils are loading or unloading from a school bus and must cross a highway or private road upon which the school bus is stopped, the flashing red signal lights and stop signal arm requirements imposed by this section do not apply to a school bus driver at any of the following locations:

(1) School bus loading zones on or adjacent to school grounds or during an activity trip, if the school bus is lawfully parked.

(2) Where the school bus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the school bus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the school bus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the school bus is so equipped, or the flashing red signal light and stop signal arm, as required on the school bus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a school bus.

The amendment to Education Code section 39831.5 (former section 38048) by Chapter 647/99 was in effect from October 10, 1999 through December 31, 1999. (See Chapter 648/99, section 5.)

subdivision (c) except when the school bus stops to unload or load on highways or public roads where traffic is controlled by an official traffic control signal. Chapter 647/99 rewrote former subdivision (d), relettering it as subdivision (e). New subdivision (e) exempted the requirement to operate the flashing red light and stop arm mechanisms in specified locations, provided that the pupils loading or unloading must cross a highway or private road. Chapter 647/99 added a new subdivision (f), which requires school bus drivers to operate the amber, or red-flashing lights at any location where the Highway Department determines that such activation is necessary.

Section 2.5 of Chapter 648/99 amended and renumbered former Education Code section 38048 as Education Code section 39831.5.⁵ Section 39631.5 continued the amendment made by

⁵SECTION 1 of Chapter 648/99 added Section 38047.5 to the Education Code, to read:

38047.5. The State Board of Education shall adopt regulations to require a passenger in a school bus equipped with passenger restraint systems in accordance with Section 27316 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

SEC. 2. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a school bus or school pupil activity bus shall receive instruction in school bus emergency procedures and passenger safety.

The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a school bus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on school bus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of school bus stops near each pupil's home.
- (B) General rules of conduct at school bus loading zones.
- (C) Red light crossing instructions.
- (D) School bus danger zone.
- (E) Walking to and from school bus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the school bus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a school bus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

Section 2.5 of Chapter 648/99 amended and renumbered former Education Code section 38048 as Education Code section 39831.5.

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety.

The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.
- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment.

Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.

Chapter 647/99 to paragraph (2) of subdivision (a) with a further amendment, added a new paragraph (3) to subdivision (a), and renumbered former paragraph (3) as paragraph (4), with a non-substantive change. New paragraph (2) of subdivision (a) requires school districts to instruct Sections 3 of repealed former Vehicle Code section 27316, which required the California Highway Patrol to contract for a study of the use of safety belts in schoolbuses. Section 4 of Chapter 648/99 added a new Vehicle Code section 27316, which requires all school buses manufactured on or after January 1, 2002 that are purchased or leased for use in California be equipped with a combination pelvic and upper torso (3-point) passenger restraint system.

-
- (5) Number of pupils participating.
 - (6) Grade levels of pupils.
 - (7) Subjects covered in instruction.
 - (8) Amount of time taken for instruction.
 - (9) Bus driver's name.
 - (10) Bus number.
 - (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 3 Section 27316 of the Vehicle Code is repealed.

SEC. 4. Section 27316 is added to the Vehicle Code, to read:

27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses manufactured on or after January 1, 2002, and purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system.

(b) For purposes of this section, a "passenger restraint system" is a restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2-seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured.

(c) No person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature that, in implementing this section, school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, amended or amended and renumbers Section 38048 of the Education Code, and (3) this bill is or contracted for after January 1, 2002, to ensure that elementary-level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 38048 of the Education Code proposed by both this bill and Assembly Bill 1573. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill either enacted after Assembly Bill 1573, in which case Section 38048 of the Education Code, as amended by Assembly Bill 1573, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative and, Section 2 of this bill shall not become operative.

Sections 11.5 and 14 of Chapter 646, Statutes of 1999, section 1.5 of Chapter 647/99, and section 2 of Chapter 648/99 all contained provisions amending former Education Code section 38048; however, these provisions did not

Section 2 of Chapter 581/01⁶ amended Vehicle Code section 27316 declaring schools purchasing or leasing Type 1 buses manufactured after July 1, 2005 and Type 2 buses manufactured after July 1, 2004 must be equipped with pelvic and upper torso passenger restraint systems.

Chapter 360/02⁷ added Section 38047.6 of the Education Code, requiring

become operative. (See Chapter 646/99; sections 44 and 45, Chapter 647/99, section 5, and Chapter 648/99, section 5.)

⁶ Chapter 581/01 amends Section 27316 of the Vehicle Code, to read:

SECTION 1. The Legislature hereby finds and declares that legislation necessary to implement specific performance standards adopted by the National Highway Transportation Safety Administration relating to school bus occupant protection systems should be enacted as those standards become available.

SECTION. 2. Section 27316 of the Vehicle Code is amended to read:

27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all school buses purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system, if the school bus is either of the following:

(1) Type 1, as defined in paragraph (1) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2005,

(2) Type 2, as defined in paragraph (2) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2004.

(b) For purposes of this section, a "passenger restraint system" means any of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2-seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the school bus was manufactured.

(2) A restraint system certified by the school bus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap/shoulder restraint system.

(c) No person, school district, or organization, with respect to a school bus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the school bus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature, in implementing this section, that school pupil transportation providers work to prioritize the allocation of school buses purchased, leased, or contracted for on or after July 1, 2004, for type 2 school buses, or on or after July 1, 2005, for type 1 school buses, to ensure that elementary level school bus passengers receive first priority for new school buses whenever feasible.

⁷ Chapter 360/02 adds Section 38047.6 of the Education Code, to read:

SECTION 1. Section 38047.6 is added to the Education Code, to read:

SEC. 2. Section 27316.5 is added to the Vehicle Code, to read:

The State Board of Education shall adopt regulations to require a passenger in a school pupil activity bus equipped with passenger restraint systems in accordance with Section 27316.5 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

27316.5. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all type 2 school pupil activity buses, manufactured on or after July 1, 2004, purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system.

(b) For purposes of this section, a "passenger restraint system" is either of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date that the school pupil activity bus was manufactured.

The State Board of Education to adopt regulations to require a passenger in a school pupil activity bus equipped with passenger restraint systems in accordance with Section 27316.5 of the Vehicle Code and to use a passenger restraint system so that the passenger is properly restrained by that system.

Chapter 397/02⁸ amended Vehicle Code section 22112 by providing that the schoolbus driver shall deactivate the amber light warning system after reaching a schoolbus stop; would

(2) A restraint system certified by the school pupil activity bus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap-shoulder restraint system.

(c) No person, school district, or organization, with respect to a type 2 school pupil activity bus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted hereunder requiring a passenger to use a passenger restraint system, if a passenger on the school pupil activity bus fails to use or improperly uses the passenger restraint system.

⁸ Chapter 397/02 amended Section 22112 of the Vehicle Code to read:

(a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the schoolbus driver shall activate an approved amber warning light system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. ~~The schoolbus driver shall deactivate the amber warning light system after reaching the schoolbus stop. The schoolbus driver shall operate the flashing red light signal system and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any place where traffic is controlled by a traffic officer or at any location identified in subdivision (e) of this section.~~ The schoolbus flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any other time.

(b) The schoolbus driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall, before opening the door, ensure that the flashing red light signal system and stop signal arm are activated, and that it is safe to enter or exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the schoolbus driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road upon which the schoolbus is stopped. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(1) Require all pupils who need to cross the highway or private road upon which the schoolbus is stopped to walk in front of the bus as they cross.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the school bus and it is safe to move before setting the school bus in motion.

revise the locations and circumstances with respect to which flashing amber light warning system, flashing red signal lights, and stop signal arm system may or may not be operated; and would make clarifying changes to the provisions.

C. COSTS MANDATED BY THE STATE

The Statutes and Education Code sections referenced in this test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514, by creating new state-mandated duties related to the uniquely governmental function of providing services and these statutes apply to school districts and do not apply generally to all residents and entities in the state.

The new duties mandated by the state upon school districts require state reimbursement of the direct and indirect costs of labor, material and supplies, data processing services and software, contracted services and consultants. Equipment and capital assets, staff and student training and travel to implement the following activities:

(e) Except at a location where pupils are loading or unloading from a school bus and must cross a highway or private road upon which the school bus is stopped, the flashing red signal lights and stop signal arm requirements imposed by this section do not apply to a school bus driver at any of the following locations:

(1) School bus loading zones on or adjacent to school grounds or during an activity trip, if the school bus is lawfully parked.

(2) Where the school bus is disabled due to mechanical breakdown.

(3) Where a pupil requires physical assistance from the driver or authorized attendant to board or leave the schoolbus and providing the assistance extends the length of time the schoolbus is stopped beyond the time required to load or unload a pupil that does not require physical assistance.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard as determined by the schoolbus motor carrier.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber warning light system, if the schoolbus is so equipped, or the flashing red light signal system and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

A) Pursuant to Education Code Section 39831.5 subdivision (a), All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school that are transported in a schoolbus or school pupil activity bus shall receive instruction in school bus emergency procedures and passenger safety.

B) Pursuant to Education Code Section 39831.5 subdivision (1), Upon registration, the parents or guardians of all pupils not previously transported in a school bus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on school bus safety.

C) Pursuant to Education Code Section 39831.5 subdivision (2), at least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver and how to safely cross the street, highway, or private road, proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the school bus through emergency exit doors.

D) Pursuant to Education Code Section 39831.5 subdivision (3), prior to departure on a school activity trip, all pupils riding on a school bus or school pupil activity bus shall receive safety instruction which includes, but is not limited to, location of emergency exits, location and use of emergency equipment and instruction on the use of passenger restraint system.

E) Pursuant to Vehicle Code Section 22112 (a) On approach to a school bus stop where pupils are loading or unloading from a school bus, the driver of the school bus shall

activate an approved flashing amber light warning system, if the school bus is so equipped, beginning 200 feet before the school bus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the school bus, at all times when the school bus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The school bus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a school bus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a school bus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the school bus.

(d) When a school bus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the school bus and it is safe to move before setting the school bus in motion.

(e) Except at a location where pupils are loading or unloading from a school bus and must cross a highway or private road upon which the school bus is stopped, the flashing red signal lights and stop signal arm requirements imposed by this section do not apply to a school bus driver at any of the following locations:

(1) School bus loading zones on or adjacent to school grounds or during an activity trip, if the school bus is lawfully parked.

(2) Where the school bus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the school bus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the school bus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the school bus is so equipped, or the flashing red signal light and stop signal arm, as required on the school bus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a school bus.

F) Pursuant to Vehicle Code Section 22112 (a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the schoolbus driver shall activate an

approved amber warning light system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The schoolbus driver shall deactivate the amber warning light system after reaching the schoolbus stop. The schoolbus driver shall operate the flashing red light signal system and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any place where traffic is controlled by a traffic officer or at any location identified in subdivision (e) of this section. The schoolbus flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any other time.

(b) The schoolbus driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall, before opening the door, ensure that the flashing red light signal system and stop signal arm are activated, and that it is safe to enter or exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the schoolbus driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road upon which the schoolbus is stopped. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils who need to cross the highway or private road upon which the schoolbus is stopped to walk in front of the bus as they cross.

(3) Ensure that all pupils who need to cross the highway or private road upon which the schoolbus is stopped have crossed safely, and that all other pupils and pedestrians are a safe distance from the schoolbus before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the schoolbus driver may not activate the amber warning light system, the flashing red light signal system and stop signal arm at any of the following locations:

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully stopped or parked.

(2) Where the schoolbus is disabled due to mechanical breakdown. The driver of a relief bus that arrives at the scene to transport pupils from the disabled schoolbus shall not activate the amber warning light system, the flashing red light system, and stop signal arm.

(3) Where a pupil requires physical assistance from the driver or authorized attendant to board or leave the schoolbus and providing the assistance extends the length of time the schoolbus is stopped beyond the time required to load or unload a pupil that does not require physical assistance.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard as determined by the schoolbus motor carrier.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber warning light system, if the schoolbus is so equipped, or the flashing red light signal system and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

G) Pursuant to Vehicle Code section 27316 schools purchasing or leasing Type 1 buses manufactured after July 1, 2005 and Type 2 buses manufactured after July 1, 2004 must be equipped with pelvic and upper torso passenger restraint systems.

D. COSTS INCURRED OR EXPECTED TO BE INCURRED FROM MANDATE

School districts have incurred or will incur costs in excess of \$1000 per fiscal year to perform the activities described in section B above. School districts will incur costs, for among other things, to conduct the additional pupil instruction, costs due to higher school bus purchase costs related to the requirement that new school buses be equipped with the three-point passenger restraint system, costs of additional school bus purchases due to the decreased passenger capacity of school buses equipped with the three-point passenger restraint system as compared to school buses that are not so equipped, costs to maintain and replace the three-point passenger restraint system components and the costs related to additional drivers, maintenance, housing the buses and other related expenses. See Declaration of Alexandra Robinson, attached as Exhibit I.

OTHER PROVISIONS IMPACTED BY THE MANDATE

1. None of the Government Code section 17556 statutory exceptions to a finding of costs mandated by the state apply to this statute.
2. No funds were appropriated by Chapter 647/99, Chapter 648/99, Chapter 581/01 or Chapter 360/02 for reimbursement of the costs mandated by the state.

3. There are no other Federal or State constitutional provisions, statutes or executive orders impacted.

EXHIBITS

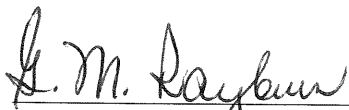
The following exhibits are attached to and incorporated into this test claim:

- Exhibit A: Chapter 647, Statutes of 1999
- Exhibit B: Chapter 648, Statutes of 1999
- Exhibit C: Chapter 581, Statutes of 2001
- Exhibit D: Chapter 360, Statutes of 2002
- Exhibit E: Chapter 397, Statutes of 2002
- Exhibit F: Education Codes Sections 39831.5, 38047.5, 38047.6,
- Exhibit G: Vehicle Code Sections 22112, 22454, 27316, 27316.5
- Exhibit H: California Code of Regulations
- Exhibit I: Declaration of Alexandra Robinson

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on June 30, 2003, at San Diego, California, by:



Gamy Rayburn, Accounting Director
San Diego School District

CHAPTER 647

EXHIBIT A

BILL NUMBER: AB 1573 CHAPTERED
BILL TEXT

CHAPTER 647

FILED WITH SECRETARY OF STATE OCTOBER 10, 1999

APPROVED BY GOVERNOR OCTOBER 5, 1999

PASSED THE ASSEMBLY SEPTEMBER 9, 1999

PASSED THE SENATE SEPTEMBER 7, 1999

AMENDED IN SENATE AUGUST 31, 1999

AMENDED IN SENATE AUGUST 18, 1999

AMENDED IN SENATE JULY 13, 1999

AMENDED IN SENATE JUNE 28, 1999

INTRODUCED BY Assembly Member Strom-Martin (Principal coauthors: Senators Monteith and Morrow) (Coauthors: Senators Alpert and Johnston)

FEBRUARY 26, 1999

An act to amend and renumber Section 38048 of the Education Code, and to amend Sections 22112 and 22454 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1573, Strom-Martin. Vehicles: schoolbuses.

(1) Existing law requires that pupils, as prescribed, who receive home-to-school transportation, receive specified schoolbus safety instruction once each school year.

This bill would add a specified training subject to the required safety instruction.

(2) Existing law exempts a schoolbus driver from the flashing red signal lights and stop signal arm requirements at locations identified by a school district, in consultation with the Department of the California Highway Patrol, that are determined to present a unique traffic hazard due to roadway design or proximity to an intersection, or where special education pupils are boarding or pupils may require assistance to board or unload the schoolbus or school pupil activity bus.

This bill, instead, would exempt a schoolbus driver from the flashing red signal lights and stop signal arm requirements at specified locations, including locations determined by a school district, with the approval of the department, to present a traffic or safety hazard, and excluding locations where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped.

(3) This bill would authorize the Department of the California Highway Patrol to impose the above described signal requirements, as specified, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from schoolbuses. Because a violation of this department-imposed requirement would be a crime, the bill would impose a state-mandated local program by expanding the scope of an existing crime.

(4) Existing law provides that the driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a schoolbus that is upon the other roadway.

This bill would recast this provision to provide that a driver of a vehicle upon a divided highway or multiple-lane highway, as defined, need not stop upon meeting or passing a schoolbus that is upon the other roadway.

(5) Existing law provides that the driver of a vehicle need not stop upon meeting or passing a schoolbus that is stopped at an intersection or place where traffic is controlled, as specified.

This bill would delete that provision.

(6) Existing law requires a schoolbus driver to undertake certain courses of action when the bus is stopped on a highway or private road for the purpose of loading or unloading pupils at a location where traffic is not controlled by a traffic officer or official traffic control signal.

This bill would delete the official traffic control signal exception for certain of those courses of action. Because this would have the effect of expanding the scope of an existing crime, the bill would impose a state-mandated local program.

(7) The bill would require the Department of the California Highway Patrol to undertake a specific study regarding flashing red lights and stop signal arms and to report the results of that study to the Legislature on or before January 1, 2005.

(8) This bill would incorporate additional changes in Section 38048 of the Education Code proposed by AB 15, to become operative only if both bills are enacted and become operative on or before January 1, 2000, and this bill is enacted last.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(10) The bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.

(D) Schoolbus danger zone.

(E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver and how to safely cross the street, highway, or private road, proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction which includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

(1) Name of school district, county office of education, or private school.

(2) Name and location of school.

(3) Date of instruction.

(4) Names of supervising adults.

(5) Number of pupils participating.

(6) Grade levels of pupils.

(7) Subjects covered in instruction.

(8) Amount of time taken for instruction.

(9) Bus driver's name.

(10) Bus number.

(11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 1.5. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety.

The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

(A) A list of schoolbus stops near each pupil's home.

(B) General rules of conduct at schoolbus loading zones.

(C) Red light crossing instructions.

(D) Schoolbus danger zone.

(E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

(A) Proper fastening and release of the passenger restraint system.

(B) Acceptable placement of passenger restraint systems on pupils.

(C) Times at which the passenger restraint systems should be fastened and released.

(D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

(1) Name of school district, county office of education, or private school.

(2) Name and location of school.

(3) Date of instruction.

(4) Names of supervising adults.

(5) Number of pupils participating.

(6) Grade levels of pupils.

(7) Subjects covered in instruction.

(8) Amount of time taken for instruction.

(9) Bus driver's name.

(10) Bus number.

(11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 2. Section 22112 of the Vehicle Code is amended to read:

22112. (a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning

lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the schoolbus and it is safe to move before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the flashing red signal lights and stop signal arm requirements imposed by this section do not apply to a schoolbus driver at any of the following locations:

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully parked.

(2) Where the schoolbus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the schoolbus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the schoolbus is so equipped, or the flashing red signal light and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

SEC. 3. Section 22454 of the Vehicle Code is amended to read:

22454. (a) The driver of any vehicle, upon meeting or overtaking, from either direction, any schoolbus equipped with signs as required in this code, that is stopped for the purpose of loading or unloading any schoolchildren and displays a flashing red light signal and stop signal arm, as defined in paragraph (4) of subdivision (b) of Section 25257, if equipped with a stop signal arm, visible from front or rear, shall bring the vehicle to a stop immediately before passing the schoolbus and shall not proceed past the schoolbus until the flashing red light signal and stop signal arm, if equipped with a stop signal arm, cease operation.

(b) (1) The driver of a vehicle upon a divided highway or multiple-lane highway need not stop upon meeting or passing a schoolbus that is upon the other roadway.

(2) For the purposes of this subdivision, a multiple-lane highway is any highway that has two or more lanes of travel in each direction.

(c) (1) If a vehicle was observed overtaking a schoolbus in violation of subdivision (a), and the driver of the schoolbus witnessed the violation, the driver may, within 24 hours, report the violation and furnish the vehicle license plate number and description and the time and place of the violation to the local law enforcement agency having jurisdiction of the offense. That law enforcement agency shall issue a letter of warning prepared in accordance with paragraph (2) with respect to the alleged violation to the registered owner of the vehicle. The issuance of a warning letter under this paragraph shall not be entered on the driving record of the person to whom it is issued, but does not preclude the imposition of any other applicable penalty.

(2) The Attorney General shall prepare and furnish to every law enforcement agency in the state a form letter for purposes of paragraph (1), and the law enforcement agency may issue those letters in the exact form prepared by the Attorney General. The Attorney General may charge a fee to any law enforcement agency that requests a copy of the form letter to recover the costs of preparing and providing that copy.

(d) This section also applies to a roadway upon private property.

SEC. 4. The Department of the California Highway Patrol shall undertake a study of the effectiveness of requiring the drivers of schoolbuses to activate the buses' flashing red signal systems, and, if equipped, the stop signal arms. The report shall provide a detailed analysis on the impact of these systems and signal arms on reducing accidents, injuries, and deaths. Notwithstanding Section 7550.5 of the Government Code, the department shall submit the results of the study to the Legislature on or before January 1, 2005.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 38048 of the Education Code proposed by both this bill and Assembly Bill 15. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends and renumbers Section 38048 of the Education Code, and (3) this bill is enacted after Assembly Bill 15, in which case Section 38048, as amended and renumbered by Section 1 of this bill, shall remain operative only until the operative date of AB 15, at which time Section 1.5 of this bill shall become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, as soon as possible, that schoolbus drivers are required to activate flashing amber warning lights in a manner that prevents schoolbus accidents and safeguards students and the public, it is necessary that this act take effect immediately.

