



January 20, 2004

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**COMMISSION ON
STATE MANDATES**

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

Dear Ms. Higashi:

As requested in your letter of October 6, 2003, the Department of Finance has reviewed the test claim submitted by the San Diego Unified School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter 828, Statutes of 1999 (AB 631, Midgen) and Chapter 1058, Statutes of 2002 (AB 1994, Reyes) are reimbursable State mandated costs (Claim No. CSM-03-TC-03 "Charter School IV"). This letter summarizes the claimant's assertions and provides the Department of Finance's response to the test claim.

Claimant's Assertions

Commencing with Section B—Activities Required Under Statute and Executive Orders Containing Mandates—of the test claim, the claimant asserts that the following activities are reimbursable State mandates:

Chapter 828, Statutes of 1999

- Makes provisions of existing law related to collective bargaining in public education employment applicable to charter schools.
- Requires charter schools to declare whether the charter school is the exclusive public school employer.
- Requires a charter school operated by the University of California to declare that it is the employer of charter school employees for collective bargaining purposes.
- Requires a charter school to include the discipline and dismissal of employees within scope of representation if the school's charter does not specify that the school will comply with statutory and regulatory provisions related to tenure and merit.

Chapter 10582, Statutes of 2002

- Requires a charter school to approve an annual financial statement and submit it to the chartering entity.
- Requires charter school petitions or renewals submitted after January 1, 2003, to identify a single charter school and to specify geographic and site requirements.
- Modifies the process by which a petitioner appeals the denial of a charter petition by requiring an appeal to the county office of education before appeal to the State Board of Education.

- Authorizes the county superintendent to monitor charter school operations within the county.
- Requires a charter school to promptly respond to inquiries, including financial information requests, from the chartering entity, county office of education, or Superintendent of Public Instruction and to consult with these entities.
- Authorizes a county board of education to approve a charter operating at multiple sites throughout the county.
- Authorizes a charter petition to be submitted directly to the State Board of Education and would allow statewide operation of a charter approved by the State Board of Education.
- Requires a charter school commencing operation after July 1, 2002, to locate within specified geographic and site limitations.
- Authorizes a charter school to commence instruction between July 1 through September 30 and prohibits apportionment for a charter school that commences operation after September 30.
- Requires school districts to respond to, prepare for, and participate in any judicial proceeding filed by a charter petitioner challenging the denial of a charter petition.

Test Claim Should Be Denied Due to Lack of Specificity

We note that the test claim consists of a summary of the entirety of the two chaptered bills and is ambiguous as to precisely which activities are alleged to be reimbursable mandates and as to whether the test claim asserts that charter schools, chartering entities, or county offices of education are eligible claimants. We believe that the Commission and the respondents are entitled to a specific and complete identification of the activities that are being claimed as reimbursable and that denial of this claim is appropriate due to lack of specificity in the test claim.

Department of Finance Test Claim Review

Although we believe the test claim should be denied due to lack of specificity, we have reviewed the test claim. Our analysis follows below.

Discretionary Acts—As more fully explained in our comments related to the Charter III test claim (99-TC-14), charter schools are not eligible claimants because establishing and maintaining a charter school is a discretionary act. State law allows, but does not require, the establishment of charter schools and therefore no reimbursable mandate for charter schools can exist. This reasoning is affirmed by the California Supreme Court decision in *Department of Finance v. Commission on State Mandates* related to school site councils.

Similarly, the test claim legislation contains authorization for chartering entities to complete certain activities, but does not require these activities. For example, charter schools are required to respond to inquiries from the chartering entity, the county office of education, or the Superintendent of Public Instruction. It is discretionary on the part of the local oversight agencies to request the specified information and therefore no reimbursable mandate exists for these entities. Charter schools are required to promptly respond to these requests, but because charter schools themselves are discretionary, no reimbursable mandate exists for the charter schools.

