

ITEM____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6,
47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652

Government Code Section 3540.1

Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058

Charter Schools IV
03-TC-03

San Diego Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses statutory amendments relating to charter schools. The test claim statutes enacted in 1999 subject charter schools to the Educational Employment Relations Act (EERA). Since 1976, the EERA has governed labor relations in California public schools with the following stated purpose:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers . . .and to afford certificated employees a voice in the formulation of educational policy.

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization, and states the scope of representation is “limited to matters relating to wages, hours of employment, and other terms and conditions of employment.” The EERA also defines the rules for negotiations, mediation, and dispute of grievances, and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.

The test claim statutes require each charter school charter to contain, “[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school....” The EERA defines “public school employer” as “the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.*”

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.

The 2002 test claim statutes were enacted to increase the oversight and accountability of charter schools. Under these statutes, each charter school is required to approve an annual statement of

its receipts and expenditures and file it with the entity that approved the charter, which files it with the county office of education, which verifies its mathematical accuracy and submits it to the Superintendent of Public Instruction (SPI). Charter schools are required to respond to reasonable inquiries from a county office of education regarding financial records, and county offices of education are authorized to monitor the operations of a charter school located within that county and investigate the charter school's operations. Annual audits are required to be submitted to the State Controller and the county office of education.

The charter school petition requirements were also amended by the 2002 statute to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in the district, it must identify those sites in the petition, which is subject to approval by the school district governing board. If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified. Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records.

The 2002 legislation also restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.

Procedural History

The test claim was filed on August 29, 2003 by the San Diego Unified School District. The Department of Finance filed comments on January 23, 2004. The claimant filed rebuttal comments on May 12, 2004.

Positions of Parties and Interested Parties

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable state mandate for school districts, county offices of education, and charter schools.

State Agency Position

The Department of Finance argues that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state, as is responding to inquiries from the chartering entity that granted the charter, and participating in judicial proceedings. Finance argues that school district oversight of schools in their districts has been a district responsibility since before 1975, so the oversight of charter schools is not a new program or higher level of service. Moreover, chartering entities have fee authority to recover costs for oversight and charter petition review. (Ed. Code, § 47613.)¹

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but “these activities

¹ All references are to the Education Code unless otherwise indicated.

represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews.”

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts (i.e., local governments) are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local governments 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

Claim	Description	Issues	Recommendation
Education Code sections 47605 & 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828.)	These provisions make charter schools subject to the EERA.	At its July 2006 hearing, the Commission issued a prior final decision in the <i>Charter Schools Collective Bargaining</i> test claim on these statutes.	Deny. The Commission does not have jurisdiction to reconsider these statutes.
Education Code sections 1628, 42100(a), 47604.4(a), 47605(j)(1) and 47605.6, (Stats. 2002, ch. 1058)	Claimant seeks reimbursement for oversight and reporting activities for county office of education or county superintendents of schools or county boards of education.	Claimant, SDUSD, files no evidence in the record regarding costs incurred by the county school agencies for these activities.	Deny. There is no evidence in the record of costs mandated by the state incurred by county school agencies for these activities.

Education Code sections 42100(b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652 (Stats. 2002, ch. 1058) and section 47626 (Stats. 1999, ch. 828).	Claimant seeks reimbursement for notification, reporting, and information-providing activities for charter schools.	Claimant, SDUSD, files no evidence in the record regarding costs incurred by charter schools for these activities.	Deny. There is no evidence in the record of costs mandated by the state incurred by charter schools for these activities.
Education Code sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6 (a)(1)(A) & (B), (a)(3) & (a)(4) (Stats. 2002, ch. 1058).	Claimant seeks reimbursement for activities of charter petitioners in obtaining approval for charter schools	Charter school petitioners are not local governments. Charter school petitions can be filed by anyone and are often organized by a group of teachers, parents and community leaders, or by a community-based organization.	Deny. Only local governments that are subject to the tax and spend provisions of article XIII B are eligible for reimbursement under article XIII B, section 6.
Education Code sections 1628, 42100 (c), 47602 (a)(1), 47605.8, 47612.1, 47613.1, 47652 (a) (Stats. 2002, ch. 1058).	Claimant's test claim pleads statutes that apply solely to state agencies.	The statutes impose no requirements on school districts or local agencies.	Deny. These statutes do not mandate a school district activity.
Education Code section 47605 (Stats. 2002, ch. 1058).	Claimant seeks reimbursement to review additional information in the charter petition, receive notification and consider at an open meeting proposed material revisions to an already approved charter to establish operations at one or more additional sites within	Claimant alleges that these activities are reimbursable. Finance asserts that school districts have fee authority for these review activities.	Approve. These activities constitute a reimbursable state mandated program. The fee authority in Education Code section 47613 does not cover the costs incurred to review additional information required to be included in a new charter petition. While the fee