CHAPTER 648

EXHIBIT B

BILL NUMBER: AB 15 CHAPTERED
BILL TEXT

CHAPTER 648
FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
APPROVED BY GOVERNOR OCTOBER 6, 1999
PASSED THE ASSEMBLY SEPTEMBER 9, 1999
PASSED THE SENATE SEPTEMBER 8, 1999
AMENDED IN SENATE SEPTEMBER 3, 1999
AMENDED IN SENATE SEPTEMBER 2, 1999
AMENDED IN SENATE AUGUST 26, 1999
AMENDED IN SENATE AUGUST 17, 1999
AMENDED IN SENATE JUNE 22, 1999
AMENDED IN ASSEMBLY MAY 28, 1999
AMENDED IN ASSEMBLY APRIL 5, 1999
AMENDED IN ASSEMBLY FEBRUARY 8, 1999

INTRODUCED BY Assembly Member Gallegos
 (Coauthors: Assembly Members Calderon, Cunneen, Knox, Kuehl, Lempert, Romero,
Shelley, and Washington) (Coauthor: Senator Speier)

DECEMBER 7, 1998

An act to amend and renumber Section 38048 of, and to add Section 38047.5 to, the Education Code, and to repeal and add Section 27316 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 15, Gallegos. Schoolbuses: passenger restraint systems:seats.

(1) Existing law requires the State Board of Education to adopt regulations relating to the use of schoolbuses by school districts and others.

This bill would require the board to adopt regulations to require a passenger in a schoolbus equipped with passenger restraint systems, as specified, to use a passenger restraint system so that the passenger is properly restrained.

(2) Existing law requires, at least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation to receive safety instruction, as specified.

This bill would require safety instruction in the use of passenger restraint systems, as specified.

(3) Existing federal law requires seatbelts for schoolbuses that have a gross vehicle weight of 10,000 pounds or less and establishes other seating and crash protection standards, as specified.

This bill would require that schoolbuses manufactured on or after January 1, 2002, and purchased or leased for use in California have a "passenger restraint system," as specified, at all designated

seating positions, unless specifically prohibited by the National Highway Transportation Safety Administration. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program by creating a new crime. The bill would provide that no person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to the above requirement, may be charged for a violation of the Vehicle Code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses that system. The bill would make a related statement of legislative intent.

(4) Existing law requires the department to complete a study by March 1, 1987, on the appropriateness of requiring that all type one schoolbuses or school pupil activity buses be equipped with a set of safety belts for each passenger.

This bill would repeal that obsolete provision of law.

(5) This bill would incorporate additional changes in Section 38048 of the Education Code proposed by AB 1573, to become operative only if both bills are enacted and become operative on or before January 1, 2000, and this bill is enacted last.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 38047.5 is added to the Education Code, to read:

38047.5. The State Board of Education shall adopt regulations to require a passenger in a schoolbus equipped with passenger restraint systems in accordance with Section 27316 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

SEC. 2. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety.

The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.

- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 2.5. Section 38048 of the Education Code is amended and renumbered to read:

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety.

The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

- (1) Upon registration, the parents or guardians of all pupils not

previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.
- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.

- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

SEC. 3. Section 27316 of the Vehicle Code is repealed.

SEC. 4. Section 27316 is added to the Vehicle Code, to read:

27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses manufactured on or after January 1, 2002, and purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system.

(b) For purposes of this section, a "passenger restraint system" is a restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured.

(c) No person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature that, in implementing this section, school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, or contracted for after January 1, 2002, to ensure that elementary-level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 38048 of the Education Code proposed by both this bill and Assembly Bill 1573. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill either amends or amends and renumbers Section 38048 of the Education Code, and (3) this bill is enacted after Assembly Bill 1573, in which case Section 38048 of the Education Code, as amended by Assembly Bill 1573, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative and, Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 581

EXHIBIT C

BILL NUMBER: SB 568 CHAPTERED
BILL TEXT

CHAPTER 581

FILED WITH SECRETARY OF STATE OCTOBER 7, 2001

APPROVED BY GOVERNOR OCTOBER 5, 2001

PASSED THE SENATE SEPTEMBER 13, 2001

PASSED THE ASSEMBLY SEPTEMBER 12, 2001

AMENDED IN ASSEMBLY AUGUST 30, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY JULY 14, 2001

AMENDED IN ASSEMBLY JUNE 11, 2001

AMENDED IN SENATE MARCH 27, 2001

INTRODUCED BY Senator Morrow

FEBRUARY 22, 2001

An act to amend Section 27316 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, Morrow. Schoolbus seat belts.

(1) Under existing law, unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses manufactured on or after January 1, 2002, and purchased or leased for use in California are required to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system. Existing law declares the intent of the Legislature that school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, or contracted for after January 1, 2002, to ensure that elementary-level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

This bill, instead, would require that certain schoolbuses purchased or leased for use in California be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system, as defined, unless specifically prohibited by the National Highway Transportation Safety Administration. The bill would declare the intent of the Legislature that school pupil transportation providers work to prioritize the allocation of those schoolbuses to ensure that elementary level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

Since a violation of these provisions is a crime under existing provisions of law, this bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares that legislation necessary to implement specific performance standards adopted by the National Highway Transportation Safety Administration relating to school bus occupant protection systems should be enacted as those standards become available.

SEC. 2. Section 27316 of the Vehicle Code is amended to read:

27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system, if the schoolbus is either of the following:

(1) Type 1, as defined in paragraph (1) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2005.

(2) Type 2, as defined in paragraph (2) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2004.

(b) For purposes of this section, a "passenger restraint system" means any of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured.

(2) A restraint system certified by the schoolbus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap/shoulder restraint system.

(c) No person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature, in implementing this section, that school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, or contracted for on or after July 1, 2004, for type 2 schoolbuses, or on or after July 1, 2005, for type 1 schoolbuses, to ensure that elementary level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 360

EXHIBIT D

BILL NUMBER: AB 2681 CHAPTERED
BILL TEXT

CHAPTER 360
FILED WITH SECRETARY OF STATE SEPTEMBER 4, 2002
APPROVED BY GOVERNOR SEPTEMBER 3, 2002
PASSED THE SENATE AUGUST 14, 2002
PASSED THE ASSEMBLY MAY 23, 2002
AMENDED IN ASSEMBLY APRIL 17, 2002

INTRODUCED BY Assembly Member Maldonado

FEBRUARY 22, 2002

An act to add Section 38047.6 to the Education Code, and to add Section 27316.5 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2681, Maldonado. School pupil activity buses: passenger restraint systems.

Existing law requires the State Board of Education to adopt regulations to require a passenger in a schoolbus equipped with passenger restraint systems, as specified, to use a passenger restraint system so that the passenger is properly restrained.

This bill would apply these provisions to type 2 school pupil activity buses.

Existing law requires that schoolbuses manufactured on or after January 1, 2002, and purchased or leased for use in California have a "passenger restraint system," as defined, at all designated seating positions, unless specifically prohibited by the National Highway Transportation Safety Administration.

This bill would apply these provisions to type 2 school pupil activity buses manufactured on or after July 1, 2004. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 38047.6 is added to the Education Code, to read:

38047.6. The State Board of Education shall adopt regulations to require a passenger in a school pupil activity bus equipped with passenger restraint systems in accordance with Section 27316.5 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

SEC. 2. Section 27316.5 is added to the Vehicle Code, to read:

27316.5. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all type 2 school pupil activity buses, manufactured on or after July 1, 2004, purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system.

(b) For purposes of this section, a "passenger restraint system" is either of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date that the school pupil activity bus was manufactured.

(2) A restraint system certified by the school pupil activity bus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap-shoulder restraint system.

(c) No person, school district, or organization, with respect to a type 2 school pupil activity bus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the school pupil activity bus fails to use or improperly uses the passenger restraint system.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 397

EXHIBIT E

BILL NUMBER: SB 1685 CHAPTERED
BILL TEXT

CHAPTER 397
FILED WITH SECRETARY OF STATE SEPTEMBER 6, 2002
APPROVED BY GOVERNOR SEPTEMBER 5, 2002
PASSED THE ASSEMBLY AUGUST 15, 2002
PASSED THE SENATE MAY 20, 2002

INTRODUCED BY Senator Morrow

FEBRUARY 21, 2002

An act to amend Section 22112 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1685, Morrow. Schoolbus: warning light systems.

Existing law provides that a schoolbus driver shall operate an approved flashing amber light warning system, flashing red signal lights, and stop signal arm system, as specified. The schoolbus driver is required to do specified things when a schoolbus is stopped for the purpose of loading or unloading pupils in specified locations; and may not activate the amber light warning system, flashing red signal lights, and stop signal arm system in specified locations. A violation of these provisions is a crime, punishable as specified.

This bill would provide that the schoolbus driver shall deactivate the amber light warning system after reaching a schoolbus stop; would revise the locations and circumstances with respect to which the flashing amber light warning system, flashing red signal lights, and stop signal arm system may or may not be operated; and would make clarifying changes to the provisions. By creating new crimes or changing existing crimes, this bill would impose a state-mandated local program upon local governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22112 of the Vehicle Code is amended to read:

22112. (a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the schoolbus driver shall activate an approved amber warning light system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The schoolbus driver shall deactivate the amber warning light system after reaching the schoolbus stop. The schoolbus driver shall operate the flashing red light signal system and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red light signal

system, amber warning lights system, and stop signal arm shall not be operated at any place where traffic is controlled by a traffic officer or at any location identified in subdivision (e) of this section. The schoolbus flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any other time.

(b) The schoolbus driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall, before opening the door, ensure that the flashing red light signal system and stop signal arm are activated, and that it is safe to enter or exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the schoolbus driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road upon which the schoolbus is stopped. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils who need to cross the highway or private road upon which the schoolbus is stopped to walk in front of the bus as they cross.

(3) Ensure that all pupils who need to cross the highway or private road upon which the schoolbus is stopped have crossed safely, and that all other pupils and pedestrians are a safe distance from the schoolbus before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the schoolbus driver may not activate the amber warning light system, the flashing red light signal system and stop signal arm at any of the following locations:

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully stopped or parked.

(2) Where the schoolbus is disabled due to mechanical breakdown. The driver of a relief bus that arrives at the scene to transport pupils from the disabled schoolbus shall not activate the amber warning light system, the flashing red light system, and stop signal arm.

(3) Where a pupil requires physical assistance from the driver or authorized attendant to board or leave the schoolbus and providing the assistance extends the length of time the schoolbus is stopped beyond the time required to load or unload a pupil that does not require physical assistance.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard as determined by the schoolbus motor carrier.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber warning light system, if the schoolbus is so equipped, or the flashing red light signal system and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EDUCATION CODE SECTIONS
39831.5, 38047.5, 38047.6

EXHIBIT F

39831.5. (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.
- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

38047.5. The State Board of Education shall adopt regulations to require a passenger in a schoolbus equipped with passenger restraint systems in accordance with Section 27316 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

38047.6. The State Board of Education shall adopt regulations to require a passenger in a school pupil activity bus equipped with passenger restraint systems in accordance with Section 27316.5 of the Vehicle Code to use a passenger restraint system so that the passenger is properly restrained by that system.

VEHICLE CODE SECTIONS
22112, 22454, 27316 & 27316.5

EXHIBIT G

Vehicle Code 22112.

(a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the schoolbus and it is safe to move before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the flashing red signal lights and stop signal arm requirements imposed by this section do not apply to a schoolbus driver at any of the following locations:

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully parked.

(2) Where the schoolbus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the schoolbus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, with the approval of the Department of the California Highway Patrol, to present a traffic or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the schoolbus is so equipped, or the flashing red signal light and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

22454. (a) The driver of any vehicle, upon meeting or overtaking, from either direction, any schoolbus equipped with signs as required in this code, that is stopped for the purpose of loading or unloading any schoolchildren and displays a flashing red light signal and stop signal arm, as defined in paragraph (4) of subdivision (b) of Section 25257, if equipped with a stop signal arm, visible from front or rear, shall bring the vehicle to a stop immediately before passing the schoolbus and shall not proceed past the schoolbus until the flashing red light signal and stop signal arm, if equipped with a stop signal arm, cease operation.

(b) (1) The driver of a vehicle upon a divided highway or multiple-lane highway need not stop upon meeting or passing a schoolbus that is upon the other roadway.

(2) For the purposes of this subdivision, a multiple-lane highway is any highway that has two or more lanes of travel in each direction.

(c) (1) If a vehicle was observed overtaking a schoolbus in violation of subdivision (a), and the driver of the schoolbus witnessed the violation, the driver may, within 24 hours, report the

violation and furnish the vehicle license plate number and description and the time and place of the violation to the local law enforcement agency having jurisdiction of the offense. That law

enforcement agency shall issue a letter of warning prepared in accordance with paragraph (2) with respect to the alleged violation to the registered owner of the vehicle. The issuance of a warning letter under this paragraph shall not be entered on the driving record of the person to whom it is issued, but does not preclude the imposition of any other applicable penalty.

(2) The Attorney General shall prepare and furnish to every law enforcement agency in the state a form letter for purposes of paragraph (1), and the law enforcement agency may issue those letters in the exact form prepared by the Attorney General. The Attorney General may charge a fee to any law enforcement agency that requests a copy of the form letter to recover the costs of preparing and providing that copy.

(d) This section also applies to a roadway upon private property.

Vehicle Code 27316. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all schoolbuses purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system, if the schoolbus is either of the following:

(1) Type 1, as defined in paragraph (1) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2005.

(2) Type 2, as defined in paragraph (2) of subdivision (b) of Section 1201 of Title 13 of the California Code of Regulations, and is manufactured on or after July 1, 2004.

(b) For purposes of this section, a "passenger restraint system" means any of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured.

(2) A restraint system certified by the schoolbus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap/shoulder restraint system.

(c) No person, school district, or organization, with respect to a schoolbus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the schoolbus fails to use or improperly uses the passenger restraint system.

(d) It is the intent of the Legislature, in implementing this section, that school pupil transportation providers work to prioritize the allocation of schoolbuses purchased, leased, or contracted for on or after July 1, 2004, for type 2 schoolbuses, or on or after July 1, 2005, for type 1 schoolbuses, to ensure that elementary level schoolbus passengers receive first priority for new schoolbuses whenever feasible.

Vehicle Code 27316.5. (a) Unless specifically prohibited by the National Highway Transportation Safety Administration, all type 2 school pupil activity buses, manufactured on or after July 1, 2004, purchased or leased for use in California shall be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system.

(b) For purposes of this section, a "passenger restraint system" is either of the following:

(1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date that the school pupil activity bus was manufactured.

(2) A restraint system certified by the school pupil activity bus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap-shoulder restraint system.

(c) No person, school district, or organization, with respect to a type 2 school pupil activity bus equipped with passenger restraint systems pursuant to this section, may be charged for a violation of this code or any regulation adopted thereunder requiring a passenger to use a passenger restraint system, if a passenger on the school pupil activity bus fails to use or improperly uses the passenger restraint system.

CALIFORNIA CODE
OF REGULATIONS

EXHIBIT H

1201. Definitions.

The following terms are defined for purposes of this chapter:

(b) Bus. Every motor vehicle defined in Vehicle Code Section 233 and every school bus, school pupil activity bus, youth bus, and farm labor bus. Bus "type" is determined as follows:

(1) Type 1. Designed for carrying more than 16 passengers and the driver

(2) Type 2. Designed for carrying not more than 16 passengers and the driver; or manufactured on or after April 1, 1977, having a manufacturer's gross vehicle weight rating of 10,000 lb or less, and designed for carrying not more than 20 passengers and the driver.

DECLARATION

EXHIBIT I

DECLARATION OF ALEXANDRA ROBINSON

SAN DIEGO UNIFIED SCHOOL DISTRICT

No. CSM-_____
Chapter 647, Statutes of 1999
Chapter 648, Statutes of 2000
Chapter 581, Statutes of 2001
Chapter 360, Statutes of 2002
Education Code Sections 38048, 38048.5, 39831.5, 38047.5, 38047.6,
Vehicle Code Sections 22112, 22454, 27316, 27316.5
School Bus Safety III

I, Alexandra Robinson, make the following declaration and statement:

1. I am currently Director of Transportation Services Division for the San Diego Unified School District (the "District") for the past 6 years.
2. I am familiar with the provisions and requirements of Education Code Sections 38048, 38048.5, 39831.5, 38047.5, 38047.6.
3. I am familiar with the provisions and requirements of Vehicle Code Sections 22112, 22454, 27316, 27316.5.

4. School districts will incur increased costs, for among other things, to conduct the additional pupil instruction, costs due to higher school bus purchase costs related to the requirement that new school buses be equipped with the three-point passenger restraint system, costs of additional school bus purchases due to the decreased passenger capacity of school buses equipped with the three-point passenger restraint system as compared to school buses that are not so equipped, costs to maintain and replace the three-point passenger restraint system components and the costs related to additional drivers, maintenance, housing the buses and other related expenses.

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters, which are stated as information and belief that I believe them to be true.

EXECUTED June 13, 2003 in San Diego, California.



Alex Robinson



JACK O'CONNELL
State Superintendent of Public Instruction

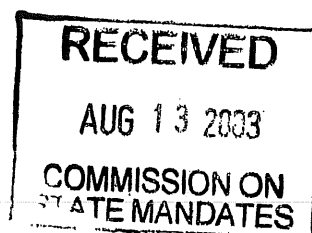
CALIFORNIA
DEPARTMENT
OF
EDUCATION

1430 N Street

P.O. Box 944272

Sacramento, CA

94244-2720



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 regarding the School Bus Safety III Test Claim (03-TC-01). We have reviewed the test claim and offer the following comments.

In general, we note that because the test claim legislation builds upon existing mandated programs and training, the cost of the activities cited by the claimant would appear to be minimal. Especially, in light of the recent amended consolidated School Bus Safety Parameters and Guidelines, which are expected to substantially reduce the cost of the original mandate.

On Page 17, Section D. Costs Incurred or Expected to be Incurred from Mandate, the claimant states that it will incur costs due to higher costs associated with increased school bus purchase prices due to new passenger restraint systems, additional buses due to decreased capacity as a result of new passenger restraint systems, additional drivers, additional maintenance, and additional storage costs. However, several manufacturers have developed or are developing seating systems that do not reduce school bus capacity and it is unclear what, if any, cost will actually be added to the price of school buses. Furthermore, the new requirements will apply to all school buses manufactured for use in California, not just those purchased by public school districts. Therefore, the requirements will apply equally to both public and private entities, which means that these requirements do not meet the test of imposing a requirement unique to government. As a result, these requirements do not constitute a mandated 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.

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,

A handwritten signature in cursive script that reads "Gerald C. Shelton". The signature is written in black ink and is positioned above the printed name.

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Bus Safety III

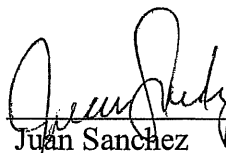
Claim Number: 03-TC-01

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

MAILING LIST

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Sacramento, Ca 95816

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6

Vehicle Code Sections 22112, 22454, 27316, 27316.5

Statutes 1999, Chapter 647 (AB 1573); Statutes 1999, Chapter 648 (AB 15);
Statutes 2001, Chapter 581 (SB 568); Statutes 2002, Chapter 360 (AB 2681);
Statutes 2002, Chapter 397 (SB 1685)

School Bus Safety III
03-TC-01

San Diego Unified School District, Claimants

EXECUTIVE SUMMARY

Overview

This test claim filed by San Diego Unified School District addresses statutes that impose activities on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.

Prior to this test claim the Commission on State Mandates (Commission) heard the *School Bus Safety II* (97-TC-22) test claim, which addresses prior versions of some of the statutes pled in the current test claim. The Commission found that the test claim legislation imposed reimbursable state-mandated activities, including instructing all prekindergarten and kindergarten pupils in school bus emergency procedures and passenger safety, and informing district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms.

However, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Department of Finance (Finance) requested a writ directing the Commission to set aside its decision and to issue a new decision denying the test claim. The court granted Finance's petition, and by doing so agreed that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court ordered the Commission to set aside the prior statement of decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim, but left one issue for remand: the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so,

whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

On remand, the Commission found that although federal law may require *transportation* of disabled children under certain circumstances, the law does not require school districts to provide a *school bus* transportation program. As a result, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Procedural History

The *School Bus Safety III* (03-TC-01) test claim and the comments by the claimants and the Department of Education were filed with the Commission before the judgment by the court in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), and the Commission's subsequent decision on remand denying the *School Bus Safety II* (97-TC-22) test claim. The claimant has not withdrawn this test claim in light of the court's judgment and the Commission's decision. In addition, neither the claimant nor the Department of Education filed comments regarding the impact of the court's judgment and the Commission's decision on the current test claim.

The test claim statutes pled in the *School Bus Safety II* (97-TC-22) test claim were Education Code sections 39831.5 (former section 38048) and 39831.3, and Vehicle Code section 22112, as added or amended in 1994, 1996, and 1997. In this test claim, the claimant has pled various statutes, including subsequent amendments that occurred in 1999 to Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112.¹ Because the Commission has already made a mandate determination on the code sections as they existed prior to the 1999 amendment, the Commission does not have jurisdiction to make a mandate determination on the activities contained in the prior versions of the code sections. As a result, the discussion regarding these code sections will only address substantive amendments made to the code sections on and after 1999.

Positions of the Parties

Claimant

The claimant alleges that the test claim statutes impose reimbursable state-mandated activities, which include: providing instruction to pupils in school bus emergency procedures and passenger safety, providing information on school bus safety to parents, requiring the school bus driver to engage in specific activities when approaching specified areas and loading and unloading pupils, and purchasing or leasing buses equipped with pelvic and upper torso passenger restraint systems.

Department of Education

In regard to safety instructions and bus driver duties, the Department of Education argues the cost of the activities alleged by the claimant appear to be minimal because the test claim legislation builds upon existing mandated programs and training. In regard to purchasing or leasing school buses or school pupil activity buses with passenger restraint systems, the

¹ Education Code section 39831.5 and Vehicle Code section 22112, as amended by Statutes 1999, chapter 647.

Department of Education argues that it is unclear “what, if any cost will be added to the price of school buses” as a result of these requirements. In addition, the Department of Education argues that the requirement applies to all school buses manufactured in California, not just those purchased by public school districts, and as a result, is not a requirement unique to government. Thus, the requirements regarding purchasing or leasing only school buses with passenger restraint systems do not constitute a mandated program.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local governments and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments or school districts to be eligible for reimbursement, one or more similarly situated local governments or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

The following chart provides a brief summary of the claims and issues raised by the claimant and staff’s recommendation.