Additionally, the test claim legislation does not support the claimant's assertion that school districts are required to prepare for and participate in judicial proceedings when a charter claim

is denied and subsequently appealed. Although a district may elect to do so because it determines that doing so is in its best interest, nothing in the test claim legislation requires such action. Any decision to do so is clearly a discretionary act not required by the State and therefore not reimbursable.

Pre-1975 Requirements—In addition to the discretionary nature of charter schools, we note that school districts have always had the responsibility to oversee individual schools within their purview. Indeed, this is one of the most basic functions of a school district. As a result, any pre-existing oversight responsibilities that the chartering entity already has with regular district schools, such as financial reporting, do not result in new requirements or a higher level of service compared to 1975, as these duties are and have always been a responsibility of the school district.

Reimbursable Oversight Costs—Education Code Section 47613 authorizes chartering entities to generally charge for actual oversight costs up to 1 percent of charter school revenue. Chartering entities are allowed to charge up to 3 percent if the chartering agency provides substantially rent-free facilities to the charter school. Therefore, even if the test claim legislation were to result in costs to chartering entities, those costs are not reimbursable by the State because the chartering entity is authorized to charge fees to cover those costs.

The claimant has offered no evidence that mandated oversight activities cost more than can be recovered by these fees. Since the fee recovery provision was an integral part of charter oversight legislation, we view it as further defining the maximum level of activity and cost that the Legislature was requiring. Therefore, we believe no costs above the fees are State mandated.

Section 17556(d) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In its April 1991 decision in *County of Fresno v. State of California* (53 Cal 3D, 482, 1991), the State Supreme Court held that this code section is facially valid under Section 6 of Article XIII B of the California Constitution. The court reasoned that Article XIII B was not intended to "reach beyond taxation", i.e., the article requires reimbursement only for those expenses that are recoverable solely from tax revenues.

Charter Petition Review—If a school district reviews a charter petition and subsequently approves the charter, we believe that costs associated with charter petition reviews are not reimbursable because the chartering entity could charge fees to recoup costs from the charter school pursuant to Education Code Section 47613, as outlined above.

If a school district reviews and denies a charter petition, there may be minor reimbursable mandated activities to review the new petition information required by the test claim legislation, such as whether the charter will be considered an exclusive public school employer for collective bargaining purposes and whether the petition complies with statutory geographic limitations. However, these activities represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews. If the Commission were to find a reimbursable mandate for these minor activities, we would expect a very tight definition of new requirements.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 6, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Dan Troy, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

A handwritten signature in black ink that reads "Jeannie Oropeza". The signature is written in a cursive style with a large initial "J".

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MARK HILL
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-03

1. I am currently employed by the State of California, Department of Finance, am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 828, Statutes of 1999, (AB 631, Midgen) and Chapter 1058, Statutes of 2002 (AB 1994, Reyes) sections relevant to this claim are accurately quoted in exhibits A and B of the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 20, 2004
at Sacramento, CA

Mark Hill
Mark Hill

PROOF OF SERVICE

Test Claim Name: Charter School IV
Test Claim Number: CSM-03-TC-03

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 915 L Street, 7th Floor, Sacramento, CA 95814.

On January 20, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (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 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

D-8
Ms. Jennifer Rockwell
Office of the Attorney General
1300 I Street, 17th Floor
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Sacramento, CA 95814

Mr. Joe Lucente
Fenton Avenue Charter School
11828 Gain Street
Lake View Terrace, CA 91342

Mr. Fil Guzman
BWG Educational Consultants, LLC
1055 Copper Court
Vacaville, CA 95687

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
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Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

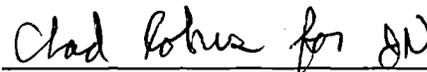
Mr. Jay Stewart
Western Placer Unified School District
1400 First Street
Lincoln, CA 95648

E-8
Gerald Shelton
California Department of Education
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
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B-8
Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 20, 2004, at Sacramento, California.



Jennifer Nelson