	the jurisdictional boundaries of the school district.		authority is intended to pay the “supervisory oversight of a charter school, which includes the cost of considering proposed revisions to an existing petition, there is no evidence in the record that the revenue is sufficient to cover the costs incurred.
Education Code section 42100(a) (Stats. 2002, ch. 1058).	Claimant seeks reimbursement to include with its annual statement of receipts and expenditures, the charter school’s annual statement of receipts and expenditures and file it with the county superintendent of schools by September 15.	Claimant alleges this activity is reimbursable. Finance argues that school districts have fee authority for this activity.	Approve. This is a reimbursable state-mandated activity. Although the fee authority in Education Code section 47613 is intended to cover the costs for “supervisory oversight” of a charter school, which includes this activity, there is no evidence in the record that the fee authority is sufficient to pay for the state mandated activities.

Staff Analysis

Commission Jurisdiction

Education Code sections 47605 and 47611.5, and Government Code section 3540.1 as added and amended by Statutes 1999, chapter 828, make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) At its July 28, 2006 hearing, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05), which determined that these statutes do not constitute a reimbursable mandate. Because the Commission does not have jurisdiction to reconsider its prior final decision, staff recommends that the Commission deny Education Code sections 47605 and 47611.5, and Government Code section 3540.1. (Stats. 1999, ch. 828.)

County Offices of Education and Charter Schools

Claimant has filed no evidence of costs mandated by the state incurred by county offices of education (including county boards of education and county superintendents of schools) or by charter schools for the activities in the test claim statutes that are unique to those entities.

The claimant has the burden to prove that new mandated activities result in increased costs mandated by the state in an amount of at least \$1,000. The Commission's regulations require that all assertions or representations of fact: (1) be supported with documentary evidence authenticated by a declaration signed under penalty of perjury by persons authorized and competent to do so, and (2) be based on the declarant's personal knowledge, information, or belief.

Although the test claim includes a declaration of costs for school districts and county offices of education, which would satisfy evidentiary requirements for activities common to both school districts and county offices of education, there is no declaration of costs mandated by the state for activities in the test claim statutes that are unique to county offices or charter schools.

Due to the lack of evidence, staff finds that Education Code sections 1628, 42100 (a), 47604.4(a), 47605 (j)(1) and 47605.6, (Stats. 2002, ch. 1058) as they affect county offices of education do not impose a reimbursable state-mandated new program or higher level of service. For the same reason, staff finds that the following Education Code sections do not impose a reimbursable state-mandated new program or higher level of service as they apply to charter schools: Education Code sections 42100(b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47605.6(a)(3), 47626, and 47652, as amended by Statutes 2002, chapter 1058, and Education Code section 47626 as added by Statutes 1999, chapter 828. Staff makes no findings whether these statutes constitute a state-mandated new program or higher level of service under article XIII B, section 6.

Charter School Petitioners

The test claim statutes amended the petition process to require that charter school petitioners provide additional information, as specified in the analysis. Staff recommends that these activities be denied because a school district, such as claimant SDUSD, is not a charter school petitioner. Anyone may file a charter school petition. Charter school petitioners are not local governments or school districts until the charter is approved, and thus, activities required of petitioners are not eligible for reimbursement under article XIII B, section 6.

Accordingly, staff finds that Education Code section 47605s(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), and section 47605.6(a)(1)(A) & (B), (a)(3), and (a)(4), do not impose a reimbursable state-mandated program.

State Agency Activities

Some of the test claim statutes impose requirements on state agencies, but not on school districts. Thus, staff finds that Education Code sections 1628, 42100(c), 47602(a)(1), 47605.8, 47612.1, 47613.1, and 47652(a), as added or amended by Statutes 2002, chapter 1058, are not a reimbursable state-mandate subject to article XIII B, section 6.

Review and Consider Charter School Petitions Submitted to School Districts (§ 47605)

Education Code section 47605, as amended in 2002, requires school districts to perform the following new activities:

1. Review and consider at a public hearing the following additional information in the charter school petition:
 - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.²
 - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.³
 - c) A description of where the charter school intends to locate in its description of facilities.⁴
 - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
 - (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
 - (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
 - (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.⁵
2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.⁶
3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.⁷

² Education Code section 47605(b)(5)(A)(ii).