Claim	Description	Issues	Staff Recommendation
Education Code sections 38047.5 and 38047.6	These sections address the adoption of regulations by the State Board of Education regarding the use of passenger restraint systems in school buses and school pupil activity buses.	Claimant alleges that the test claim statutes impose state-mandated new programs or higher levels of service.	<u>Denied:</u> The statutes do not impose any activities on school districts.
Education Code section 39831.5	This section addresses the instructions for school bus emergency procedure and passenger safety.	Claimant alleges that the test claim statute imposes state-mandated new programs or higher levels of service.	<u>Denied.</u> Any activities required by this statute are triggered by the district’s decision to provide school bus or school pupil activity bus transportation, which school districts are not required to do.

Vehicle Code section 22112	This section addresses the duties of a school bus driver when stopping to load or unload pupils.	Claimant alleges that the test claim statute imposes state-mandated new programs or higher levels of service.	<u>Denied:</u> The statute as amended in 1999 does not impose a state-mandated new program or higher level of service.
Vehicle Code section 22454	This section addresses the authority of school bus drivers to report instances in which drivers improperly overtake a stopped school bus to local law enforcement agencies.	Claimant alleges that the test claim statute imposes state-mandated new programs or higher levels of service.	<u>Denied:</u> This section does not require school districts to engage in any activities. Instead it authorizes, but does not require, a school bus driver to report a violation of the section by drivers of other vehicles to local law enforcement.
Vehicle Code sections 27316 and 27316.5	These sections address the requirement that school buses or school pupil activity buses that are purchased or leased must be equipped with passenger restraint systems.	Claimant alleges that the test claim statute imposes state-mandated new programs or higher levels of service.	<u>Denied:</u> Any activities required by this statute are triggered by the district's decision to provide school bus or school pupil activity bus transportation, which school districts are not required to do.

Conclusion

Staff concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

STAFF ANALYSIS

Claimant

San Diego Unified School District

Chronology

07/02/03	The claimant, San Diego Unified School District, files test claim with the Commission
07/15/03	Commission determines test claim is complete and requests comments
08/11/03	Department of Education files comments on the test claim
12/22/03	Judgment entered in <i>State of California Department of Finance v. Commission on State Mandates</i> (02CS00994)

I. Background

This test claim filed by San Diego Unified School District alleges reimbursable state-mandated activities imposed on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.²

Prior to the filing of this test claim, the Commission heard the *School Bus Safety II* (97-TC-22) test claim, which was filed by Clovis Unified School District in 1997. The *School Bus Safety II* (97-TC-22) test claim addresses prior versions of some of the statutes in the current test claim. Specifically the test claim statutes pled in the *School Bus Safety II* (97-TC-22) test claim were Education Code sections 39831.5 (former section 38048) and 39831.3, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739. In this test claim, the claimant has pled various statutes, including subsequent amendments that occurred in 1999 and 2002 to Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112.³

On July 29, 1999, the Commission adopted a statement of decision for *School Bus Safety II* (97-TC-22), which concluded that the test claim legislation imposed the following reimbursable state-mandated activities:

² Education Code section 39830.1 defines “school pupil activity bus” as any motor vehicle, other than a school bus, operated by a carrier in business for the principal purpose of transporting members of the public on a commercial basis, which is used under a contractual agreement between a school and the carrier to transport school pupils at or below the 12th grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent is present to accept the pupil or place the pupil on the bus.

³ Education Code section 39831.5 and Vehicle Code section 22112, as amended by Statutes 1999, chapter 647; and Vehicle Code section 22112, as amended by Statutes 2002, chapter 397.

- Instructing all prekindergarten and kindergarten pupils in school bus emergency procedures and passenger safety. (Ed. Code, § 39831.5, subd. (a); Ed. Code, § 38048, subd. (a).)
- Determining which pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, have not been previously transported by a school bus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Providing written information on school bus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, who were not previously transported in a school bus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Providing updates to all parents and guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, on new school bus safety procedures as necessary. The information shall include, but is not limited to: (A) a list of school bus stops near each pupil's home; (B) general rules of conduct at school bus loading zones; (C) red light crossing instructions; (D) school bus danger zones; and (E) walking to and from school bus stops. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Preparing and revising a school district transportation safety plan. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Determining which pupils require escort. (Vehicle Code section 22112, subd. (c)(3).)
- Ensuring pupil compliance with school bus boarding and exiting procedures. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Retaining a current copy of the school district's transportation safety plan and making the plan available upon request by an officer of the Department of the California Highway Patrol. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Informing district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms. (Veh. Code, § 22112.)

However, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision in *School Bus Safety II* was challenged in Sacramento County Superior Court. The petitioner, Department of Finance, sought a writ of mandate directing the Commission to set aside the prior decision and to issue a new decision denying the test claim, for the following legal reasons:

- The transportation of pupils to school and on field trips is an optional activity because the State does not require schools to transport pupils to school or to undertake school activity trips.

- Prior to the enactment of the test claim legislation, the courts determined that when schools undertook the responsibility for transporting pupils they were required to provide a reasonably safe transportation program.
- To the extent the test claim legislation requires schools to transport pupils in a safe manner and to develop, revise, and implement transportation safety plans, the test claim legislation does not impose a reimbursable state mandate because these activities are undertaken at the option of the school district and the legislation merely restates existing law, as determined by the courts, that schools that transport students do so in a reasonably safe manner. Therefore the test claim legislation does not require school districts to implement a new program or higher level of service.⁴

On December 22, 2003, the court entered judgment for Finance. By granting Finance’s petition the court agreed that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. On February 3, 2004, the court ordered the Commission to set aside the prior statement of decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. At the March 25, 2004 Commission hearing, the Commission set aside the original *School Bus Safety II* decision and vacated the applicable parameters and guidelines and statewide cost estimate.⁵

However, the court left one issue for remand: the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

On remand, the Commission found that although federal law may require *transportation of* disabled children under certain circumstances, the law does not require school districts to provide a *school bus* transportation program. In addition, the Commission states, “even if school bus transportation is used for [students with disabilities], there is no evidence in the record that the state and federal funding provided for transporting children with disabilities is inadequate to cover any pro rata cost that may result from the test claim statutes.”⁶ Therefore the Commission found that the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Because the Commission has already made a mandate determination in its decision on *School Bus Safety II* (97-TC-22) regarding Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112, as they existed prior to the 1999 amendments pled in this test claim,

⁴ Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, dated July 9, 2002, pages 4-5.

⁵ The original *School Bus Safety* (CSM-4433) statement of decision and parameters and guidelines were not part of the litigation.

⁶ Commission statement of decision for *School Bus Safety II* (97-TC-22) (Remand), March 30, 2005, p. 9.

the Commission does not have jurisdiction to make a mandate determination on the activities contained in the prior versions of the code sections.⁷ As a result, the discussion regarding these code sections will only address substantive amendments made to the code sections in Statutes 1999, chapters 647 and 648, and Statutes 2002, chapter 397.

The court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), and the Commission's subsequent decision on remand denying the *School Bus Safety II* (97-TC-22) test claim, were made after the filing of this test claim. The claimant has not withdrawn this test claim in light of the court's judgment and the Commission's decision. In addition, neither the claimant nor the Department of Education filed comments regarding the impact of the court's judgment and the Commission's decision on the current test claim.

A. Claimants' Position

Prior to the court's judgment and the Commission's decision regarding *School Bus Safety II* (97-TC-22), which found that the provision of school bus transportation services is discretionary, the claimant alleged that the test claim statutes impose reimbursable state-mandated activities, which include: providing instruction to pupils in school bus emergency procedures and passenger safety, providing information on school bus safety to parents, requiring the school bus driver to engage in specific activities when approaching specified areas and loading and unloading pupils, and purchasing or leasing buses equipped with pelvic and upper torso passenger restraint systems.⁸

B. Department of Education

Prior to the court's judgment and the Commission's decision, which denied the *School Bus Safety II* (97-TC-22) test claim and vacated the applicable parameters and guidelines, the Department of Education argued the following:

In general, we note that because the test claim legislation builds upon existing mandated programs and training, the cost of the activities cited by the claimant would appear to be minimal. Especially, in light of the recent amended consolidated School Bus Safety Parameters and Guidelines, which are expected to substantially reduce the cost of the original mandate.

On Page 17, Section D. Costs Incurred or Expected to be Incurred from Mandate, the claimant states that it will incur costs due to higher costs associated with increased school bus purchase prices due to new passenger restraint systems,

⁷ Government Code section 17521 defines "test claim" as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. On April 26, 1994, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1992, chapter 624, which were pled in the *School Bus Safety* (CSM-4433). On March 30, 2005, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1996, chapter 277 and Statutes 1997, chapter 739, which were pled in the *School Bus Safety II* (97-TC-22).

⁸ Test Claim 03-TC-01, dated July 2, 2003, pgs. 11-17.

additional buses due to decreased capacity as a result of new passenger restraint systems, additional drivers, additional maintenance, and additional storage costs. However, several manufacturers have developed or are developing seating systems that do not reduce school bus capacity and it is unclear what, if any, cost will actually be added to the price of school buses. Furthermore, the new requirements will apply to all school buses manufactured for use in California, not just those purchased by public school districts. Therefore, the requirements will apply equally to both public and private entities, which means that these requirements do not meet the test of imposing a requirement unique to government. As a result, these requirements do not constitute a mandated program.⁹

II. Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁰ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹¹ “It’s purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹² A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or requires a local agency or school district to engage in an activity or task.¹³ The required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service under existing programs.¹⁴

The courts have defined a “program” that is subject to article XIII B, section 6 of the California Constitution as one that carries out the governmental function of providing public services, or a

⁹ Department of Education Comments in Response to Test Claim 03-TC-01, dated August 11, 2003.

¹⁰ Article XIII B, section 6, subdivision (a) (as amended by Proposition 1A in November 2004), provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

¹¹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735 (*Kern High School Dist.*).

¹² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹³ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁵ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁶ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁷ Finally, the newly required activity or higher level of service must impose costs on local agencies as a result of local agencies’ performance of the new activities or higher level of service that were mandated by the state statute or executive order.¹⁸

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁰

A. The test claim statutes do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the headers impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Adoption of Regulations (Ed. Code, §§ 38047.5 and 38047.6)

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language governs.²¹ Education Code sections 38047.5 and 38047.6 require the State Board of Education to adopt regulations requiring passengers of school buses and school pupil activity buses equipped with passenger restraint systems to use the passenger restraint system. The plain

¹⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

¹⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁰ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²¹ *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

language of these code sections does not impose any requirements on school districts. Instead, the code sections address the duties of the State Board of Education. Thus, staff finds that Education Code sections 38047.5 and 38047.6 do not impose any reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Instruction in School Bus Emergency Procedure and Passenger Safety (Ed. Code, § 39831.5)

Education Code section 39831.5 was amended by Statutes 1999, chapter 648, as indicated by the following underlined provisions:

(a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.
- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.

(D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

As relevant to this test claim, Education Code section 39831.5 requires school districts to engage in the following activity:

Include in the annual school bus passenger safety instructions given to pre-kindergarten through eighth grade students that are transported on school buses or school pupil activity buses for home-to-school transportation the following:

- a. how to safely cross the street, highway, or private road; and
- b. instruction on the use of passenger restraint systems, including: (1) proper fastening and release of the passenger restraint system; (2) acceptable placement of passenger restraint systems on pupils; (3) times at which the passenger restraint systems should be fastened and released; and (4) acceptable placement of the passenger restraint systems when not in use. (Ed. Code, § 39831.5 (Stats. 1999, ch. 648, § 2.5)).

In order to determine whether the above activity constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.²²

The activity of including information in annual school bus passenger safety instructions is triggered by a school district's decision to provide school bus or school pupil activity bus transportation to students. However, under state law, school districts are authorized but not required to provide school bus or school pupil activity bus transportation of pupils to and from school.²³ Districts are authorized to "provide for the transportation of pupils to and from school . . ." and are authorized to provide transportation in a variety of ways, including purchasing or renting a vehicle, contracting with a municipally owned transit system, or providing reimbursement to parents for the cost of transportation.²⁴ In *Arcadia Unified School Dist. v. State Dept. of Education*, a case in which the California Supreme Court found that an Education Code section that authorizes charging a fee for pupil transportation does not violate the free school guarantee or equal protection clause of the California Constitution, the Court confirmed that California schools need not provide bus transportation at all. Specifically, the Court states:

Without doubt, school-provided transportation may enhance or be useful to school activity, but it is not a necessary element which each student must utilize or be denied the opportunity to receive an education.

This conclusion is especially true in this state, since, as the Court of Appeal correctly noted, *school districts are permitted, but not required, to provide bus transportation.* ([Ed. Code,] § 39800.) If they choose, districts may dispense with bus transportation entirely and require students to make their own way to school. Bus transportation is a service which districts may provide at their option, but schools obviously can function without it. (Fns. omitted, emphasis added.)²⁵

Likewise, federal law, specifically the Individuals with Disabilities Education Act (IDEA), does not require school districts to provide *school bus* or *school pupil activity bus* transportation for students with disabilities. In *State of California Department of Finance v. Commission on State Mandates* (02CS00994), discussed above, the court addressed the issue of whether the IDEA requires school bus transportation for students with disabilities. On remand the Commission, found that the IDEA does not require school bus transportation of students.

The primary purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living."²⁶ "Free appropriate public education" (FAPE) is defined to mean special education and related services that: (1) have been provided at public expense, under public supervision and direction,

²² *Kern High School Dist., supra*, 30 Cal.4th at p. 743.

²³ Education Code section 39800.

²⁴ Education Code sections 39800 and 39806.

²⁵ *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 264.

²⁶ Title 20 United States Code section 1400(d)(1)(A) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

and without charge; (2) meet the standards of the State educational agency; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with the individualized education program (IEP).²⁷

An IEP is a written statement, developed in a meeting between the school, teachers, and the parents of a child with a disability (IEP team), that includes a statement of the special education and related services and supplementary aids and services that are to be provided to the child.²⁸ “Related services” is defined by the IDEA to mean “*transportation*, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education”²⁹ As a result, if transportation is included in a child’s IEP, transportation would be a related service that must be provided to the child. However, *school bus* or *school pupil activity bus* transportation is not required in order to comply with the possible requirement to provide transportation under the IDEA.

As defined by the implementing regulations of the IDEA, “transportation” includes: (1) travel to and from school and between schools; (2) travel in and around school buildings; (3) specialized equipment (*such as* special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with disability.³⁰ Thus, under federal law the provision of bus transportation is a transportation option, but it is not a required option. Similarly guidelines issued by the California Department of Education for use by IEP teams when determining the need for and the provision of transportation services provide:

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent’s driving with a parent’s voluntary participation, or other mode as determined by the IEP team.³¹

In addition, in regard to the provision of transportation in general (i.e. not specifically applicable to students with disabilities), in lieu of providing transportation school districts may pay parents of pupils a sum not to exceed the cost of actual and necessary travel incurred in transporting students to and from schools in the district or the cost of food and lodging of the student at a place convenient to the schools if the cost does not exceed the estimated cost of providing

²⁷ Title 20 United States Code sections 1401(9) (as reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004), formerly section 1401(8) (as added by Pub.L. No. 105-17) (June 4, 1997)).

²⁸ Title 20 United States Code section 1414(d) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

²⁹ Title 20 United States Code section 1401(22) (emphasis added).

³⁰ 34 Code of Federal Regulations part 300.24(b)(15), as amended by 64 FR 12418 (March 12, 1999), and part 300.34(c)(16), as amended by 71 FR 46753 (Aug. 14, 2006).

³¹ California Department of Education “Special Education Transportation Guidelines” at <<http://www.cde.ca.gov/sp/se/lr/trnsprtgdlns.asp>> as of February 23, 2011.

transportation of the student.³² Thus, although school districts may provide school bus or school pupil activity bus transportation, along with a variety of other possible options, to fulfill the possible transportation requirements under the IDEA, neither state law nor the IDEA require school districts to provide school bus or school pupil activity bus transportation. As a result, consistent with the court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision on remand regarding the *School Bus Safety II* (97-TC-22) test claim, and the *Kern High School Dist.* case, staff finds that Education Code section 39831.5 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Stopping to Load or Unload Pupils (Veh. Code, § 22112)

Vehicle Code section 22112 was amended by Statutes 1999, chapter 647, as shown by the underlined provisions that indicate additions or changes and ellipses that indicate deletions:

(a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

³² Education Code sections 39806 and 39807.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the schoolbus and it is safe to move before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the flashing red signal lights and stop signal arm requirements imposed by . . . this section do not apply to a schoolbus driver at any of the following locations . . . :

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully parked.

(2) Where the schoolbus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the schoolbus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, . . . with the approval of the Department of the California Highway Patrol, . . . to present a . . . traffic . . . or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the schoolbus is so equipped, or the flashing red signal light and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

The amendments made to Vehicle Code section 22112 by Statutes 1999, chapter 647, do not add any activities to the code section. Instead, the amendments either reduce the instances in which a school bus driver must engage in an activity (i.e. Veh. Code, § 22112, subd. (d)) or specify when the duty of a school bus driver to use the flashing red signal lights and stop signal arm do not apply. In 2002, Vehicle Code section 22112 was amended again to make clarifying non-substantive changes to the code section.³³ As a result, Vehicle Code section 22112, as amended by Statutes 1999, chapter 647, and Statutes 2002, chapter 397, does not require school districts to engage in any activities.

In addition, even if the 1999 and 2002 amendments to Vehicle Code section 22112 imposed new activities on school districts, these activities are triggered by the underlying decision by school

³³ Statutes 2002, chapter 397.

districts to provide school bus or school pupil activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any new activities required by Vehicle Code section 22112 are triggered by the local decision to provide school bus transportation, and would not be state-mandated activities.

Meeting or Overtaking School Buses (Veh. Code, § 22454)

Vehicle Code section 22454 addresses the duty of drivers to stop immediately before passing a school bus and to not pass a school bus if the bus is stopped and displays a flashing red light signal and stop signal arm. Section 22454 authorizes, but does not require, the bus driver to report a violation of section 22454 to the local law enforcement agency that has jurisdiction of the offense. If a school bus driver does report a violation of section 22454 to the local law enforcement agency, the law enforcement agency is required to issue a letter of warning to the registered owner of the vehicle.

Although the claimant has pled Vehicle Code section 22454, it is unclear from the test claim filing what activities are alleged to be mandated by this code section. As it applies to school districts, Vehicle Code section 22454 does not require school bus drivers to engage in any activities. In addition, the claimant does not have standing to claim for any costs incurred by local law enforcement agencies even if the district employs police officers because, as determined by the court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (*POBRA*), school districts are not required to employ peace officers.³⁴

In addition, any activity contained in Vehicle Code section 22454 is triggered by the underlying decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any possible activities required by Vehicle Code section 22454 would not be state-mandated activities. As a result, staff finds that Vehicle Code section 22454 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Pelvic and Upper Torso Passenger Restraint Systems for School Buses and School Pupil Activity Buses (Veh. Code, § 27316 and 27316.5)

Vehicle Code section 27316 requires school buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school bus is: (1) designed to carry more than 16 passengers and the

³⁴ *POBRA, supra*, 170 Cal.App.4th at pgs. 1366-1369. Even if school districts had standing to claim reimbursement for requirements imposed on local law enforcement agencies by Vehicle Code section 22454, the activity is directly related to the enforcement of an infraction created by section 22454. Under Government Code section 17556, subdivision (g), activities directly related to the enforcement of an infraction do not impose costs mandated by the state subject to reimbursement under article XIII B, section 6 of the California Constitution. As a result, Vehicle Code section 22454 would not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

driver and is manufactured on or after July 1, 2005; or (2) designed to carry not more than 16 passengers and the driver, and is manufactured on or after July 1, 2004.³⁵ Similarly, Vehicle Code section 27316.5 requires school pupil activity buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school pupil activity bus is designed to carry not more than 16 passengers and the driver and is manufactured on or after July 1, 2004. In summary, when school districts purchase or lease school buses or school pupil activity buses, the buses must be equipped with passenger restraint systems.

However, the activities required by Vehicle Code sections 27316 and 27316.5 are triggered by the underlying discretionary decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. As a result, staff finds that Vehicle Code sections 27316 and 27316.5 do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

III. Conclusion

Staff concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.

IV. Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

³⁵ Vehicle Code sections 27316 and 27316.5 refer to “Type 1” or “Type 2” school buses or school pupil activity buses when addressing passenger restraint requirements. California Code of Regulations, title 13, section 1201, subdivision (b) (Register 2007, No. 41), defines “Type 1” as a school bus or school pupil activity bus that is designed to carry more than 16 passengers and the driver. As relevant to this test claim, “Type 2” is defined as a school bus or school pupil activity bus designed to carry not more than 16 passengers and the driver.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code sections 38048 (currently numbered 39831.5), 39831.3 and 39831.5, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739;

Filed on December 22, 1997,

By Clovis Unified School District, Claimant

No. 97-TC-22 (REMAND)


School Bus Safety II

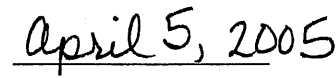
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on March 30, 2005)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.


PAULA HIGASHI, Executive Director


Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code sections 38048 (currently numbered 39831.5), 39831.3 and 39831.5, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739;

Filed on December 22, 1997,

By Clovis Unified School District, Claimant

No. 97-TC-22 (REMAND)

School Bus Safety II

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on March 30, 2005)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this remanded test claim during a regularly scheduled hearing on March 30, 2005. Keith Petersen appeared on behalf of the claimant, Clovis Unified School District. Susan Geanacou appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 4-0.

BACKGROUND

In 1997, claimant Clovis Unified School District submitted a test claim alleging a reimbursable state mandate for school districts to perform new activities by instructing pupils and informing parents of school bus safety procedures. The test claim statutes are Education Code sections 38048 (currently numbered 39831.5), 39831.3 and 39831.5, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739. In the original *School Bus Safety II* Statement of Decision, adopted July 29, 1999, the Commission concluded that the test claim legislation imposed the following reimbursable state-mandated activities:

- Instructing all prekindergarten and kindergarten pupils in schoolbus emergency procedures and passenger safety. (Ed. Code, § 39831.5, subd. (a); Ed. Code, § 38048, subd (a).)
- Determining which pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, have not been previously transported by a schoolbus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)

- Providing written information on schoolbus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, who were not previously transported in a schoolbus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Providing updates to all parents and guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, on new schoolbus safety procedures as necessary. The information shall include, but is not limited to: (A) a list of schoolbus stops near each pupil's home; (B) general rules of conduct at schoolbus loading zones; (C) red light crossing instructions; (D) schoolbus danger zone; and (E) walking to and from schoolbus stops. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Preparing and revising of a school district transportation safety plan. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Determining which pupils require escort. (Vehicle Code section 22112, subd. (c)(3).)
- Ensuring pupil compliance with schoolbus boarding and exiting procedures. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Retaining a current copy of the school district's transportation safety plan and making the plan available upon request by an officer of the Department of the California Highway Patrol. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Informing district administrators, school site personnel, transportation services staff, schoolbus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms. (Veh. Code, § 22112.)

In *State of California Department of Finance v. Commission on State Mandates* (02CS00994), this decision was challenged in Sacramento County Superior Court. The petitioner, Department of Finance, sought a writ directing the Commission to set aside the prior decision and to issue a new decision denying the test claim, for the following legal reasons:

- The transportation of pupils to school and on field trips is an optional activity because the State does not require schools to transport pupils to school or to undertake school activity trips.
- Prior to the enactment of the test claim legislation, the courts determined that when schools undertook the responsibility for transporting pupils they were required to provide a reasonably safe transportation program.
- To the extent the test claim legislation requires schools to transport pupils in a safe manner and to develop, revise and implement transportation safety plans, the test claim legislation does not impose a reimbursable state mandate because these activities are undertaken at the option of the school district and the legislation merely restates existing law, as determined by the courts, that schools that transport students

do so in a reasonably safe manner. Therefore the test claim legislation does not require school districts to implement a new program or higher level of service.¹

On December 22, 2003, the court entered judgment for the Department of Finance, and on February 3, 2004, ordered the Commission to set aside the prior Statement of Decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. At the March 25, 2004 Commission hearing, the Commission set aside the original *School Bus Safety II* decision and vacated the applicable parameters and guidelines and statewide cost estimate.²

However, the court left one issue for remand: the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

Claimant's Position

Claimant's response to the request for briefing, dated April 26, 2004, follows:

You notified the claimant on March 26, 2004 that the Commission on State Mandates has adopted an order to set aside the decision on the above referenced test claim pursuant to an order of the Sacramento Superior Court. You requested the claimant to file and serve a brief by April 26, 2004 addressing two limited issues for rehearing. I respond to that request on behalf of the test claimant.

The two issues are:

1. Whether IDEA or any other federal law requires school districts to transport any students, and if so,
2. Whether the test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

In the statement of decision for the test claim, adopted July 29, 1999, at footnote 13, the Commission has already made that determination of fact and law in the affirmative.

No further comments were filed after the release of the draft staff analysis.

State Agency's Position

The Commission received no state response to the request for briefing or to the draft staff analysis.

¹ Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, dated July 9, 2002, pages 4-5.

² The original *School Bus Safety* (CSM-4433) statement of decision and parameters and guidelines were not part of the subject litigation.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution³ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁵ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁶ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁷

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁸ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.⁹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁰

³ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁴ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹¹ -

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹² In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹³

Issue: The Commission is ordered to rehear the *School Bus Safety II* test claim and issue a decision on this limited question:

- **Does the federal IDEA or any other federal law require school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs?**

In briefing the *School Bus Safety II* litigation, (*State of California Department of Finance v. Commission on State Mandates* (02CS00994)), the Department of Finance cited the 1992 California Supreme Court decision confirming the constitutionality of Education Code section 39807.5.¹⁴ In that case, the Court found that the provision, which authorizes school districts to

¹¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹³ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁴ *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251. Current Education Code section 39807.5 follows (added by Stats. 1999, ch. 646; substantively identical to the law analyzed in *Arcadia*):

(a) When the governing board of any school district provides for the transportation of pupils to and from schools in accordance with Section 39800, or between the regular full-time day schools they would attend and the regular full-time occupational training classes attended by them as provided by a regional occupational center or program, the governing board of the district may require the parents and guardians of all or some of the pupils transported, to pay a portion of the cost of this transportation in an amount determined by the governing board.

(b) The amount determined by the board shall be no greater than the statewide average nonsubsidized cost of providing this transportation to a pupil on a publicly owned or operated transit system as determined by the Superintendent of Public Instruction, in cooperation with the Department of Transportation.

(c) For the purposes of this section, “nonsubsidized cost” means actual operating costs less federal subventions.

charge fees for pupil transportation, violated neither the free school guarantee nor equal protection clause of the California Constitution. In addition, the Court confirmed that, statutorily, California schools need not provide bus transportation at all. (*Arcadia Unified School Dist.*, *supra*, 2 Cal.4th 251, 264.)

Without doubt, school-provided transportation may enhance or be useful to school activity, but it is not a necessary element which each student must utilize or be denied the opportunity to receive an education.

This conclusion is especially true in this state, since, as the Court of Appeal correctly noted, *school districts are permitted, but not required, to provide bus transportation.* ([Ed. Code,] § 39800.) If they choose, districts may dispense with bus transportation entirely and require students to make their own way to school. Bus transportation is a service which districts may provide at their option, but schools obviously can function without it. [Fns. omitted, emphasis added.]

Department of Finance's briefing to the court stated:

There is no reimbursable mandate for activities undertaken at the option or discretion of a local government entity. Actions undertaken without legal compulsion (or threat of penalty for nonparticipation) do not trigger a state mandate and do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 743; 134 Cal.Rptr.2d 237, 249; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.) The test claim statutes all deal with safe practices when students are transported. But since districts are not required to transport pupils, the test claim statutes create no mandate. The transportation of students is a voluntary activity.¹⁵

By granting the Department of Finance's petition on all but the limited federal law question, the court agreed with the petitioner that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary.

Claimant's April 26, 2004 response to the Commission's request for briefing on the remaining federal law issue was: "In the statement of decision for the test claim, adopted July 29, 1999, at

(d) The governing board shall exempt from these charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board.

(e) A charge under this section may not be made for the transportation of handicapped children.

(f) Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of pupils in the schools.

¹⁵ Points and Authorities in Support of Petition for Writ of Mandate, dated September 30, 2003, page 8.

footnote 13, the Commission has already made that determination of fact and law in the affirmative.” Footnote 13 follows in its entirety:

Federal law, under the Individuals with Disabilities Education Act (IDEA), requires states to provide disabled children with special education and related services in the least restrictive environment. Therefore, instruction in schoolbus safety to prekindergarten and kindergarten pupils includes special education pupils with transportation listed in their individualized education program (IEP). The IEP is a written statement developed in a meeting between the school, the teacher, and the parents. The purpose of the IEP is to ensure a disabled child receives a free appropriate public education in the least restrictive environment. The IEP includes related services that may be required. Depending on the needs of the child, these related services may include transportation. The IDEA includes specific services, but is not limited to the provision of those services listed. The enumerated services include *transportation*, early identification and assessment of disabling conditions in children, and medical and counseling services. (Title 20, United States Code, section 1401(a)(17), (19).) Thus, the test claim goes beyond federal requirements in that under IDEA transportation services are discretionary.

Claimant asserts that by this footnote the Commission affirmatively determined that the IDEA requires school districts to transport students. However, the final sentence of the footnote in plain language concludes, “that under IDEA transportation services are discretionary.” The Commission notes that the language of the footnote is unclear: initially suggesting that if an IEP determines that transportation is necessary for a particular student, it is required under the IDEA, but then concluding transportation is discretionary under the federal law. Regardless of how the footnote might be interpreted, the July 29, 1999 Statement of Decision, including footnote 13, was set aside by court-order and no longer has any legal effect. Therefore the issue must be re-examined and decided by the Commission.

A primary purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and *related services* designed to meet their unique needs and prepare them for employment and independent living.” (20 U.S.C. § 1400(d)(1)(A), emphasis added.) Consistent with this purpose, the IDEA authorizes federal funding for states that provide disabled children with special education and “related services.” “Related services,” for the purposes of the IDEA, “means *transportation*, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education” (20 U.S.C. § 1401(22), emphasis added.) Thus, transportation may be a necessary related service for individual disabled children as part of providing them with “a free appropriate public education.” However, the Commission finds no evidence that *school bus* transportation is required in order to comply with the IDEA.

As an example, the California Department of Education periodically files a plan of compliance with the federal government as a condition of receiving IDEA funding. The plan in effect at the time the test claim statutes were enacted provides that “In lieu of providing transportation of an individual, the local education agency may reimburse the parent or nonpublic school or agency subject to a written agreement or contract for cost of actual and necessary travel incurred in transporting the child with disabilities at a rate to be determined by the local education agency governing board, but no less than the rate allowed for travel by the local education agency

employees.”¹⁶ Currently, the CDE has guidelines posted to its website, which define transportation options for use in developing an IEP, as follows:

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team.¹⁷

Certainly school districts may choose to transport these students directly by school bus, but neither federal nor state law requires this. Finally, even if school bus transportation is used for these students, there is no evidence in the record that the state and federal funding provided for transporting children with disabilities is inadequate to cover any pro rata costs that may result from the test claim statutes.

CONCLUSION

By granting the Department of Finance’s petition in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Sacramento Superior Court found that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court left an issue for remand, ordering the Commission “to rehear the *School Bus Safety II* test claim and to issue a decision on the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs?”¹⁸

The Commission concludes that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program; therefore, pursuant to the court decision described above, and article XIII B, section 6 of the California Constitution, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

¹⁶ *California State Plan for Part B of the Individuals with Disabilities Education Act and Section 619 (Preschool) for Fiscal Years 1994 through 1997*, version 4, page 145.

¹⁷ At <<http://www.cde.ca.gov/sp/se/sr/trnsprtgdlns.asp>> [as of Mar. 8, 2005.]

¹⁸ Peremptory Writ of Mandamus, *State of California Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case Number 02CS00994, dated February 3, 2004.

PARCADIA UNIFIED SCHOOL DISTRICT et al.,
Plaintiffs and Appellants,

v.

STATE DEPARTMENT OF EDUCATION, Defen-
dant and Respondent; FRANCISCO SALAZAR,
Intervener and Respondent.

No. S021288.

Supreme Court of California
Mar 16, 1992.

SUMMARY

In a prior taxpayers' suit challenging the constitutionality of Ed. Code, 39807.5 (charge for school-provided transportation), the Court of Appeal, concluded that the statute violated both the free school guaranty (Cal. Const., art. IX, § 5) and the equal protection clause of the state Constitution (Cal. Const., art. I, § 7, subd. (a)). Accordingly, the trial court entered judgment against defendants, including the State Department of Education. Subsequently, 25 school districts as plaintiffs, and the department as defendant, submitted an action on stipulated facts to the court of a different county to determine the facial validity of the statute, in which action one of the taxpayers in the prior suit intervened. The trial court ruled that the statute facially violated the free school guaranty. (Superior Court of Sacramento County, No. 361147, Michael J. Virga, Judge.) The Court of Appeal, Third Dist., No. C008489, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that the present action was not barred, despite the prior judgment in the taxpayers' suit, because the public interest exception to the rule of collateral estoppel applied. The court also held that the statute on its face did not violate the free school guaranty of the California Constitution, since transportation is neither an educational activity nor an essential element of school activity. In addition, the court held that the statute did not facially violate California's equal protection clause, since the statute could be constitutionally applied. (Opinion by Panelli, J., with Lucas, C. J., Kennard, Arabian, Baxter and George, JJ., concurring. Separate dissenting opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports
(1) Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Public Interest Exception.

A judgment in a taxpayers' suit against the State Department of Education, entered on remand following a depublished Court of Appeal decision holding unconstitutional Ed. Code, § 39807.5 (charge for transportation costs), did not bar a subsequent action between school districts and the department to determine the facial validity of the statute in which action one of the taxpayers in the prior suit intervened. Although collateral estoppel ordinarily bars a party to a prior action, or one in privity with the party, from relitigating issues finally decided against him or her in the earlier action, it would have been detrimental to the public interest to apply collateral estoppel. When the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. The public interest exception is extremely narrow, and may only be applied in exceptional circumstances. The validity of § 39807.5 involved a pure question of law and affected the public in general, the school districts had not been parties to the previous action and had not been parties to the previous action and had not had an opportunity to litigate the constitutionality of the statute, and if the action were barred, the law on a matter of statewide importance would remain permanently unclear and unsettled. Thus, the public interest exception to the rule of collateral estoppel was applicable, whether or not the districts were agents or privies of the department.

(2) Venue § 23--Civil Cases--Objections--Interference With Injunction of Another Court.

An action between school districts and the State Department of Education, to determine the constitutionality of Ed. Code, § 39807.5 (charge for transportation costs), could properly be brought in the county of the department's principal place of business, despite a prior judgment against the department entered by a court of another county following a determination, in a taxpayers' suit, that the statute was unconstitutional. The present action, which, due to the public interest exception to collateral estoppel, was

not barred, was instituted by the school districts, and did not directly interfere with the injunction issued in the previous action against the Superintendent of Public Instruction, which injunction was still in effect.

(3a, 3b, 3c) Schools § 59--Parents and Students--Busing--Free School Guaranty.

Ed. Code, § 39807.5, permitting school districts to charge parents and guardians for the transportation of pupils to and from school, does not violate California's free school guaranty (Cal. Const., art. IX, § 5), because transportation is not an educational activity, nor an essential element of school activity. The enforcement of rules required for the safety of students on a moving bus does not transform the ride into an educational activity. In addition, the history of the 1879 California Constitution supports the view that transportation was not included within the free school guaranty.

(4) Constitutional Law § 25--Constitutionality of Legislation--Rules of Interpretation--Presumption of Constitutionality.

In considering the constitutionality of a legislative act, a court will presume its validity, resolving all doubts in favor of the act. Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, a court must uphold the act. Thus, wherever possible, a court will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize constitution and statute.

(5) Constitutional Law § 12--Construction of Constitutions--Intent of Enactment.

The first step in interpreting an ambiguous constitutional provision is to look at the intent of the framers.

(6a, 6b) Schools § 62--Sessions, Courses, Texts, and Supplies--Free School Guaranty--Scope of Protection--Transportation.

The free school guaranty (Cal. Const., art. IX, § 5) extends to all activities which constitute an integral, fundamental part of the elementary and secondary education, or which amount to necessary elements of any school's activity. This broad approach focuses not upon the formalities of credit, but upon the educational activities in question. Thus, school districts must provide and cannot charge students for the cost and upkeep of schools and their physical facilities, teachers' salaries, school furniture, and the use of

school buildings for educational activities. However, the free school clause does not extend to noneducational supplemental services. School-provided transportation is not necessary to receive an education, and school districts may dispense with bus transportation entirely and require students to make their own way to school. Thus, a fee may be charged for transportation consistent with the free school guaranty.

[See Cal. Jur.3d, Schools, §§ 13, 328; 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 367.]

(7) Schools § 59--Parents and Students--Busing--Fee Waiver.

The "stigma" attached to applying for a waiver of fees, charged by school districts to parents and guardians for the transportation of pupils pursuant to Ed. Code, § 39807.5, does not render the statute invalid. The fee is for a noneducational service, which is not protected by the free school guaranty (Cal. Const., art. IX, § 5), and there is no more stigma attached to applying for a transportation waiver than in applying for any other noneducational government benefit.

(8a, 8b) Schools § 59--Parents and Students--Busing--Equal Protection.

Ed. Code, § 39807.5, permitting school districts to charge parents and guardians for the transportation of pupils to and from school, does not facially violate California's equal protection clause (Cal. Const., art. I, § 7, subd. (a)), since the statute can be constitutionally applied. The statute specifically exempts indigent children from paying fees for transportation, and, if the statute is properly administered, no child will be denied transportation to school because of poverty. A student who cannot afford to pay for transportation to attend school may not be charged for school-provided transportation. In addition, there is no evidence that the statute has been or will be applied in such a way as to discriminate against poor students or affect their ability to obtain an education.

(9) Constitutional Law § 23--Constitutionality of Legislation--Raising Question of Constitutionality--Burden of Proof--Facial Challenge to Statute.

To support a determination of facial unconstitutionality, voiding a statute as a whole, the party seeking to invalidate the statute cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute. Rather, the party must demonstrate that the act's provisions inevitably

pose a present total and fatal conflict with applicable constitutional prohibitions.

COUNSEL

Breon, O'Donnell, Miller, Brown & Dannis, Priscilla Brown, Nancy B. Bourne and Martha Buell Scott for Plaintiffs and Appellants.

Joseph R. Symkovick, Roger D. Wolfertz and Joanne Lowe for Defendant and Respondent.

Robert K. Miller, M. Carmen Ramirez, Grant R. Specht, Barbara Macri-Ortiz, Peter D. Roos and Deborah Escobedo for Intervener and Respondent.

Cynthia L. Rice, Ellen Braff-Guajardo, Tina L. Rasnow, Carol K. Smith, Elizabeth E. Guillan, Vibiana Andrade and Stephen P. Wiman as Amici Curiae on behalf of Intervener and Respondent. *255

PANELLI, J.

We granted review to decide whether Education Code section 39807.5,^{FN1} which authorizes school districts to charge fees for pupil transportation, violates either the free school guarantee (art. IX, § 5) or the equal protection clause (art. I, § 7, subd. (a)) of the California Constitution. We conclude that the statute, on its face, violates neither constitutional guarantee.^{FN2}

FN1 All further statutory references are to the Education Code, unless otherwise noted.

FN2 The challenge in this case is to the facial constitutionality of section 39807.5; accordingly, we have no occasion to consider its constitutionality as it may be applied.

Facts

This case has its roots in an earlier case. In 1985, Francisco Salazar (the intervener in the present case) filed a taxpayers' suit in Ventura County Superior Court against the State Department of Education, the State Board of Education, the Superintendent of Public Instruction, and the Fillmore Unified School District,^{FN3} alleging that defendants' implementation of section 39807.5 violated the free school guarantee and the equal protection clause of the California Constitution.^{FN4} The superior court ruled that the school

districts that assessed the fees were indispensable parties but did not reach the merits. The Court of Appeal, Second District, Division Six, reversed, holding that the districts were not indispensable parties, and that section 39807.5 violated both the free school guarantee and the equal protection clause of the state *256 Constitution. (*Salazar v. Honig* (May 10, 1988) Cal.App. B026629.) On September 1, 1988, we denied review but ordered the Court of Appeal opinion republished. On remand, the superior court entered judgment against the defendants.

FN3 The Fillmore Unified School District was dismissed from the case when it elected not to impose fees for student transportation.

FN4 Section 39807.5 provides:

"When the governing board of any school district provides for the transportation of pupils to and from schools in accordance with the provisions of Section 39800, or between the regular full-time day schools they would attend and the regular full-time occupational training classes attended by them as provided by a regional occupational center or program, the governing board of the district may require the parents and guardians of all or some of the pupils transported, to pay a portion of the cost of such transportation in an amount determined by the governing board.

"The amount determined by the board shall be no greater than the statewide average nonsubsidized cost of providing such transportation to a pupil on a publicly owned or operated transit system as determined by the Superintendent of Public Instruction, in cooperation with the Department of Transportation.

"For the purposes of this section, 'nonsubsidized cost' means actual operating costs less federal subventions.

"The governing board shall exempt from these charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board.

“No charge under this section shall be made for the transportation of handicapped children.

“Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of pupils in the schools.”

Pursuant to the superior court's order, the State Department of Education (Department) issued a legal advisory, informing all school districts that section 39807.5 was unconstitutional and directing them to cease charging for transportation. However, numerous school districts, which were not parties to the Ventura County action, did not follow the advisory, taking the position that the statute was not unconstitutional.

The present action was instituted to determine the validity of section 39807.5. Twenty-five school districts as plaintiffs and the Department as defendant agreed to submit to the Sacramento County Superior Court on a stipulated statement of facts for judgment “to determine the rights of the parties.” (Code Civ. Proc., § 1138.) Eighteen of the school districts had continued to charge for transportation, while seven had ceased after the decision in *Salazar v. Honig*, *supra*, Cal.App.) and the Department's legal advisory. The purpose of the action was to determine the facial validity of the statute, rather than to litigate the propriety of any particular application.

Salazar successfully moved to intervene. He also moved to dismiss, alleging that the Department was bound by the judgment in the Ventura County action as a party and that the school districts were bound as agents of the Department. The trial court denied the motion to dismiss and granted judgment for the Department, ruling that section 39807.5 facially violated the free school guarantee. (Cal. Const., art. IX, § 5.)

The Court of Appeal, Third District, in a unanimous decision, reversed. The court held that the districts were not collaterally estopped to maintain the action, because the public interest exception to the rule of collateral estoppel applied; the court therefore did not consider whether the districts were agents of the Department or in privity with it. The court also held that section 39807.5 on its face violates neither the free school guarantee nor the equal protection clause of the California Constitution.

Collateral Estoppel

As a threshold matter, we must determine whether the Court of Appeal was correct in holding that this action is not barred by the earlier judgment in *Salazar v. Honig* (*supra*, Cal.App.).

(1) Salazar contends that the Department is bound by the judgment in *Salazar v. Honig* (*supra*, Cal.App.), and that the school districts are also *257 bound, since they are agents of the Department and in privity with it. “Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action.” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64 [266 Cal.Rptr. 139, 785 P.2d 522], citing *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 874 [151 Cal.Rptr. 285, 587 P.2d 1098] (*City of Sacramento*)). Salazar also claims that it was inappropriate for the Sacramento County Superior Court to take jurisdiction over the action when the state defendants were bound by the injunctions issued as a result of the Ventura County action. The Department and the school districts, on the other hand, maintain that the requirements of collateral estoppel are not met as to the school boards, because the boards are neither agents of, nor in privity with, the Department. Moreover, they maintain, even if the formal requirements are met, the Court of Appeal was correct in its holding that the action was not barred, because the requirements of the public interest exception to the doctrine of collateral estoppel are met, and we agree.