³ Education Code section 47605(b)(5)(P).

⁴ Education Code section 47605(g).

⁵ Education Code section 47605(a)(1) and (5).

⁶ Education Code section 47605(b).

Staff finds that these activities are a state-mandated new program or higher level of service.

School District's Filing of Charter School Annual Statement of Receipts and Expenditures (§ 42100(a))

Education Code section 42100 (a), as amended in 2002, requires a school district governing board to include the charter school's annual statement of all receipts and expenditures for the preceding fiscal year with its own annual filing and file them with the county superintendent of schools on or before September 15 each year. Because this was not required by prior law, staff finds that this activity constitutes a state-mandated new program or higher level of service.

Education Code Sections 47605 and 42100, as Amended in 2002, Impose Costs Mandated by the State

Government Code section 17556 (d) provides that the Commission shall not find costs mandated by the state if "[t]he ... school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Education Code section 47613 authorizes school districts to charge fees to charter schools based on a small percentage of the charter school's revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) "for the actual costs of supervisory oversight."

Staff finds that the fee authority in section 47613 does not apply to the activities identified in 1. and 2. above to review and consider at a public hearing the additional information required by Education Code section 47605 to be included in the charter school petition since the proposed charter has not yet been approved. The plain language of Education Code section 47613 states that the fee may be charged against the revenue of a charter school. Charter school petitioners are not yet a charter school and cannot receive revenue until the charter is approved. Thus, Government Code section 17556(d) does not apply to deny this claim with respect to the activities required by section 47605 to review and consider additional information in the charter school petition, or to make specific findings supporting a denial of the petition based on the additional information. Thus, staff finds that the activities mandated by Education Code section 47605 and listed in 1. and 2. above impose costs mandated by the state within the meaning of Government Codes section 17514.

However, staff finds that the fee authority for "supervisory oversight" applies to the remaining activities mandated by Education Code section 42100(a) and 47605(a)(4); to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.

However, there is no evidence in the record that the one or three percent fee revenue is sufficient to pay for these mandated activities, as required by Government Code section 17556 (d). There

⁷ Education Code section 47605(a)(4).

is no evidence showing the actual costs of the two mandated activities, or the amount of revenue received. At the time this test claim was filed, claimants only had to estimate costs for all claimed activities to be at least \$1,000. Moreover, the fee revenue applies to many other oversight activities that are not included in this test claim.

Accordingly, staff finds that the activities mandated by Education Code sections 42100(a) and 47605(a)(4) impose costs mandated by the state. If this test claim is approved, any fee revenue received by a school district pursuant to Education Code section 47613 and applied to these activities will be identified as offsetting revenue in the parameters and guidelines.

Conclusion and Recommendation

Staff finds that sections 42100 and 47605 (Stats. 2002, ch. 1058) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution for school districts to perform the activities listed in the conclusion at the end of this document.

Staff recommends that the Commission adopt this analysis to partially approve the test claim for these activities.

STAFF ANALYSIS

Claimant

San Diego Unified School District

Chronology

08/29/2003 Test claim 03-TC-03 filed by the San Diego Unified School District
12/24/2003 Department of Finance requests extension of time to file comments
01/23/2004 Department of Finance files comments
05/12/2004 Claimant files rebuttal comments

I. Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,⁸ charter schools are exempt from most laws governing school districts.⁹ California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.¹⁰

Labor Relations (EERA) Statutes

The test claim statutes enacted in 1999 (Stats. 1999, ch. 828) subject charter schools to the Educational Employment Relations Act (EERA) or “Rodda Act.”¹¹ Since 1976, the EERA has governed labor relations in California public schools with the following stated purpose:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers . . . and to afford certificated employees a voice in the formulation of educational policy.¹²

⁸ Education Code section 47601 includes these reasons, among others, in the legislative intent for establishing charter schools.

⁹ Education Code section 47610. Exceptions to the exemption in section 47610 include teachers’ retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605(c)(1)) and teacher credentials (§ 47605(1)).

¹⁰ Office of the Legislative Analyst, “Assessing California’s Charter Schools” (January 2004); <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> as of November 15, 2011.

¹¹ The EERA is Government Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

¹² Government Code section 3540.