As we will discuss, it appears that the Court of Appeal properly applied the public interest exception. Therefore, like the Court of Appeal, we need not consider whether the districts were agents of the Department or in privity with it. We would be reluctant to do so in the absence of a factual record when our decision might have unforeseeable consequences in other cases and there is an alternative basis for our conclusion.

We recently affirmed the rule that, “ ‘when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.]’ ” (*City of Sacramento, supra*, 50 Cal.3d at p. 64, quoting *Consumers Lobby Against Monopolies v. Public Utilities*

Com. (1979) 25 Cal.3d 891, 902 [160 Cal.Rptr. 124, 603 P.2d 41].) The issue in *City of Sacramento* was whether local governments were entitled to subvention of the costs of extended mandatory unemployment insurance coverage. We determined that the state should not be bound by a prior judgment on the issue because “the consequences of any error transcend those which would apply to mere private parties”; any error would also affect the taxpayers and employers of the state. (*City of Sacramento, supra*, 50 Cal.3d at pp. 64-65.)

It would be equally detrimental to the public interest to apply collateral estoppel here. Because *Salazar v. Honig* (*supra*, Cal.App.) was ordered not to be officially published and may not be cited as legal authority, there has been a continuing and demonstrable uncertainty about the validity of section 39807.5. School districts do not know if they can constitutionally charge for *258 school transportation, and have responded to this uncertainty in different ways. It is clearly in the public interest that school districts have a uniform understanding of this important issue. If we were to hold that this action could not go forward, and if *Salazar v. Honig* was wrongly decided, school districts would be unable to charge fees for transportation, and so they would be unable to collect those revenues, to which they are entitled by statute. Students might also be adversely affected, because those districts that could not afford to fund bus transportation out of their limited revenues might be forced to eliminate the service. The public interest, especially the interests of school districts, taxpayers, and students, will best be served by a final resolution by this court of whether the fees are permissible.

In addition, the unusual history of *Salazar v. Honig* (*supra*, Cal.App.) suggests that it would be in the public interest to permit this action to go forward. Although Salazar presented evidence at that trial on the unconstitutionality of section 39807.5, the state defendants did not present any evidence on the issue, nor did they argue that the statute was constitutional. Their defense was based solely on the contention that the school districts were indispensable parties. Thus, no one during the *Salazar v. Honig* proceedings contended that the statute could be applied in a manner consistent with the Constitution. The public interest would best be served by a determination of this important issue based on the presentation of both sides of the controversy.

The practical result of Salazar's position would be that the constitutionality of section 39807.5 would never again be litigated. If, as Salazar contends, all of the school districts in the state of California are bound by the decision in *Salazar v. Honig* (*supra*, Cal.App.) then no school district is free either to charge a fee for home-to-school transportation or to assert the constitutionality of the statute. In that case, there would be *no opportunity* for anyone *ever* to challenge the legal grounds of the unpublished ruling. Thus, in one fell swoop, by binding all the parties in the state who have any interest in the issue without naming them as parties to the first action, Salazar would have effectively prevented the constitutionality of this legislative enactment from ever being fully tested or defended.

None of the cases Salazar relies on convinces us that the Court of Appeal erred in applying the public interest exception. Salazar points out that the injustice exception to the rule of collateral estoppel has been criticized; however, that exception is distinct from the public interest exception, on which the Court of Appeal relied. (See *Slater v. Blackwood* (1975) 15 Cal.3d 791, 796 [126 Cal.Rptr. 225, 543 P.2d 593], criticizing *259 *Greenfield v. Mather* (1948) 32 Cal.2d 23, 35 [194 P.2d 1].) Salazar also brings to our attention cases concerning injunctive orders or class actions, in which parties were held to be bound by an earlier judgment. (See *Ross v. Superior Court* (1977) 19 Cal.3d 899 [141 Cal.Rptr. 133, 569 P.2d 727], and *Cartwright v. Swap* (1974) 40 Cal.App.3d 567 [115 Cal.Rptr. 402].) He suggests that if we were to allow cases such as this to go forward, the result would be a “judicial administration nightmare.” However, the cases he relies on do not address the particular exception that the Court of Appeal applied.

The public interest exception is an extremely narrow one; we emphasize that it is the exception, not the rule, and is only to be applied in exceptional circumstances. However, the unusually compelling facts in this case make it appropriate for us to apply the exception here. The matter before us involves a pure question of law. It affects the public in general, including children, parents and taxpayers; it also affects the ability of school districts to provide and finance school transportation. Because the school districts were not parties to the earlier case of *Salazar v. Honig* (*supra*, Cal.App.) they have not had the opportunity to litigate the constitutionality of section 39807.5. If the

action were barred from going forward, then the state of the law on a matter of statewide importance would remain permanently unclear and unsettled. (2)(See fn. 5.) Therefore, we conclude that the Court of Appeal did not err in applying the public interest exception to the rule of collateral estoppel, and that the parties were not barred from pursuing their case in the Sacramento County Superior Court.^{FN5}

FN5 Salazar argues that the impropriety of the Sacramento County action is shown by the fact that the districts did not name the Superintendent of Public Instruction as a defendant. The Ventura County Superior Court ordered the superintendent to inform all school districts in California that they could not lawfully charge for home-to-school transportation, and further prohibited him from calculating the statewide average non-subsidized cost under section 39807.5; this calculation is necessary for school districts to charge fees for transportation under the statute.

In our view, whether or not the districts were agents or privies of the Department, the public interest demanded that the parties not be barred from litigating the facial validity of the statute. We see no objection to their bringing the action in the county of the Department's principal place of business. This action does not directly interfere with the injunction against the Superintendent of Public Instruction which, as Salazar points out, is still in effect. (See 8 Witkin, Cal. Procedure (3d ed. 1985) Attack on Judgment in Trial Court, §§ 1-3, pp. 403-407.) After our decision, we are confident that the parties will file the appropriate action to challenge the continued propriety of the injunction against the Superintendent of Public Instruction.

Free School Guarantee

(3a) Salazar argues that section 39807.5 violates California's free school guarantee, which provides that "[t]he Legislature shall provide for a system *260 of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (Cal. Const., art. IX, § 5.)^{FN6} We

must first establish the scope of our inquiry. The statute is a legislative enactment. (4) "In considering the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the Act. Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the Act. [Citations.] Thus, wherever possible, we will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statute. [Citations.]" (*California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594 [131 Cal.Rptr. 361, 551 P.2d 1193].)^{FN7}

FN6 The Department has taken no position on whether section 39807.5 violates the free school guarantee or the equal protection clause of the California Constitution.

FN7 It is important to recognize that the challenged act here is a legislative act. As a result, this situation is fundamentally different from that in *Hartzell v. Connell* (1984) 35 Cal.3d 899 [201 Cal.Rptr. 601, 679 P.2d 35], on which Salazar relies, which is discussed in detail below. In *Hartzell*, we were considering fees that were imposed by a school district, *which the district had not been authorized by law to impose*.

(5) The first step in interpreting an ambiguous constitutional provision is to look at the intent of the framers. (See *Story v. Richardson* (1921) 186 Cal. 162, 165 [198 P. 1057, 18 A.L.R. 750].) The California free school guarantee was adopted during the 1878-1879 Constitutional Convention. It substantially followed a provision of the state's 1849 Constitution, but, unlike the earlier provision, it required schools to be "free." (See *Debates & Proceedings, Cal. Const. Convention 1878-1879*, p. 1100, remarks of Mr. Winans.) The history of the 1878-1879 constitutional debates gives very little guidance on the meaning of the term "free school," except to note that "[a] free school is a school at which pupils may attend without charge." (*Debates & Proceedings, Cal. Const. Convention 1878-1879, supra*, at p. 1100, remarks of Mr. Jones.) The only evidence we have located of whether the framers expected schools to provide transportation is the statement of one delegate that he knew "many a small common school, or district, where children ride on horseback a distance of five or eight miles to school in the morning, and home at night." (*Ibid.*) This

statement suggests that although the framers were aware of the difficulties students might face in getting to school, they did not consider transportation part of the school system. (3b) Thus, although the history of the 1879 Constitution does not make entirely clear whether the framers would have intended to allow school districts to charge a fee for transportation if they chose to provide that service, it supports the view that transportation is not included within the free school guarantee.

In the absence of more explicit guidance on the intent of the framers, the next step is to look to our previous cases to shed light on the meaning of the *261 free school guarantee. In the past, we have supplemented our own history of interpreting the free school guarantee by looking to other states' interpretations of similar provisions in their states' constitutions. (See *Hartzell v. Connell*, *supra*, 35 Cal.3d 899, 905-912.) It is especially appropriate for us to continue to do so in this case, because California's provisions for schooling appear to have been at least partially modeled on similar provisions in other states' constitutions. (See Debates, Cal. Const. Convention 1849, p. 206 [former art. IX, § 3, predecessor to current art. IX, § 5, similar to provisions adopted by several other states]; see also Debates & Proceedings, Cal. Const. Convention 1878-1879, *supra*, at p. 1087 [proposed art. IX, § 1 taken partly from Arkansas and Missouri Constitutions, and proposed art. IX, § 4 taken from the Illinois Constitution] and p. 1089 [spread of free school guarantees from Missouri].)

The leading case interpreting California's free school provision is *Hartzell v. Connell*, *supra*, 35 Cal.3d 899 (*Hartzell*). *Hartzell* involved a challenge to the fees a school district charged for participation in such extracurricular activities as dramatic productions, music groups, and cheerleading groups. As previously noted, there was no statutory authorization for such fees. We held that the free school guarantee extends not only to classes, but also to extracurricular activities which are " 'educational' in character." (*Hartzell*, *supra*, 35 Cal.3d at p. 911.) However, Salazar asks us to hold that the guarantee includes transportation to and from school, which none of the educator parties maintain is an educational activity.^{FN8} (6a) Salazar asserts that school-provided transportation, although not educational in character, is nonetheless covered by *Hartzell*'s understanding of the free school guarantee because it is an "integral funda-

mental part of [] elementary and secondary education," or a "necessary element[] of any school's activity." (*Id.* at p. 905, citing *Bond v. Ann Arbor School District* (1970) 383 Mich. 693, 702 [178 N.W.2d 484, 41 A.L.R.3d 742].)

FN8 Amicus curiae City Terrace Coordinating Council, in an argument that bus transportation is educational in character, points out that students are supervised on bus rides, must maintain certain standards of behavior, and face suspension for breaches of discipline. However, the enforcement of rules against noisiness and general rowdiness on buses is clearly required for the safety of the students on a moving bus. This necessary discipline does not transform a bus ride into an educational activity.

In attempting to determine whether the extracurricular activities in *Hartzell* came within the protection of the free school guarantee, we considered two approaches to resolution of the issue used by other states with similar constitutional provisions. The first approach, which we rejected, restricts the free school guarantee to "programs that are 'essential to the prescribed curriculum.' [Citations.]" (*Hartzell*, *supra*, 35 Cal.3d at p. 905.) This approach would not have guaranteed free access to activities that are not *262 contained within a school's regular academic coursework. The second approach extends the free school guarantee "to all activities which constitute an 'integral fundamental part of the elementary and secondary education' or which amount to ' necessary elements of any school's activity. " ' [Citations.]" (*Ibid.*) This second approach, we noted, had led states that adopted it to strike down extracurricular activity fees as violative of their free school provisions. (*Id.* at pp. 905-906.) After reviewing the history and purpose of California's free school guarantee, we approved the second, broader approach, because it "does not sever the concept of education from its purposes. It focuses not upon the formalities of credit, but upon the educational character of the activities in question." (*Id.* at p. 909, italics added.)

Applying this second approach in *Hartzell*, we noted that the activities in question served the purposes of education: to prepare students for participation in political affairs and in institutional structures such as labor unions and business enterprises and to

serve as a “unifying social force.” (*Hartzell, supra*, 35 Cal.3d at pp. 907-908.) We determined that extracurricular activities constitute “an integral component of public education” and are “a fundamental ingredient of the educational process.” We also noted that extracurricular activities are “[no] less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens physically, mentally, and morally, than the study of algebra and Latin” (*Id.* at p. 909, internal quotation marks and citations omitted.) We therefore concluded that, “[s]ince it is not disputed that the programs involved in this case are ‘educational’ in character, they fall within [the free school] guarantee.” (*Id.*, at p. 911, italics added.)

It is clear that we adopted the second of the two approaches, in which we looked at whether an activity is an integral, fundamental part of education or a necessary element of any school's activity, specifically because that approach focuses “upon the educational character of the activities in question.” (*Hartzell, supra*, 35 Cal.3d at p. 909, italics added.) The two parts of the approach we adopted both focus on whether an activity is educational in character. (“The second approach ... focuses not upon the formalities of credit, but upon the educational character of the activities in question.” (*Ibid.*)) As a result, we twice stated our holding that “all educational activities ... offered to students by school districts fall within the free school guarantee” (*id.* at p. 911, italics added), and that “the imposition of fees for educational activities offered by public high school districts violates the free school guarantee.” (*Id.*, at p. 913, italics added.) Thus, neither our holding nor our reasoning in *Hartzell* leads to the conclusion that noneducational activities are protected by the free school guarantee. Although in *Hartzell* we *263 adopted a broad understanding of what activities are protected as educational, we did not extend that expansive understanding of the free school clause beyond the realm of educational activities to noneducational supplemental services. (3c) Transportation is simply not an educational activity. It is not protected by the reasoning of *Hartzell*.

Against this conclusion, Salazar contends that, although bus transportation is not educational, it is a “necessary element[] of any school's activity.” (“ ” (*Hartzell, supra*, 35 Cal.3d at p. 905.) However, it appears that Salazar has misunderstood what the cases mean by the quoted language. We believe that the

Court of Appeal in this case was correct when it concluded that transportation is not an essential element of school activity.

The language we adopted in *Hartzell* was derived from *Bond v. Ann Arbor School District*, (*supra*, 383 Mich. 693 [178 N.W.2d at p. 487]), which held that, under the Michigan free school guarantee, schools could not charge a fee for textbooks and school supplies. Quoting *Paulson v. Minidoka County School District No. 331* (1970) 93 Idaho 469 [463 P.2d 935, 938-939], the Michigan Supreme Court stated that “[t]extbooks are necessary elements of any school's activity. They represent a fixed expense peculiar to education, the benefits from which inure to every student in equal proportion ... solely as a function of his being a student. Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance or teachers' salaries.” (*Bond, supra*, 178 N.W.2d at p. 487.) Thus, the court concluded, textbooks and school supplies were “necessary elements of any school's activity,” and must be provided without cost to the students. (*Id.* at p. 488.)

FN9

FN9 Based on this line of cases, it appears that, at least in its origin, the “necessary elements of any school's activity” test was extremely restrictive, protecting only activities that truly were *essential* to the functioning of any school. As noted above, the Michigan court in *Bond v. Ann Arbor School District* relied on *Paulson v. Minidoka County School District No. 331* for its formulation. However, *Paulson* did not interpret the phrase expansively. The *Paulson* court stated that it would permit a charge for participation in extracurricular activities, because they were not “necessary elements of a high school career,” but it invalidated a fee for textbooks. (*Paulson, supra*, 93 Idaho 469 [463 P.2d 935, 938.]) Thus, the cases applying the “necessary elements” test do not give any support for the broad application urged by Salazar.

None of these considerations apply to school bus transportation. Students are not required to use the same means of transportation as their classmates *264 in order to get to school to receive an education; individual students may choose different modes of transportation to suit their own circumstances. Unlike textbooks or teachers' salaries, transportation is not an expense peculiar to education. (6b) Without doubt, school-provided transportation may enhance or be useful to school activity, but it is not a necessary element which each student must utilize or be denied the opportunity to receive an education.^{FN10}

FN10 Clearly, the protection of the free school clause extends to the cost and upkeep of the school itself and its physical facilities; districts cannot charge for such expenses as teachers' salaries, school furniture, or the use of school buildings for educational activities. Items such as these are necessary elements of any school's activity, and must be provided to students without charge. (See *Bond v. Ann Arbor School District*, *supra*, 178 N.W.2d at pp. 487-488.)

This conclusion is especially true in this state, since, as the Court of Appeal correctly noted, school districts are permitted, but not required, to provide bus transportation. (§ 39800.) If they choose, districts may dispense with bus transportation entirely and require students to make their own way to school.^{FN11} Bus transportation is a service which districts may provide at their option, but schools obviously can function without it. Therefore, we are not persuaded by Salazar's argument that, although bus transportation is not an educational activity, it is protected by the free school guarantee as a "necessary element of any school's activity."

FN11 In *Manjares v. Newton* (1966) 64 Cal.2d 365, 375-376 [49 Cal.Rptr. 805, 411 P.2d 901], we decided that a school district that provides bus service may not act in an arbitrary and capricious manner in deciding which outlying areas will be offered that service. We have not yet addressed the question of whether the failure to offer bus service at all may also constitute an abuse of discretion or violate the free school or equal protection clause of the California Constitu-

tion if children are thereby deprived of the ability to attend school. We emphasize that section 39807.5 provides that indigent students will not have to pay a fee; therefore, in this facial challenge we do not anticipate that any child will be unable to attend school as a result of a proper application of section 39807.5.

Our conclusion appears to be in accord with the authority in other states with similar free school guarantees. Courts that have considered the issue have arrived at the conclusion that states or school districts may charge a fee for bus transportation without violating the free school guarantee. A Michigan court relied on *Bond v. Ann Arbor School District*, *supra*, for its conclusion that transportation was not an essential part of a system of free public schools in the way that books and school supplies were. (*Sutton v. Cadillac Area Public Schools* (1982) 117 Mich. App. 38 [323 N.W.2d 582, 583-584], citing *Bond*, *supra*, 383 Mich. 693 [178 N.W.2d 484].) Citing *Sutton*, the North Dakota Supreme Court held in *Kadmas v. Dickinson Public Schools* *265 (N.D. 1987) 402 N.W.2d 897, affirmed (1988) 487 U.S. 450,^{FN12} that districts could charge for bus transportation consistent with the state constitutional article mandating a uniform system of free public schools. (N.D. Const., art. VIII, § 2.) In reaching its holding, the court stated that "transportation is not a necessary element of the educational process, and it is not an integral part of the educational system to which the constitution refers in requiring the Legislature to provide 'a uniform system of free public schools.' Although transportation may be an important prerequisite to accepting the educational opportunities offered in the public school system it is not part of the system." (402 N.W.2d at p. 901.) The court stated that, as with other important prerequisites to education, such as good nutrition and proper immunizations, a state may participate in providing them, but was not required to do so. (*Id.* at pp. 901-902.) We find this analysis to be reasonable and persuasive. Thus, a line of cases following *Bond*, on which we relied in *Hartzell*, *supra*, 35 Cal.3d 899, to conclude that the free school guarantee covers extracurricular activities, supports our conclusion that states may charge a fee for transportation consistent with the free school guarantee.

FN12 Because the United States Supreme Court based its decision affirming the North

Dakota Supreme Court's judgment on the federal equal protection clause, under which education is not a fundamental right, it is not relevant to our analysis here. (*Kadmas v. Dickinson Public Schools* (1988) 487 U.S. 450, 458, 465 [101 L.Ed.2d 399, 409, 413-414, 108 S.Ct. 2481].)

(7) Finally, Salazar contends that section 39807.5 should be held invalid because of the "stigma" attached to applying for a waiver. (See *Hartzell, supra*, 35 Cal.3d at p. 912.) Salazar's argument ignores the crucial fact that *Hartzell* involved a fee for activities that were protected by the free school guarantee; we based our rejection of the waiver on the requirement that educational extracurricular activities be truly free. In this case, the fee in question is for a noneducational service. There is no more stigma attached to applying for a transportation waiver than there is in applying for any other noneducational government benefit, such as subsidized school lunches. (See § 49550 et seq.)

As noted earlier, section 39807.5 is a legislative enactment; it is our duty to uphold it unless its unconstitutionality is clear and unquestionable. (*California Housing Finance Agency v. Elliott, supra*, 17 Cal.3d 575, 594; accord, *Dean v. Kuchel* (1951) 37 Cal.2d 97, 101 [230 P.2d 811].) Based on the foregoing analysis, we cannot conclude that it is clear and unquestionable that the statute, on its face, violates the free school guarantee. Therefore, we hold that section 39807.5 does not violate California's free school guarantee. *266

Equal Protection

(8a) Salazar also argues that section 39807.5 violates California's equal protection clause. (Cal. Const., art. I, § 7, subd. (a).)^{FN13} He claims that the statute discriminates against poor students and that it creates a classification based on wealth that will affect children's ability to exercise their fundamental right to education. (See *Serrano v. Priest* (1971) 5 Cal.3d 584, 604-610 [96 Cal.Rptr. 601 [487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), and *Serrano v. Priest* (1976) 18 Cal.3d 728, 765-766 [135 Cal.Rptr. 345, 557 P.2d 929], cert. den. 432 U.S. 907 [53 L.Ed.2d 1079, 97 S.Ct. 2951] (*Serrano II*).) Therefore, Salazar contends, we should subject the statute to strict scrutiny rather than to rational basis analysis.

FN13 Article I, section 7, subdivision (a)

provides in part that: "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution."

The qualification regarding school assignment and transportation was adopted by the voters in 1979. The history of the amendment makes clear that the qualification was adopted in order to limit the use of compulsory busing designed to desegregate schools. (See Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 16, 1979) at pp. 6-9.) This case addresses a different concern; it does not consider the *use* of busing, but rather whether the imposition of a *fee* for transportation establishes a suspect class or impermissibly affects poor children's exercise of a fundamental right. Neither the Court of Appeal nor the parties have addressed the amendment in this case. Accordingly, we express no opinion on this provision of the Constitution.

Salazar's claims that school transportation fees

discriminate against the poor and burden the exercise of a fundamental right might have merit if the statute were to be applied in such a way that children were prevented from attending school because they could not afford to pay the fees. However, section 39807.5 specifically provides that indigent children must be exempted from paying fees for transportation. If the statute is properly administered, no child will be denied transportation to school because of poverty. We have no reason to believe, in this facial challenge, that the statute will be applied improperly. *267

Salazar also contends that section 39807.5 allows impermissible disparity of treatment among students in different districts, based on whether or not each district charges for transportation and how each defines indigency. (See *Serrano II, supra*, 18 Cal.3d at pp. 761, 765-766.) However, this need not result in an equal protection violation. Under our interpretation of the statute, a student who cannot afford to pay for transportation to attend school may not be charged for school-provided transportation. If a district provides transportation without charge, the service will be free to all students; if a district charges for transportation, students who cannot afford to pay the fee will be exempted. Therefore, poor students in different districts will have equal access to school-provided transportation, if their districts elect to provide it. FN14

FN14 As stated earlier, the situation presented by districts that choose not to provide transportation has nothing to do with section 39807.5 and is, for that reason, beyond the scope of this facial challenge to the statute. The parties have not addressed the issue in their briefs and have agreed that that issue is not before the court.

Because this is a challenge to the facial validity of section 39807.5, our task is to determine whether the statute can constitutionally be applied. (9) "To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181 [172 Cal.Rptr. 487, 624 P.2d 1215], italics in original.)

(8b) In this case, there is no evidence that the statute has been or will be applied in such a way as to discriminate against poor students or affect their ability to obtain an education. Therefore, we conclude that the Court of Appeal was correct in holding that the statute does not facially violate equal protection.

Conclusion

For the foregoing reasons, we conclude that, on its face, section 39807.5 does not violate California's free school guarantee or equal protection clause. Therefore, the judgment of the Court of Appeal is affirmed.

Lucas, C. J., Kennard, J., Arabian, J., Baxter, J., and George, J., concurred.

MOSK, J.,
Dissenting.

The majority opinion holds that Education Code section 39807.5, which purports to authorize school districts to charge fees for pupil transportation, does not violate the free school guaranty (art. IX, § 5) of the California Constitution. I disagree and therefore dissent. *268

In *Hartzell v. Connell* (1984) 35 Cal.3d 899, 905 [201 Cal.Rptr. 601, 679 P.2d 35] (hereafter *Hartzell*), we held the free school guaranty applicable to "all activities which constitute an 'integral fundamental part of the elementary and secondary education' or which amount to 'necessary elements of any school's activity'" (quoting *Bond v. Ann Arbor School District* (1970) 383 Mich. 693, 702 [178 N.W.2d 484, 41 A.L.R.3d 742].) *Hartzell* held that charging fees for extracurricular activities violated the free school guaranty even though the activities did not yield academic credit. We reasoned that the activities in question, which included sports, music, and drama, contributed to the educational process by imparting not only specific skills but also leadership and a sense of a collective endeavor. Thus, whether or not a course yielded academic credit did not alone determine if it was integral to the schooling process.

The present case presents even more compelling reasons for finding a violation of the free school guaranty. If the fees in *Hartzell* threatened free schooling by endangering noncredit cultural development, the fees imposed here on school transportation go even

further by threatening to abort the educational opportunity itself. In *Hartzell*, discussing low-income families that may not qualify for or be aware of the fee-waiver program, we stated that a student's opportunity to participate in extracurricular activities "cannot be made to depend upon his or her family's decision whether to pay a fee or buy a toaster." (*Hartzell*, *supra*, 35 Cal.3d at p. 912.)

That pronouncement applies even more strongly to the present case. The very act of sending a child to school should not be foreclosed because the choice comes down to busfare or grocery money. It is common knowledge that these are difficult economic times, a fact that probably explains why a number of school districts have resorted to charging transportation fees. However, to try to save public money by instituting measures that threaten education for low-income children is not only shortsighted, it is violative of the democratic principles that give our political system its legitimacy.

The majority appear to conclude that unlike textbooks or teachers' salaries, "transportation is not an essential element of school activity." (Maj. opn., *ante*, p. 263.) Certainly transportation in and of itself is not essential to education; but transportation *to and from school* is essential to education because it is a prerequisite to it. For the student who cannot walk to school and cannot afford public or private transportation, a school bus is as essential to the process of education as the school-building, the desk, the blackboard and the teacher.

As Justice Rutledge, joined by Justices Frankfurter, Jackson, and Burton, eloquently observed: "Without buildings, without equipment, without library, textbooks and other materials, and without transportation to bring *269 teacher and pupil together in such an effective teaching environment, there can be not even the skeleton of what our times require. Hardly can it be maintained that transportation is the least essential of these items, or that it does not in fact aid, encourage, sustain and support, just as they do, the very process which is its purpose to accomplish. No less essential is it, or the payment of its cost, than the very teaching in the classroom or payment of the teacher's sustenance. Many types of equipment, now considered essential, better could be done without." (*Everson v. Board of Education* (1946) 330 U.S. 1, 48 [91 L.Ed. 711, 740, 67 S.Ct. 504, 168 A.L.R. 1392]

(dis. opn. of Rutledge, J.)) The majority in *Everson* declared nothing that disagreed with the foregoing observation of Justice Rutledge. Indeed, the bare majority went so far as to approve public funding of transportation to private schools.

California cases have also emphasized the importance of transportation in the education process. (See, e.g., *San Francisco Unified School District v. Johnson* (1971) 3 Cal.3d 937, 959-960, fn. 29 [92 Cal.Rptr. 309, 479 P.2d 669]: "[t]he educational structure of California is not, and cannot be, so designed that every pupil is provided with a school within walking distance of his home. In rural areas almost all students travel by school bus; in urban regions the attendance zones of secondary schools often exceed a walking radius"; *Bowker v. Baker* (1946) 73 Cal.App.2d 653, 660 [167 P.2d 256], declaring that the function of free school transportation is to induce pupil attendance.) The majority's attempt to distinguish school transportation from textbooks, teachers' salaries and other elements of the educational process is unpersuasive.

Nor are the fees justified by the fact that school districts are not required to provide transportation. In *Hartzell*, *supra*, 35 Cal.3d 899, extracurricular activities were provided at the school's discretion, but that fact did not resolve the issue of permissibility of fee charges. Apart from the basic curriculum, much is left to the discretion of individual school districts. It is inconsistent with the free school guaranty to hold that where there is discretion there may automatically be fees. Nor am I persuaded by the speculative argument that without bus fees, transportation will be terminated entirely to the detriment of the indigent and handicapped; nearly a decade has passed since *Hartzell* was decided and extracurricular activities have not vanished.

Finally, fee waivers for the "indigent" cannot save the statute. The Constitution guarantees free schooling to all, not just to indigents. Thus, the presence or absence of a waiver is irrelevant to the free school clause issue. Even were this not the case, the potential for fee waivers for the indigent *270 does not allay any of the concerns discussed above because Education Code section 39807.5 leaves the task of defining "indigent" to the governing boards of the school districts themselves; thus many families not fitting whatever definition the districts decide to adopt

may still have difficulty making ends meet. A waiver for the poorest families, such as those receiving public aid, still requires the “working poor” to cut necessities in order to educate their children.^{FN1} If it comes down to a choice between grocery money and busfare, the child will be the loser.

FN1 There have been actual instances in which school districts premised eligibility for fee waivers on receipt of welfare assistance. (*Salazar v. Honig* (May 10, 1988) Cal.App. B026629.) As the majority note, we ordered that opinion unpublished on September 1, 1988.

Contrary to the opinions in Michigan and North Dakota relied upon by the majority, the importance of transportation to the process of education was emphasized by this court a quarter of a century ago in *Manjares v. Newton* (1966) 64 Cal.2d 365 [49 Cal.Rptr. 805, 411 P.2d 901]. In that case we ordered bus service to be provided to a group of pupils arbitrarily excluded by the district. We dismissed the claim that “economic considerations” justified the exclusion (*id.* at pp. 374-375), observing that “society has a compelling interest in affording children an opportunity to attend school.” (*Id.* at p. 375.) Clearly we were not speaking in terms of curriculum or even extracurricular activities, but rather simply of the *opportunity to attend school*, which encompasses the means necessary to get there.

Transportation to school is a “necessary element” of schooling within the meaning of *Hartzell, supra*, 35 Cal.3d at page 905. I would therefore reverse the judgment of the Court of Appeal. As I believe the statute violates the free school guaranty, I see no need to reach the equal protection issue. *271

Cal. 1992.
Arcadia Unified School Dist. v. State Dept. of Education
2 Cal.4th 251, 825 P.2d 438, 5 Cal.Rptr.2d 545, 72 Ed. Law Rep. 1137

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▷Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and
Respondent,

v.

FRANCIS V. SEE, Objector and Appellant.
No. S087881.

Supreme Court of California
June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed

paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990)

Wills and Probate, §§ 153, 153A, 153B.]

(2) Statutes §
29--Construction--Language--Legislative Intent.

In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes §
46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.

When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.

A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it

generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.

A trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.

Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and

"contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory *908 construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves,^{FN1} objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint"^{FN2} in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as \$5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold *909 divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children—Margaret and Daniel—as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by

section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent"

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions—section 6450, section 6452, and section 6453—must be considered. *910

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child

as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child*. [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. Acknowledgement

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [*911105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d

570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) In such cases, we "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge" is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit".]) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly "confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances.^{FN3} Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, *912 test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent of a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgment of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent

and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation *913 of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigarán* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child" and "contributed to the support or the care of the child" as required by section

6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano, supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano, supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing *914 Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano, supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.)^{FN4} Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such

child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)

In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayres, supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was "to own or admit the knowledge of." (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate of Gird, supra*, 157 Cal. at pp. 542-543), but, as discussed, the word retains virtually the same meaning in general usage today—"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his *915 one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird, supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird, supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. ^{FN5} (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394.)

FN5 Section 255 of the former Probate Code provided in pertinent part: "Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock" (*Estate of Ginocchio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner

to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the *916 same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452.
FN6

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he

"was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. *917

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops" (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, *918257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into

his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child".])

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity." (*Id.* at p. 276.) *919

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession

of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginocchio, supra, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginocchio, supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock.^{FN7} In construing former section 6408, *Estate of Corcoran (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475]* held that a half sibling was a "natural brother or sister" within the meaning of such *920 exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature

amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child." (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby sub-

jecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran, supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. ^{FN8} *921

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. Requirement of a Natural Parent and Child Relationship

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. ^{FN9} (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however,

that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used in this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, ^{FN10} if a court order was entered during the father's lifetime declaring paternity. ^{FN11} (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The pa-

rental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he *922 argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir, supra*, 59 Cal.App.4th at pp. 1516-1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "re-

puted father" of a child, FN12 satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. *923 It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing

thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease's* reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease, supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. *924

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section

7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir, supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran, supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. *925 **BROWN, J.**

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must af-

firm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession—to carry out “the intent a decedent without a will is most likely to have had.” (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a “father” who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a “forensic genealogist.”

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must “openly treat” a child born out of wedlock “as his own” in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. *926

Cal. 2001.

Estate of Griswold

25 Cal.4th 904, 24 P.3d 1191, 108 Cal.Rptr.2d 165, 01 Cal. Daily Op. Serv. 5116, 2001 Daily Journal D.A.R. 6305.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

<p>STATE OF CALIFORNIA DEPARTMENT OF FINANCE,</p> <p>Petitioner and Plaintiff,</p> <p>v.</p> <p>COMMISSION ON STATE MANDATES,</p> <p>Respondent and Defendant.</p>
<p>CLOVIS SCHOOL DISTRICT,</p> <p>Real Party in Interest.</p>

02CS00994

PEREMPTORY WRIT OF MANDAMUS

Dept: 33
Judge: Lloyd G. Connelly

To The Commission on State Mandates, Respondent:

The attached Judgment having been entered in this action, ordering that a peremptory writ of mandamus be issued from this court,

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ:

(1) To set aside your statement of decision in the School Bus Safety II Test Claim, number 97-TC-22, and to vacate the parameters and guidelines and statewide cost estimate issued with respect to this test claim;

(2) Pursuant to Government Code section 17559, subdivision (b), your are ordered to rehear the School Bus Safety II test claim and to issue a decision on the limited issue of whether the federal

1 Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts
2 to transport any students and, if so, whether the School bus Safety II test claim statutes mandate a
3 higher level of service or new program beyond federal requirements for which there are reimbursable
4 state-mandated costs..

5 YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before
6 March 30, 2004, setting forth what you have done to comply.



7
8 Jody Patel, Clerk
9 By D. Deaton, Deputy Clerk

10
11 LET THE FOREGOING WRIT ISSUE

12 Dated: FEB - 3 2004

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Lloyd G. Connelly, Judge

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ENDORSED
DEC 22 2003
By B. Beddow, Deputy

Entd

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

STATE OF CALIFORNIA DEPARTMENT OF FINANCE,

Petitioner and Plaintiff,

v.
COMMISSION ON STATE MANDATES,

Respondent and Defendant.

CLOVIS SCHOOL DISTRICT,

Real Party in Interest.

02CS00994

~~PROPOSED~~ JUDGMENT

Date: December 11, 2003
Time: 1:30 p.m.
Dept: 33
Judge: Lloyd G. Connelly

This cause came on regularly for hearing before this court on December 11, 2003, the Honorable Lloyd G. Connelly, presiding, pursuant to the petition for writ of mandate and delcaratory relief filed by Petitioner State of California, Department of Finance.

Ramon M. de la Guardia, Deputy Attorney General appeared as counsel for Petitioner; and Paul M. Starkey, Chief Legal Counsel and Camille Shelton, Senior Commission Counsel appeared on behalf of defendant Commission on State Mandates; Gregory A. Wedner and Sophie C. Agopian of the firm Lozano Smith appeared on behalf of Real Party in Interest Clovis Unified School District.

///

1 The cause having been argued and submitted for decision, the court being fully advised,
2 having read and considered all the points and authorities, declarations and evidence submitted, and
3 good cause appearing therefore,

4 **IT IS HEREBY ORDERED:**

5 The Petition for writ of mandate is granted in part and denied in part as follows:

6 1. Respondent Commission on State Mandates is ordered to set aside its statement of
7 decision in the School Bus Safety II Test Claim, number 97-TC-22, and to vacate the parameters and
8 guidelines and statewide cost estimate issued with respect to this test claim. However, this Order
9 is not intended to and does not alter either the statement of decision or the parameters and guidelines
10 issued in School Bus Safety I, Test Claim number CSM-4433.

11 2. Pursuant to Government Code section 17559, subdivision (b), the Commission is
12 ordered to rehear the School Bus Safety II test claim and issue a decision on the limited issue of
13 whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law
14 requires school districts to transport any students and, if so, whether the School Bus Safety II test
15 claim statutes mandate a higher level of service or new program beyond federal requirements for
16 which there are reimbursable state mandated costs.

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3. Petitioner's motion to dismiss its second and third causes of action is granted and those causes of action are hereby dismissed.

DATED: DEC 22 2003

LLOYD G. CONNELLY

HONORABLE LLOYD G. CONNELLY
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

DATED: _____

Gregory A. Wedner, Esq.
Sophie C. Agopian, Esq.
Lozano Smith for Real Party in Interest
Clovis Unified School District

DATED: _____

Paul M. Starkey, Chief Legal Counsel
Camille Shelton, Senior Commission Counsel
Commission on State Mandates / Respondents

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **STATE OF CALIFORNIA DEPARTMENT OF FINANCE v.
COMMISSION ON STATE MANDATES;
CLOVIS SCHOOL DISTRICT (RPI)**

No.: **02CS00994**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for 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 the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 15, 2003, I served the attached **[PROPOSED] JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, addressed as follows:

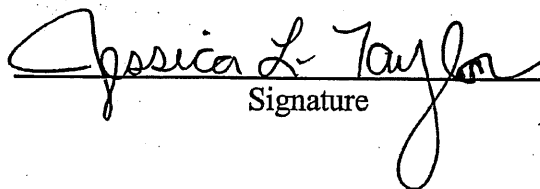
Sophie C. Agopian
LOZANO SMITH
2800 28th Street, Suite 240
Santa Monica, CA 90405

Gregory A. Wedner
LOZANO SMITH
899 Northgate Drive, Suite 200
San Rafael, CA 94903-3666

Paul M. Starkey, Chief Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 15, 2003, at Sacramento, California.

JESSICA L. TAYLOR
Declarant


Signature

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **STATE OF CALIFORNIA DEPARTMENT OF FINANCE v.
COMMISSION ON STATE MANDATES;
CLOVIS SCHOOL DISTRICT (RPD)**

No.: **02CS00994**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for 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 the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 28, 2004, I served the attached **PEREMPTORY WRIT OF MANDAMUS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, addressed as follows:

Sophie C. Agopian
LOZANO SMITH
2800 28th Street, Suite 240
Santa Monica, CA 90405

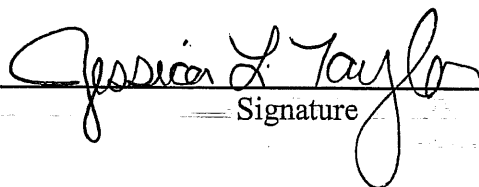
Gregory A. Wedner
LOZANO SMITH
899 Northgate Drive, Suite 200
San Rafael, CA 94903-3666

Paul M. Starkey, Chief Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 28, 2004, at Sacramento, California.

JESSICA L. TAYLOR

Declarant


Signature

COPY

FILED
ENDORSED

02 JUL -9 PM 3:19

LEGAL PROCESS #2

1 BILL LOCKYER
 Attorney General of the State of California
 2 PAMELA SMITH-STEWARD
 Chief Assistant Attorney General
 3 ANDREA LYNN HOCH
 Senior Assistant Attorney General
 4 LOUIS R. MAURO
 Lead Supervising Deputy Attorney General
 5 CATHERINE M. VAN AKEN
 Supervising Deputy Attorney General
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 7 State Bar No. 56866
 1300 I Street
 8 P.O. Box 944255
 Sacramento, CA 94244-2550
 9 Telephone: (916) 324-5467
 Fax: (916) 324-8835
 10 Attorneys for Petitioner/Plaintiff State of
 California Department of Finance
 11
 12

13 SUPERIOR COURT OF CALIFORNIA
 14 COUNTY OF SACRAMENTO

02CS00394

16 STATE OF CALIFORNIA DEPARTMENT OF
 FINANCE,
 17
 Petitioner and Plaintiff,
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 v.
 19 COMMISSION ON STATE MANDATES,
 20
 Respondent and Defendant,
 21 CLOVIS SCHOOL DISTRICT,
 22
 Real Party in Interest.
 23

Case No.
 PETITION FOR WRIT OF
 ADMINISTRATIVE
 MANDAMUS
 [Gov. Code § 17559(b);
 Code Civ. Proc. § 1094.5]
 AND
 COMPLAINT FOR
 DECLARATORY RELIEF
 (SCHOOL BUS SAFETY II)

24
 25
 26 Petitioner/Plaintiff State of California Department of Finance (hereinafter Petitioner)
 27 petitions this Court for a writ of administrative mandate, pursuant to Government Code section
 28 17559(b) and Code of Civil Procedure section 1094.5, directed to Respondent/Defendant

1 Commission on State Mandates (“Commission”), commanding it to set aside its decision granting
2 “Test Claim CSM 97-TC-22” and to issue a new decision denying Test Claim CSM 97-TC-22 (“the
3 test claim”). In the alternative, Petitioner seeks either (1) a writ of mandate commanding respondent
4 Commission to issue new Parameters and Guidelines for the test claim or (2) declaratory relief that
5 the current parameters and guidelines do not authorize payment to school districts for safety
6 measures undertaken prior to the enactment of the test claim legislation. By this Petition/Complaint
7 the State of California Department of Finance alleges:

8 1. Petitioner Department of Finance is the state government agency that has, pursuant
9 to Government Code section 13000 et seq., general powers of supervision over all matters
10 concerning the financial and business affairs of the State of California. The Department of Finance
11 is responsible for protecting and conserving the financial interests of the State, for preventing
12 improvidence, and for controlling the expenditure of State money by various State government
13 entities.

14 2. Petitioner brings the first and second causes of action pursuant to Government Code
15 section 17559(b) and Code of Civil Procedure 1094.5.

16 3. Petitioner Department of Finance is beneficially interested in this proceeding and is
17 aggrieved by the decision of respondent Commission to grant in part the test claim.

18 4. Respondent Commission is a quasi-judicial State body, required by Government Code
19 section 17500 et seq. to conduct hearings, to receive evidence, and to decide claims by a local agency
20 that the local agency is entitled to reimbursement from the State for the costs of a new program or
21 higher level of service mandated by the Legislature or a State agency, as required by article XIII B,
22 section 6 of the California Constitution. The functions, powers and duties of the Commission are
23 set forth in Government Code section 17500 et seq., and the Commission’s implementing regulations
24 at Title 2, California Code of Regulations, section 1181 et seq.

25 5. Real party in interest, the Clovis School District is the local government agency that
26 filed test claim 97-TC-22 which the parties also refer to as “School Bus Safety II.”

27 6. Venue is proper because petitioner’s cause of action arose in Sacramento County and
28 respondent Commission maintains its offices in the City of Sacramento.

1 7. "Costs mandated by the state" means any increased costs that a local agency or school
2 district is required to incur after July 1, 1980, as a result of any statute enacted on or after January
3 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, that
4 mandates a new program or higher level of service of an existing program within the meaning of
5 article XIII B, section 6 of the California Constitution.

6 8. Article XIII B, section 6 of the California Constitution provides that when the
7 Legislature or a state agency mandates a new program or imposes a higher level of service on any
8 local government, the State shall provide a subvention of funds to reimburse such local government
9 for the costs of such program or increased level of service.