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization,¹³ and states the scope of representation is “limited to matters relating to wages, hours of employment, and other terms and conditions of employment.”¹⁴ The EERA also defines the rules for negotiations,¹⁵ mediation,¹⁶ and dispute of grievances,¹⁷ and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.¹⁸

The test claim statutes require each charter school charter to contain, “[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school....”¹⁹ The EERA defines “public school employer” as “the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.*”²⁰

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.²¹ This section also requires, “By March 31, 2000, all existing charter schools ...[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.”²²

The scope of representation for charter school employees may include discipline and dismissal, “if the charter ... does not specify that it shall comply with those statutes and regulations ... that establish and regulate tenure or a merit or civil service system.”²³

¹³ Government Code section 3543.

¹⁴ Government Code section 3543.2. “Terms and conditions of employment” is defined broadly to include health and welfare benefits, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for employee evaluation, organizational security, grievance procedures, layoff of probationary certificated employees, et cetera.

¹⁵ Government Code section 3543.3.

¹⁶ Government Code section 3548.

¹⁷ Government Code section 3543.

¹⁸ Government Code section 3541.

¹⁹ Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828. References herein are to the Education Code unless otherwise indicated.

²⁰ Government Code section 3540.1, as amended by Statutes 1999, chapter 828. Emphasis added.

²¹ Education Code section 47611.5(b), Statutes 1999, chapter 828.

²² Education Code section 47611.5(f), Statutes 1999, chapter 828.

²³ Education Code section 47611.5(c), Statutes 1999, chapter 828.

Oversight and Accountability Reform Statutes

The 2002 test claim statutes were enacted because, according to the legislative history of AB 1994 (Stats. 2002, ch. 1058), “charter schools lack the oversight and accountability required of other public schools.”²⁴ The catalyst was the Gateway Academy Charter School, which was approved by the Fresno Unified School District in 1998 and began operations in fall 1999.

However, the [Gateway Academy] charter was revoked by the Fresno Unified School District Board . . . after it learned that the 600-student statewide school had accumulated a \$1.3 million debt in one year, hired teachers without credentials, and employed individuals who did not pass criminal background checks. The large debt triggered many questions including how Gateway used state and federal funding and questions about its enrollment. Inquiries suggested that one of Gateway's satellites, the Silicon Valley Academy, was providing sectarian studies and charging tuition. Numerous other accounts of violations involving Gateway have been alleged over the last several months. AB 1994 provides several key common sense reforms so charter schools are more accountable to taxpayers.

[¶]...[¶] Gateway's charter was revoked by the district governing board who cited the difficulties of keeping track of remote (satellite) operations as a reason why various anomalies were not discovered sooner.²⁵

Under the 2002 test claim statute, each charter school is required to approve an annual statement of its receipts and expenditures and file it with the entity that approved the charter, which files it with the county superintendent of schools, who verifies its mathematical accuracy and submits it to the Superintendent of Public Instruction (SPI).²⁶ Charter schools are required to respond to reasonable inquiries from a county office of education regarding financial records²⁷ and county offices of education are authorized to monitor the operations of a charter school located within that county and investigate the charter school's operations.²⁸ Annual audits are required to be submitted to the State Controller and the county superintendent of schools unless the county superintendent is the chartering entity.²⁹

The charter school petition requirements were amended by the 2002 statute to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in

²⁴ Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, page 1.

²⁵ Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, pages 2-3.

²⁶ Education Code section 42100.

²⁷ Education Code section 47604.3.

²⁸ Education Code section 47604.4.

²⁹ Education Code section 47605(m).

the district, it must identify those sites in the petition, which is subject to approval by the school district governing board.³⁰ If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified.³¹ Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records.³²

The 2002 legislation restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.³³ And other petition and public hearing requirements were imposed before establishing these “county-wide” charter schools, i.e., those that operate in more than one school district in the county.³⁴ A charter petition for a state-wide charter school may be submitted to the State Board of Education (SBE).³⁵

The 2002 test claim statute also modified the appeal process so that when a charter school petition is denied, an appeal to the county board of education is required first before appealing to the State Board of Education. Prior law allowed petitioners to appeal to either the county board or the State Board.

Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided the *Charter Schools* (CSM-4437) test claim, finding that Statutes 1992, chapter 781 (§§ 47605 & 47607) imposes a reimbursable state-mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its statement of decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (§§ 47605, (j)(1) & (k)(3), 47605.5, 47607, & 47614) require reimbursable state-mandated activities for school districts and county offices of education for activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions (hereafter *Charter Schools* parameters and guidelines). School districts may charge a fee from one to three percent of the charter school’s

³⁰ Education Code section 47605(a)(1) & (a)(4).