10 9. The following statutes are the subject of Test Claim CSM-97-TC-22 : (1) Education
11 Code section 39831.5 (effective 1998 this statute was renumbered Education Code section 38048);
12 Vehicle Code section 22112 (as amended by Chapter 831, Statutes of 1994 and Chapter 739, Statutes
13 of 1997) and Education Code section 39831.3 (added by Chapter 739, Statutes 1997);

14 10. Statutes of 1994, Chapter 831 ("Chapter 831/94") amended Education Code section
15 39831.5 to require, among other things, that school districts provide written information on school
16 bus safety to the parents or guardians of pupils in prekindergarten, kindergarten and grades 1 to 6,
17 inclusive, at the time of pupil registration if the pupil had not previously been transported in a school
18 bus. New subdivision (a)(1) of section 39831.5 specified certain material that must be included as
19 part of the written information.

20 11. Statutes of 1996, Chapter 277 ("Chapter 277/96") repealed Education Code section
21 39831.5, effective January 1, 1998, and enacted a new Education Code section 38048 which contains
22 substantially the same provisions as section 39831.5 as amended by Chapter 831/94.

23 12. Statutes of 1997, Chapter 739 ("Chapter 739/97") added Education Code section
24 39831.3, which requires school districts and county offices of education to prepare a transportation
25 safety plan, to follow the transportation safety plan, to revise the transportation safety plan as
26 required, and to keep a copy of the current transportation safety plan at each school subject to the
27 plan.

28

1 13. The test claim legislation is legislation of general applicability and applies to both
2 public and private schools.

3 14. Chapter 739/97 also amended Vehicle Code section 22112 to require school bus
4 drivers to "operate the flashing red signal lights and stop signal arms . . . at all times when the school
5 bus is stopped for the purpose of loading and unloading pupils," and not just when the pupils must
6 cross a highway.

7 15. On or about December 22, 1997, in response to the test claim legislation, real party
8 in interest Clovis School District filed Test Claim CSM-97-22. This claim alleged that the test claim
9 legislation constitutes a reimbursable state mandated program for local agencies within the meaning
10 of Government Code section 17514 and article XIII B, section 6 of the California Constitution.

11 16. The Commission, in a Statement of Decision dated July 29, 1999, but effective July
12 30, 1999, determined that Education Code section 39831.5 (now section 38048) as amended by
13 Chapter 831/94 and Chapter 277/96, Education Code section 39831.3, and Vehicle Code section
14 22112, as amended by Chapter 739/97, imposed a reimbursable State mandated new program or
15 higher level of service within the meaning of section 6, article XIII B of the California Constitution.

16 17. On November 30, 1999, effective December 1, 1999, the Commission adopted the
17 Parameters and Guidelines for the test claims known as School Bus Safety I and II. The
18 reimbursement period for School Bus Safety I begins on September 14, 1992. The reimbursement
19 period for School Bus Safety II begins on January 1, 1998.

20 18. Among the reimbursable activities contained in the parameters and guidelines are
21 preparing, revising and implementing transportation safety plans.

22 19. On January 25, 2001, the Commission adopted a statewide cost estimate for School
23 Bus Safety II in the amount of \$290,409,000 through fiscal year 2001-02.

24 20. The transportation of pupils to school and on field trips is an optional activity because
25 the State does not require schools to transport pupils to school or to undertake school activity trips.

26 21. Prior to the enactment of the test claim legislation, the courts determined that when
27 schools undertook the responsibility for transporting pupils they were required to provide a
28 reasonably safe transportation program.

1 28. The Commission's determination that the test claim legislation constitutes a
2 reimbursable state mandate is an abuse of discretion and is not supported by substantial evidence for
3 the following reasons:

- 4 a. The test claim statutes do not mandate new programs or higher levels of service
5 because the State does not require schools to transport students. The programs the
6 test claim legislation addresses are voluntary and discretionary.
- 7 b. Any safety requirements or activities that the test claim legislation requires or are
8 required for the implementation of the test claim legislation merely affirm or restate
9 what the courts have declared existing law.
- 10 c. The test claim statutes are not mandates because they apply equally to private and
11 public schools and are therefore statutes of general application and only incidentally
12 affect public school districts.

13 **Second Cause of Action**

14 **(CCP § 1094.5 Mandate Relief Regarding Parameters and Guidelines)**

15 29. Petitioner realleges and incorporates the allegations of paragraphs 1 through 27 of this
16 Petition/Complaint as though fully set forth herein.

17 30. After the Commission determines that legislation imposes a state mandate,
18 Government Code section 17557 requires the Commission to adopt parameters and guidelines for
19 any claim related to the test claim legislation.

20 31. Government Code section 17557 requires the successful test claimant to submit
21 proposed parameters and guidelines but specifically empowers the Commission to amend, modify
22 and supplement the parameters and guidelines.

23 32. The Commission has a duty to insure that it adopts parameters and guidelines that
24 conform to the test claim legislation.

25 33. The Parameters and Guidelines the Commission adopted for the School Bus Safety
26 II legislation are overbroad and vague and provide school districts with too much discretion in filing
27 claims for reimbursement.

1 34. Because the Commission's parameters and guidelines do not adequately define
2 reimbursable activities and do not provide sufficient guidance for claiming reimbursable costs,
3 School Bus Safety II reimbursement claims vary widely in the items claimed, rates and amounts and
4 methods of calculating reimbursement and the support needed for reimbursement.

5 35. The parameters and guidelines adopted by the Commission are an abuse of discretion
6 and are not supported by substantial evidence for the following reasons:

- 7 a. They do not adequately define reimbursable activities and costs and provide
8 insufficient guidance on permissible activities that may be claimed for
9 reimbursement;
- 10 b. They permit school districts to seek reimbursement of costs and reimbursement for
11 programs adopted prior to the test claim legislation which were not optional within
12 the meaning of Government Code section 17565 but which reflect the schools
13 obligation to transport students in a reasonably safe manner that results from their
14 choice to transport students, or obligations resulting from court orders or the
15 settlement of claims or lawsuits.

16 **Third Cause of Action**

17 **(Declaratory Relief Regarding Parameters and Guidelines).**

18 36. Petitioner realleges and incorporates the allegations of paragraphs 1 through 34 of this
19 Petition/Complaint as though fully set forth herein.

20 37. Assuming the test claim legislation imposes a reimbursable mandate on school
21 districts, and assuming that the Commission did not abuse its discretion in adopting the parameters
22 and guidelines, an actual controversy has arisen between the parties in relation to the interpretation
23 of the parameters and guidelines and the required proof of costs for reimbursement, in that the parties
24 are in dispute as to (1) whether school districts are entitled to reimbursement for costs associated
25 with activities and programs which are required to meet school districts' preexisting and freely
26 chosen obligation to transport students in a reasonably safe manner or which are the result of the
27 settlement of claims and law suits; (2) the degree and sufficiency of evidence school districts must
28 produce to justify their claims for mandated costs; and (3) whether school districts are entitled to

1 reimbursement for expenses related to mandated activities of salaried employees when those
2 activities occur during normal school business hours.

3 38. The true interpretation of the parameters and guidelines and the governing law is:

4 a. The State does not require school districts to transport students and school districts
5 are not entitled to State reimbursement for costs associated with activities and
6 programs which the districts institute to meet their obligation to transport students
7 in a reasonably safe manner or which result from court orders and decisions or the
8 settlement of claims and law suits.

9 b. School districts must maintain documentation that corroborates their claimed
10 expenses and the relationship of these claimed expenses to the mandated activities.

11 c. School districts are not entitled to reimbursement for salaried employees for
12 mandated activities performed during normal school business hours.

13 WHEREFORE, Petitioner prays as follows:

14 1. As to the First Cause of action, a peremptory writ of mandate directing Respondent
15 Commission to set aside its July 30, 1999 statement of decision and directing the Commission to
16 issue a new decision denying the test claim;

17 2. In the alternative, as to the Second Cause of Action, a peremptory writ of mandate
18 directing the Commission to set aside the "School Bus Safety II" parameters and guidelines and
19 directing the Commission to rehear the parameters and guidelines;

20 3. In the alternative to the relief prayed for in paragraphs 1 and 2, (a) for a declaration
21 that the parameters and guidelines and the test claim legislation do not entitle school districts to
22 reimbursement for activities undertaken to meet their duty to transport pupils in a reasonably safe
23 manner or for activities undertaken as the result of court orders or the settlement of claims and
24 lawsuits; (b) that school districts are required to maintain and provide documentation that
25 corroborates any costs they claim pursuant to the School Bus Safety II legislation; and (c) that school
26 districts are not entitled to reimbursement for activities performed by teachers and other salaried
27 employees during normal hours of employment;

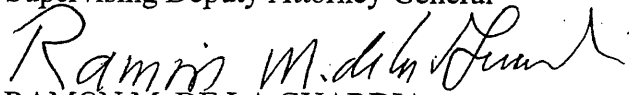
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4. For costs of suit; and

5. For such other and further relief the court deems proper.

Dated: July 9, 2002

Respectfully submitted,
BILL LOCKYER
Attorney General of the State of California
PAMELA SMITH-STEWARD
Chief Assistant Attorney General
ANDREA LYNN HOCH
Senior Assistant Attorney General
LOUIS R. MAURO
Lead Supervising Deputy Attorney General
CATHERINE M. VAN AKEN
Supervising Deputy Attorney General

RAMON M. DE LA GUARDIA
Deputy Attorney General
Attorneys for Petitioner/Plaintiff California
Department of Finance

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VERIFICATION

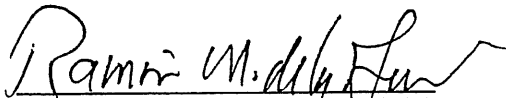
I, Ramon M. de la Guardia, declare:

1) I am an attorney at law, licensed to practice in all the Courts of the State of California. I am employed by the Office of the Attorney General of the State of California, attorneys of record for Petitioner herein.

2) I am personally familiar with the records, files and proceedings described herein and with the subject of the present Petition, and know the facts set forth in the Petition to be true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of July 2002, at Sacramento, California.


RAMON M. DE LA GUARDIA
Deputy Attorney General

C

Effective: January 1, 2000

West's Annotated California Codes CurrentnessEducation Code (Refs & Annos)Title 2. Elementary and Secondary Education (Refs & Annos)Division 3. Local Administration (Refs & Annos)Part 23.5. Transportation (Refs & Annos)Chapter 1. Transportation Services (Refs & Annos)Article 1. General Provisions (Refs & Annos)

→ § 39800. Power of governing board to provide transportation of pupils

(a) The governing board of any school district may provide for the transportation of pupils to and from school whenever in the judgment of the board the transportation is advisable and good reasons exist therefor. The governing board may purchase or rent and provide for the upkeep, care, and operation of vehicles, or may contract and pay for the transportation of pupils to and from school by common carrier or municipally owned transit system, or may contract with and pay responsible private parties for the transportation. These contracts may be made with the parent or guardian of the pupil being transported. A governing board may allow the transportation of preschool or nursery school pupils in schoolbuses owned or operated by the district. A state reimbursement may not be received by a district for the transportation of preschool or nursery school pupils.

(b) As used in this article, "municipally owned transit system" means a transit system owned by a city, or by a district created under Part 1 (commencing with Section 24501) of Division 10 of the Public Utilities Code.

CREDIT(S)

(Added by Stats.1999, c. 646 (A.B.1600), § 14.)

Current with urgency legislation through Ch. 20 of 2011 Reg.Sess.

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END OF DOCUMENT

C

Effective: January 1, 2000

West's Annotated California Codes Currentness

Education Code (Refs & Annos)

Title 2. Elementary and Secondary Education (Refs & Annos)

Division 3. Local Administration (Refs & Annos)

Part 23.5. Transportation (Refs & Annos)

▣ Chapter 1. Transportation Services (Refs & Annos)

▣ Article 1. General Provisions (Refs & Annos)

→ § 39806. Payments to parents in lieu of transportation

In lieu of providing in whole or in part for the transportation of a pupil attending the schools of a district, the governing board may pay to the parents or guardian of the pupil a sum not to exceed the cost of actual and necessary travel incurred in transporting the pupil to and from the regular day schools of the district. A payment may not be made pursuant to this section unless it will be more economical to make the payments than to provide for said transportation.

CREDIT(S)

(Added by Stats.1999, c. 646 (A.B.1600), § 14.)

Current with urgency legislation through c. 14 of 2011 Reg.Sess.

(C) 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

C

Effective: January 1, 2000

West's Annotated California Codes CurrentnessEducation Code (Refs & Annos)Title 2. Elementary and Secondary Education (Refs & Annos)Division 3. Local Administration (Refs & Annos)Part 23.5. Transportation (Refs & Annos)▣ Chapter 1. Transportation Services (Refs & Annos)▣ Article 1. General Provisions (Refs & Annos)

→ § 39807. Food and lodging payments in lieu of transportation

In lieu of furnishing transportation to pupils attending the schools of a school district, the governing board may pay to the parents or guardian of each pupil the cost of food and lodging of the pupil at a place convenient to the schools. The amount paid on account of each pupil may not exceed the estimated cost to the district of providing for the transportation of the pupil to and from his or her home and the school he or she attends.

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(Added by Stats.1999, c. 646 (A.B.1600), § 14.)

Current with urgency legislation through c. 14 of 2011 Reg.Sess.

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6. Amendment of subsection (c) filed 6–22–83; effective thirtieth day thereafter (Register 83, No. 26).
7. Amendment filed 10–30–86; effective thirtieth day thereafter (Register 86, No. 44).
8. Amendment of subsection (a) filed 8–4–87; operative 9–3–87 (Register 87, No. 32).
9. Change without regulatory effect adding new subsection (b)(3) filed 8–13–91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 4).
10. New subsection (b)(4) filed 4–28–92; operative 5–28–92 (Register 92, No. 18).
11. Amendment of subsections (a), (b)(1), (b)(2), (c) and NOTE filed 7–22–93; operative 8–21–93 (Register 93, No. 30).
12. Amendment of subsection (b)(4) and NOTE filed 9–6–95; operative 10–6–95 (Register 95, No. 36).
13. Amendment of subsection (a) filed 3–31–99; operative 4–30–99 (Register 99, No. 14).
14. Amendment of subsection (b)(3) filed 10–24–2001; operative 11–23–2001 (Register 2001, No. 43).
15. New subsection (b)(5) filed 3–20–2002; operative 4–19–2002 (Register 2002, No. 12).

§ 1201. Definitions.

The following terms are defined for purposes of this chapter:

(a) Adverse driving conditions. Snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

(b) Bus. Every motor vehicle defined in Vehicle Code Section 233 and every school bus, school pupil activity bus, youth bus, and farm labor bus. Bus “type” is determined as follows:

(1) Type 1. Designed for carrying more than 16 passengers and the driver.

(2) Type 2. Designed for carrying not more than 16 passengers and the driver; or manufactured on or after April 1, 1977, having a manufacturer’s gross vehicle weight rating of 10,000 lb or less, and designed for carrying not more than 20 passengers and the driver.

(c) Co–driver. A driver teamed with another driver for the purpose of alternating driving duties during a trip. While one drives, the other ordinarily rests in a sleeper berth. Both driver and co–driver maintain separate driver’s records of duty status pursuant to Section 1213 of this title.

(d) Commercial Motor Vehicle. Any vehicle or combination of vehicles as defined in Vehicle Code Section 15210(b)(1).

(e) Commissioner. Commissioner of the Department of the California Highway Patrol.

(f) Department. Department of the California Highway Patrol.

(g) Drive or Operate. These terms include all time spent at the driving controls of a motor vehicle in operation.

(h) Driver. Any person, including the owner–driver, who drives any motor vehicle subject to this chapter, and any person, whether driving for compensation or not, who is under the direct control of and drives for a motor carrier.

(i) Driver–salesperson. Any employee who is employed solely as such by a private carrier of property by motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which the driver reports for duty, who devotes not more than 50 percent of his/her hours on duty to driving time. The term “selling goods” for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

(j) Driving Time. Means all time spent at the driving controls of a commercial motor vehicle in operation.

(k) Eight Consecutive Days. The period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24–hour period.

(l) FMVSS. Federal Motor Vehicle Safety Standard(s) in effect at the

time the vehicle or component is manufactured.

(m) GPPV—General Public Paratransit Vehicle. Any motor vehicle specified in Vehicle Code Section 336.

(n) Interstate Driver. Interstate driver means the driver of a vehicle engaged in interstate commerce as defined in 49 CFR, Section 390.5, as those regulations now exist or are hereafter amended.

(o) Intrastate Driver. Intrastate driver means a driver engaged in trade, traffic, or transportation not described in the term “interstate driver.”

(p) Manufacturer of the Chassis. The original manufacturer of the chassis or the manufacturer of any integral type of school bus.

(q) Motor Carrier or Carrier. The registered owner, lessee, licensee, school district superintendent, or bailee of any vehicle who operates or directs the operations of any such vehicle on either a for–hire or not–for–hire basis. The terms “motor carrier” and “carrier” may be used interchangeably in this chapter.

(r) Multiple Stops. All stops made in any one village, town, or city may be computed as one.

(s) On–duty Time. All time from the time a driver begins to work, or is required to be in readiness to work, until the time the driver is relieved from work and all responsibility for performing work. On–duty time shall include:

(1) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any vehicle;

(3) All “driving time” as defined in this section;

(4) All time, other than driving time, in or upon any motor vehicle, except time spent resting in a sleeper berth as defined by the term “sleeper berth” in this section;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time spent complying with driver requirements relating to accidents;

(7) All time repairing, obtaining assistance, or remaining in attendance in or about a disabled vehicle;

(8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post accident, or follow–up testing required by 49 CFR Part 382, when directed by a motor carrier;

(9) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier; and

(10) Performing any compensated work for any nonmotor carrier entity.

(t) Pupil Transportation. The transportation of any pupil enrolled in a public or private school at or below the twelfth–grade level to or from school in a school bus, to or from a school activity in a school bus or SPAB, from a school to a nonschool–related activity within 25 miles of the school in a youth bus, or the transportation of any student enrolled in a community college to or from the community college or a college activity, in a vehicle designated as a school bus by resolution of the governing board pursuant to Vehicle Code Section 545(g), and certified by the department.

(u) SPAB—School Pupil Activity Bus. Any motor vehicle specified in Vehicle Code Section 546.

(v) School District Superintendent. This term or a similar phrase includes county superintendent of schools and the equivalent official of a private or public school that does not have a school district superintendent.

(w) Seven Consecutive Days. The period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24–hour period.

(x) Sleeper Berth. A berth conforming to the requirements of Section 1265.

(y) Supporting Documents. Supporting documents are the records of a motor carrier which are maintained in the ordinary course of business which may be used to verify the information recorded on drivers' records of duty status. Examples are: bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumber receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, Commercial Vehicle Safety Alliance reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business. Supporting documents may include other documents which the motor carrier maintains and which can be used to verify information on drivers' records of duty status.

(z) Trailer-bus. A trailer or semi-trailer designed or used for the transportation of more than 10 persons.

(aa) Truck. All motortrucks and truck tractors specified in Vehicle Code Section 34500.

(bb) Twenty-four Hour Period. Any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

(cc) Wheelchair. A specially constructed device on wheels used exclusively to transport a physically handicapped person except infant seat devices, strollers, and gurneys.

(dd) Wheelchair School Bus. Any school bus that has been designed or modified in accordance with Section 1293 of this title to transport pupils confined to wheelchairs.

(ee) Work Period. The duration between the time a driver first reports for duty and the time a driver is completely relieved of all duties and is permitted to go off duty for eight consecutive hours. The terms "work period" and "tour of duty" have the same meaning.

NOTE: Authority cited: Sections 31401, 34501, 34501.5, 34508 and 34520, Vehicle Code; and Section 39831, Education Code. Reference: Sections 336, 546, 31401, 34501, 34501.2, 34501.5, 34508 and 34520, Vehicle Code; and Section 39831, Education Code.

HISTORY

1. Amendment filed 5-14-79; effective July 1, 1979 (Register 79, No. 19).
2. Amendment of subsection (k) filed 4-3-80; designated effective 7-1-80 (Register 80, No. 14).
3. Amendment of subsection (j) filed 12-28-81; effective thirtieth day thereafter (Register 82, No. 1).
4. Amendment of subsections (p), (r) and (w) filed 6-9-82; effective thirtieth day thereafter (Register 82, No. 24).
5. Amendment of subsections (a), (p) and (s), and new subsection (z) filed 10-28-82; effective thirtieth day thereafter (Register 82, No. 44).
6. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
7. Amendment filed 7-1-83; effective thirtieth day thereafter (Register 83, No. 27).
8. Amendment filed 8-16-88; operative 9-15-88 (Register 88, No. 34).
9. Amendment of subsection (l) filed 12-5-88; operative 1-4-89 (Register 88, No. 51).
10. Amendment of subsection (k)(4) filed 7-17-89; operative 8-16-89 (Register 89, No. 29).
11. Change without regulatory effect adding new subsections (a), (h), (i), (l), (m), (p), (q)(9), (v), (w), and (z), subsection relettering, and amendment of newly designated subsections (q)-(q)(8) filed 2-4-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 6).
12. Editorial correction of printing error (Register 93, No. 12).
13. Change without regulatory effect amending subsection (g) filed 5-11-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 19).
14. Change without regulatory effect repealing subsection (t) and subsection relettering filed 4-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).
15. New subsection (w), subsection relettering and amendment of NOTE filed 1-8-98; operative 2-7-98 (Register 98, No. 19).
16. Amendment of section and NOTE filed 10-24-2001; operative 11-23-2001 (Register 2001, No. 43).
17. Amendment of subsections (i), (n)-(o), (s) and (bb) filed 10-12-2007; operative 11-11-2007 (Register 2007, No. 41).

§ 1202. General Provisions.

The general provisions of this chapter are as follows:

(a) Inspections by Department. Motor carriers shall afford authorized representatives of the department a reasonable opportunity to enter terminals, maintenance facilities, farm labor camps, or other private property to inspect vehicles and records to determine compliance with this chapter. Every driver shall permit the inspection of any vehicle or pertinent records for which the driver is responsible or has under his or her control.

(b) Authority of District Boards. The governing board of any school district, county superintendent of schools, or equivalent private school entity or official, may adopt and enforce additional requirements governing the transportation of pupils. Such requirements shall not conflict with any law or state administrative regulation.

(c) Application to Private School Buses. The provisions of this chapter shall apply equally to private school buses and to private school officials and agencies unless the context clearly indicates that no such application may reasonably be made.

(d) Special Application. Regulations in this title relating to buses and to the transportation of passengers shall also apply to trailer buses.

(e) Exemptions. The Commissioner may grant exemptions from any of the requirements of this chapter when, in his judgment, requests appear reasonable, or the results intended by these regulations can be accomplished by alternate methods of compliance. However, no exemption will be granted if, in the opinion of the Commissioner, the exemption would compromise the safety requirements of these regulations. In addition, any exemption granted by the Commissioner is nontransferable and may be rescinded at any time for cause.

(1) Application for Exemption. An application for exemption shall be made in writing to the Commissioner, and it shall include the following data:

Reason for requesting an exemption

Alternate method(s) of compliance

When relevant, the make and model, vehicle identification number, and license number of the vehicle for which the exemption is being requested

The application shall be mailed to:

CALIFORNIA HIGHWAY PATROL
ENFORCEMENT SERVICES DIVISION
POST OFFICE BOX 942898
SACRAMENTO, CA 94298-0001

(2) Copy of Exemption. A copy of any exemption granted shall be carried in the vehicle(s) for which it was issued at all times, unless specified otherwise in the exemption, and shall be presented for inspection upon demand by any authorized representative of the department.

(3) Blanket Exemptions. The provisions of this subsection do not apply to any blanket exemptions the Commissioner may elect to issue. A blanket exemption is an exemption from a particular provision of this subchapter granted to all vehicles, or vehicles manufactured on or after a specified date, pending a change in these regulations.

(f) Motor Carrier of Property Certificate of Compliance. Any motor carrier of property, as defined in Section 34601 of the Vehicle Code, who contracts or subcontracts with, or otherwise provides transportation services for, another motor carrier of property shall provide to that motor carrier a certificate as set forth in Section 34620(b) of the Vehicle Code. The certificate may be on a form provided by the department, or may be a carrier-provided form containing the following information:

(1) The name of the contracted motor carrier.

(2) The contracted motor carrier's Motor Carrier Permit number and expiration date.

(3) The signature of the contracted motor carrier or his or her agent.

(4) The printed name, title, and driver's license number of the contracted motor carrier or his or her agent.

(5) The date the certificate is signed.

(6) The name of the contracting motor carrier.

(7) The following statement, inserting the above information as indicated: "I, the undersigned, certify that (*name of contracted carrier*) holds



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United States Code Annotated Currentness

Title 20. Education

Chapter 33. Education of Individuals with Disabilities (Refs & Annos)

Subchapter I. General Provisions

→ § 1400. Short title; findings; purposes

(a) Short title

This chapter may be cited as the “Individuals with Disabilities Education Act”.

(b) Omitted

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because--

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can

be made more effective by--

- (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to--
 - (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and
 - (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;
 - (B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;
 - (C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.], in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;
 - (D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;
 - (E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;
 - (F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;
 - (G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and
 - (H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.
- (6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.
- (7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.
- (8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.
- (9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(C) Minority children comprise an increasing percentage of public school students.

(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having intellectual disabilities and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are--

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 601, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, and amended Pub.L. 111-256, § 2(b)(1), Oct. 5, 2010, 124 Stat. 2643.)

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Title 20. Education

▣ Chapter 33. Education of Individuals with Disabilities (Refs & Annos)

▣ Subchapter I. General Provisions

→ § 1401. Definitions

Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

- The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(2) Assistive technology service

The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

- (A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;
- (B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
- (C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (E) training or technical assistance for such child, or, where appropriate, the family of such child; and
- (F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term “child with a disability” means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Core academic subjects

The term “core academic subjects” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(5) Educational service agency

The term “educational service agency”--

(A) means a regional public multiservice agency--

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term “elementary school” means a nonprofit institutional day or residential school, including a public ele-

mentary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term "equipment" includes--

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term "excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting--

(A) amounts received--

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311 et seq.]; and

(iii) under parts A and B of title III of that Act [20 U.S.C.A. § 6811 et seq. and 20 U.S.C.A. § 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term "free appropriate public education" means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Highly qualified

(A) In general

For any special education teacher, the term “highly qualified” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801], except that such term also--

- (i) includes the requirements described in subparagraph (B); and
- (ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

- (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;
- (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- (iii) the teacher holds at least a bachelor's degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either--

- (i) meet the applicable requirements of section 9101 of such Act [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
- (ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

- (i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;
- (ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic

subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(11) Homeless children

The term “homeless children” has the meaning given the term “homeless children and youths” in section 11434a of Title 42.

(12) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term “individualized family service plan” has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term “infant or toddler with a disability” has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term “institution of higher education”--

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978.

(18) Limited English proficient

The term “limited English proficient” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(19) Local educational agency

(A) In general

The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes--

(i) an educational service agency; and

(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term “native language”, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the

child.

(21) Nonprofit

The term “nonprofit”, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) Parent

The term “parent” means--

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term “parent organization” has the meaning given the term in section 1471(g) of this title.

(25) Parent training and information center

The term “parent training and information center” means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term “Secretary” means the Secretary of Education.

(29) Special education

The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(30) Specific learning disability**(A) In general**

The term “specific learning disability” means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term “transition services” means a coordinated set of activities for a child with a disability that--

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term “universal design” has the meaning given the term in section 3002 of Title 29.

(36) Ward of the State

(A) In general

The term “ward of the State” means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

CREDIT(S)

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Title 20. Education

▣ Chapter 33. Education of Individuals with Disabilities (Refs & Annos)

▣ Subchapter II. Assistance for Education of All Children with Disabilities

→ § 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

(a) Evaluations, parental consent, and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this subchapter.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the

child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under

this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur--

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall--

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that--

(A) assessments and other evaluation materials used to assess a child under this section--

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures--

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities

(A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--

(A) review existing evaluation data on the child, including--

- (i) evaluations and information provided by the parents of the child;
- (ii) current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

- (i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
- (ii) the present levels of academic achievement and related developmental needs of the child;
- (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs,

the local educational agency--

(A) shall notify the child's parents of--

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(d) Individualized education programs

(1) Definitions

In this chapter:

(A) Individualized education program

(i) In general

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(I) a statement of the child's present levels of academic achievement and functional performance, including--

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to--

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction

Nothing in this section shall be construed to require--

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

(B) Individualized education program team

The term "individualized education program team" or "IEP Team" means a group of individuals composed of--

(i) the parents of a child with a disability;

(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) not less than 1 special education teacher; or where appropriate, not less than 1 special education provider of such child;

(iv) a representative of the local educational agency who--

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general education curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(vii) whenever appropriate, the child with a disability.

(C) IEP Team attendance

(i) Attendance not necessary

A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(ii) Excusal

A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(I) the parent and the local educational agency consent to the excusal; and

(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) Written agreement and consent required

A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

(D) IEP Team transition

In the case of a child who was previously served under subchapter III, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the subchapter III service coordinator or other representatives of the subchapter III system to assist with the smooth transition of services.

(2) Requirement that program be in effect

(A) In general

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5

In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the

child if using that plan as the IEP is--

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.

(C) Program for children who transfer school districts

(i) In general

(I) Transfer within the same State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) Transfer outside State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) Transmittal of records

To facilitate the transition for a child described in clause (i)--

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(3) Development of IEP

(A) In general

In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

- (i) the strengths of the child;

- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

(B) Consideration of special factors

The IEP Team shall--

- (i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
- (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- (v) consider whether the child needs assistive technology devices and services.

(C) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

(D) Agreement

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

(E) Consolidation of IEP Team meetings

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(F) Amendments

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(4) Review and revision of IEP

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--

(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address--

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(V) other matters.

(B) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

(5) Multi-year IEP demonstration

(A) Pilot program

(i) Purpose

The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) Authorization

In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) Proposal

(I) In general

A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(II) Content

The proposal shall include--

- (aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;
- (bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;
- (cc) a list of required elements for each multi-year IEP, including--
 - (AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and
 - (BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and
 - (dd) a description of the process for the review and revision of each multi-year IEP, including--
 - (AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;
 - (BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;
 - (CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and
 - (DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

(B) Report

Beginning 2 years after December 3, 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including--

- (i) reducing--

(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

(II) noninstructional time spent by teachers in complying with this subchapter;

(ii) enhancing longer-term educational planning;

(iii) improving positive outcomes for children with disabilities;

(iv) promoting collaboration between IEP Team members; and

(v) ensuring satisfaction of family members.

(C) Definition

In this paragraph, the term “natural transition points” means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

(6) Failure to meet transition objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(7) Children with disabilities in adult prisons

(A) In general

The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 1412(a)(16) of this title and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this subchapter will end, because of such children's age, before such children will be released from prison.

(B) Additional requirement

If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections [ENI] 1412(a)(5)(A) of this title and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) Educational placements

Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(f) Alternative means of meeting participation

When conducting IEP team [FN2] meetings and placement meetings pursuant to this section, section 1415(e) of this title, and section 1415(f)(1)(B) of this title, and carrying out administrative matters under section 1415 of this title (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 614, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2702.)

[FN1] So in original. Probably should be "section".

[FN2] So in original. Probably should be capitalized.

Current through P.L. 112-3 (excluding P.L. 111-296, 111-314, 111-320, and 111-350) approved 2-25-11

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person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with § 300.515.

(b) *Foster parent.* Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if—

(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19))

§ 300.21 Personally identifiable

As used in this part, the term *personally identifiable* has the meaning given that term in § 300.500(b)(3).

(Authority: 20 U.S.C. 1415(a))

§ 300.22 Public agency.

As used in this part, the term *public agency* includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(1)(A), (a)(11))

§ 300.23 Qualified personnel.

As used in this part, the term *qualified personnel* means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(Authority: 20 U.S.C. 1221e-3)

§ 300.24 Related services.

(a) *General.* As used in this part, the term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a

disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) *Individual terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(7) *Parent counseling and training means*—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) *Physical therapy* means services provided by a qualified physical therapist.

(9) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child be-

havior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(10) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(11) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) *School health services* means services provided by a qualified school nurse or other qualified person.

(13) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(22))

§ 300.25 Secondary school.

As used in this part, the term *secondary school* means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(Authority: 20 U.S.C. 1401(23))

§ 300.26 Special education.

(a) *General.* (1) As used in this part, the term *special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) *Individual terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education*—

(i) Means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially-designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(25))

§ 300.27 State.

As used in this part, the term *State* means each of the 50 States, the District of Columbia, the Commonwealth

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

(Authority: 20 U.S.C. 1401(23))

§ 300.31 Parent training and information center.

Parent training and information center means a center assisted under sections 671 or 672 of the Act.

(Authority: 20 U.S.C. 1401(25))

§ 300.32 Personally identifiable.

Personally identifiable means information that contains—

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415(a))

§ 300.33 Public agency.

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

(Authority: 20 U.S.C. 1412(a)(11))

§ 300.34 Related services.

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.* (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the

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IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services* includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and tran-

scription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them

to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

§ 300.36 Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law,

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Special Education Transportation Guidelines

Guidelines for use by Individualized Education Program (IEP) Teams when determining required transportation services.

California Education Code (EC) citations, including Code content, and *Code of Federal Regulations (CFR)* citations have been updated to reflect changes since October 2002. Changes made in April 2010, are noted by italics (does not apply to codes or code acronyms).

Preface

EC Section 41851.2 (Assembly Bill 876 [Canella], Chapter 283, Statutes of 1991), required the State Superintendent of Public Instruction (SSPI) to develop special education transportation guidelines for use by individualized education program (IEP) teams that clarify when special education services are required.

The State Board of Education, Advisory Commission on Special Education, Special Education Local Plan Area (SELPA) Administrators, Special Education Administrators of County Offices (SEACO), Protection & Advocacy, Inc., Team of Advocates for Special Kids (TASK), school districts, County Offices of Education (COE), transportation offices, California Department of Education staff and other interested parties provided valuable contributions to the development of the 1993 Guidelines For Use By Individualized Education Program (IEP) Teams When Determining Required Transportation Services.

The guidelines should be utilized to plan and implement transportation services to pupils that require this service to benefit from special education instruction and/or related services.

Introduction

EC Section 56040 states: "Every individual with exceptional needs, who is eligible to receive *special education instruction and related services* under this part [Part 30] shall receive *that instruction and those services* at no cost to his or her parents or, as appropriate, to him or her." Special education transportation is defined in federal regulation [34 *CFR* Section 300.34 9(c)(16)] as a related service. Transportation is required to be provided if it is necessary for the student to benefit from special education instruction. In addition, as required for any special education program, the service must be provided to meet the criteria for a free, appropriate public education as defined in federal regulation 34 *CFR* Section 300.17.

EC Section 41851.2 (Assembly Bill 876 (Canella), Chapter 283, Statutes of 1991), required that the SSPI develop special education transportation guidelines for use by IEP teams that clarify "when special education services, as defined by *EC* Section 41850, are required." *EC* 41850(d) defines "special education transportation" as:

"The transportation of severely disabled *special day class* pupils, and orthopedically impaired pupils who require a vehicle with a wheelchair lift, who received transportation in the prior fiscal year, as specified in their individualized education program.

"A vehicle that was used to transport special education pupils."

EC 41850(b) (5) defines "home-to-school transportation services" for pupils with exceptional needs as:

"The transportation of individuals with exceptional needs as specified in their individualized education programs, who do not receive special education transportation as defined in subdivision (d)"

Examples that IEP teams may consider under *EC* 41850(b) include pupils with severe disabilities who are not placed in special day classes or otherwise enrolled in programs serving pupils with profound disabilities, pupils with orthopedic disabilities who do not use wheelchairs or require lifts, students beginning special education who did not receive transportation under an IEP in the prior fiscal year, pupils with other health impairments, learning disabilities or other cognitive disabilities, or pupils who live beyond reasonable distance to their school and would not, without transportation, have access to appropriate special education instruction and related services at not cost.

Considerations for Use by Local Education Agencies, Special Education Local Plan Areas, County Offices Of Education and/or Transportation Cooperatives

It is recommended that these issues and concepts be taken under consideration by all LEAs, SELPAs, COEs and/or transportation cooperatives that provide any special education transportation in preparation for organizing a transportation

system and providing services that will allow for students' placement in the least restrictive environment while also allowing for the most cost-effective special education transportation system.

Transportation Policies

Each LEA providing special education is required to adopt policies for the programs and services it operates, consistent with agreements with other districts or county offices and/or agreements stated as part of the local plan for special education (EC 56195.8). These policies describe how special education transportation is coordinated with regular home-to-school transportation and set forth criteria for meeting the transportation needs of pupils receiving special education (EC 56195.8(b)(5)). It is recommended these policies focus upon pupil needs as the primary consideration for determining transportation services and that these policies also address the needs of pupils who may be eligible for transportation services as required by the Rehabilitation Act of 1973, Section 504.

Delivery of Services

Districts/SELPA/COEs responsible for implementation of IEPs should be knowledgeable of transportation policies and/or procedures that address the responsibilities of the IEP team in regard to transportation and the delivery of services to eligible students in their least restrictive environment.

This includes consideration of services that are provided in the setting appropriate to the needs of the student at the pupil's neighborhood school, or within the district or SELPA; regional and/or magnet programs and services may also be appropriate to the needs of the pupil. Consideration should be taken regarding the effect that the location of a placement will have on the length of time that a student has to or from school each day. Placements should not be made solely on a "space available" basis. If a student is receiving services outside of his/her residence area, the placement should be reviewed at least annually in order to determine if a placement closer to the student's residence would be appropriate.

Location of Programs, Placement of Pupils

The efficiency of a transportation system for special education is partially dependent on the location of the program sites and the placements of students. A demographic and geographic review that analyzes the present locations of programs, program needs, and population served should take place. Program service regions with clearly defined service areas can then be established, using residence areas of the neighborhood schools. While this also involves the issue of available facilities, a mission statement and policies developed by the agency may promote the comprehensive commitment to all pupils and the acceptance of pupils with exceptional needs in a broad variety of settings.

Additional Policy Considerations

Other subjects that need policy and procedure directives may include control of pupil medicine transported between home and school on a vehicle; student suspension; physical intervention and management; authority to use special harnesses, vest, and belts; early closing of school due to inclement weather or other emergencies; authority to operate special equipment; when no adult is home to receive pupils; when and how to involve community emergency medical and/or law enforcement personnel; use of mobility aides; control and management of confidential information; use of bus aides; and other.

Coordination of Calendars and Schedules

Coordination of student attendance calendars at all school sites that provide special education services is necessary to fully utilize transportation services and to minimize the number of required days of transportation service.

In unified districts, multi-track districts, multi-district SELPAs, COEs and/or in transportation cooperatives, standardization of calendars should include the coordination of starting and ending dates of school years, bell schedules (starting and ending times), vacation/intersession breaks, staff development days (School Improvement Program, School Based Coordinated Program, other), minimum day schedules, etc. This coordination should be done so that all significant transportation implications are addressed and transportation resources are effectively utilized.

Length of School Day, Related Services, Extracurricular Events

It should be noted that the use of alternative starting times for all special education students at a site can lead to program compliance concerns. Pupils receiving special education and related services must be provided with an educational program in accordance with their IEP for at least the same length of time as the regular school day for their chronological

peer group, unless otherwise stated in a student's IEP. In addition, there may be occasions where the needs of the pupil require receiving therapy or some other related service that cannot be provided during the "established" school day. If provisions for "early" or "late" transportation are made for pupils within the general education program due to extra curricular events, provisions for equal opportunity to these events for pupils with exceptional needs who require special transportation must also be made.

Use of Policy and Resource Information

An overview of all available transportation resources should be provided to all administrators, IEP team leaders/case managers or chairpersons and other IEP team members who are authorized to recommend the type of special education service and the location where the service will be provided.

Guidelines For Use By The Individualized Education Program (IEP) Team

Local Education Agency Rules and Policies

All pupils, including those receiving specialized instruction and services, are subject to the rules and policies governing regular transportation offerings within the local education agency, unless the specific needs of the eligible pupil or the location of the special education program/service dictate that special education transportation is required.

Primary Consideration: Pupil Needs

The specific needs of the pupil must be the primary consideration when an IEP team is determining any transportation needs. These may include, but are not limited to:

1. Medical diagnosis and health needs consideration of whether long bus rides could affect a certain pupil's health (duration, temperature control, need for services, health emergencies); general ability and/or strength to ambulate/wheel; approximate distance from school or the distance needed to walk or wheel oneself to the school; consideration of pupil needs in inclement or very hot weather, other.
2. Physical accessibility of curbs, sidewalks, streets, and public transportation systems.
3. Pupil capacity consideration of a pupil's capacity to arrive at school on time, to avoid getting lost, to avoid dangerous traffic situations, and to avoid other potentially dangerous or exploitative situations on the way to and from school.
4. Behavioral Intervention Plans (Title 5, *CCR 3001 (g)* specified by the pupil's IEP and consideration of how to implement such plans while a pupil is being transported.
5. Other transportation needs mid-day or other transportation needs as required on a pupil's IEP (for example, occupational or physical therapy or mental health services at another site, community based classes, etc.) must also be taken into consideration when the IEP team discusses a pupil's placement and transportation needs.
6. *Extended school year services, pursuant to EC Section 56345(b)(3), should be another consideration of a pupil's need for transportation if considered necessary to provide a free appropriate public education as specified in a pupil's IEP.*

Transportation Staff and IEP Team Meetings

Effective practice requires that procedures are developed for communication with transportation personnel and that transportation staff are present at IEP team meetings when the pupil needs the use of adaptive or assistive equipment, when school bus equipment is required to be modified, when the pupil exhibits severe behavioral difficulties and a behavior intervention plan is to be implemented, when the pupil is medically fragile and requires special assistance, and/or when the pupil has other unique needs.

Transportation Options

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team. When developing specific IEP goals and objectives related to the pupil's use of public transportation, the IEP team may wish to consider a blend of transportation services as the pupil's needs evolve. Specialized transportation as a related service must be written on the pupil's IEP with specificity and should be approved by the transportation administrator. It is recommended that services be described in sufficient enough detail to inform the parties of how, when and from where to

where transportation will be provided and, where arrangements for the reimbursement of parents are required, the amount and frequency of reimbursement.

Suspension from the School Bus

Occasionally pupils receiving special education services are suspended from bus transportation (*EC 48900-48900. Z, Grounds for Suspension*). The suspension of a pupil receiving special education services from California transportation can constitute a significant change of placement if the district: 1) has been transporting the student; 2) suspends the student from transportation as a disciplinary measure; and 3) does not provide another mode of transportation (Office of Civil Rights, Letter of Finding Complaint No. 04-89-1236, December 8, 1989).

A significant change in placement requires a meeting of the IEP team to review the pupil's IEP. During the period of any exclusion from bus transportation, pupils must be provided with an alternative form of transportation at no cost to the pupil or parent in order to be assured of having access to the required special education instruction and services (*EC 48915.5*).

EC 48915.5(c) reads: "If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program." (AB 1859, Chapter 492, Statutes of 2002. Effective 01/01/2003.)

Summary

The LEA providing special education is required to adopt policies for the programs and services it operates, consistent with agreements with other districts or county offices stated as part of the local plan for special education. These policies describe how special education transportation is coordinated with regular home-to-school transportation and set forth criteria that are consistent with these Guidelines for meeting the transportation needs of pupils receiving special education.

These policies and an overview of all available transportation resources should be provided to all administrators, IEP team leaders/case managers/chairpersons and other IEP team members who are authorized to recommend the type of special education service and the location where the service will be provided.

The specific needs of the pupil must be the primary consideration when an IEP team is determining transportation services. It is often beneficial to have transportation staff present at IEP team meetings. The combination of planning and providing information to IEP teams maximizes appropriate placements and efficient cost-effective transportation systems.

Notice

The guidance in the Special Education Transportation Guidelines is not binding on local education agencies (LEAs) or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the Guidelines are exemplary and compliance is not mandatory. (*EC Section 33308.5*)

Questions: Focused Monitoring and Technical Assistance Consultant

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