³¹ Education Code section 47605(b)(5)(A)(ii).

³² Education Code section 47605(b)(5)(P).

³³ Education Code section 47605.1(d).

³⁴ Education Code section 47605.6.

³⁵ Education Code section 47605.8.

revenue for “supervisory oversight” of the charter school. (§ 47613.) This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

On May 25, 2006, the Commission decided the *Charter Schools III* test claim (99-TC-14)³⁶ that alleged various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools. The Commission found that charter schools are not eligible claimants, but found the claim partially reimbursable for school districts.

On July 28, 2006, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05) that alleged statutes that extended the collective bargaining provisions of the EERA to charter schools. The Commission denied the test claim, finding that a school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school, and that charter schools are not eligible claimants under article XIII B, section 6 of the California Constitution. The Commission also found that subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.

Claimant Position

Claimant, San Diego Unified School District (SDUSD), alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. The claimant seeks reimbursement for the activities alleged to be reimbursable for chartering agencies (county offices of education and school districts), charter schools, and county offices of education, as follows:

Chartering Agencies (School Districts and County Offices of Education)

A. Review that the following declarations are included in the charter petition:

1. How a charter petition for charter schools which serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements;
2. Procedures to be used if the charter school closes.

B. Review declarations regarding collective bargaining in public education employment:

1. Whether or not the charter school shall be deemed the exclusive public school employer of the employees (§ 47611.5(b));
2. That the charter is the employer of the employees at the charter for the purpose of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school intends to be operated by the University of California in University facilities (§ 47626(a));

³⁶ Filed on Education Code Sections 41365, 47605(b),(c),(d), (j) and (l), 47604.3, 47607(c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, chapter 786, Statutes 1998, chapter 34, Statutes 1998, chapter 673, Statutes 1999, chapter 162, Statutes 1999, chapter 736, Statutes 1999, chapter 78, California Department of Education Memo (May 22, 2000).

3. The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees (§ 47611.5(c)); and
- C. Review of the annual statement of all receipts and expenditures for the preceding fiscal year for fiscal soundness.

Charter Schools

- A. Include a declaration regarding the following in the charter petition:
1. Whether the charter school is the exclusive public school employer of the employees at the charter school (§ 47611.5(b));
 2. That the charter school is the employer for the purpose collective bargaining for employees of public institutions of higher education, if the charter school is operated by the University of California in university facilities (§ 47626(a));
 3. The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees (§ 47611.5(c));
- B. Fiscal and geographic reporting:
1. Approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the chartering agency;
 2. Identify a single charter school and specify the geographic and site requirements for the establishment of a charter school renewal or petition sought on or after January 1, 2003;
- C. Respond promptly to all reasonable inquiries from its chartering authority:
1. Respond to inquiries including but not limited to, inquiries regarding its financial records;
 2. Consult and respond to county office of education's inquiries regarding investigations or monitoring by the county office of education.

County Superintendent of Schools

1. Monitor the operations of charter schools; and
2. Conduct investigations based on parental complaints or other information that justifies an investigation.

Claimant SDUSD alleges that school districts and county offices of education have incurred or will incur costs in excess of \$1,000 per fiscal year to perform these activities.³⁷

³⁷ In its May 2004 rebuttal to the state agency comments, claimant asserts that the comments of the Department of Finance are incompetent and should be excluded from the record because they are not signed under penalty of perjury "with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief." (Cal. Code Regs.,

State Agency Position

The Department of Finance asserts that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state. Finance also states that other activities are discretionary and not reimbursable, such as responding to inquiries from the chartering entity (because it is discretionary for local oversight entities to request the specified information) and participating in judicial proceedings. Finance argues that school district's overseeing district schools has been a district responsibility since before 1975, so are not a new program or higher level of service. And chartering entities have fee authority to recover costs for oversight and charter petition review (§ 47613).

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but "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."

II. DISCUSSION

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 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."³⁸ Thus, the subvention requirement of section 6 is "directed to state mandated increases in the services provided by [local government] ..."³⁹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.⁴⁰

tit. 2, § 1183.02 (c)). While the claimant correctly states the Commission's regulation, staff disagrees with the request to exclude Finance's comments from the official record. Most of the comments from Finance argue an interpretation of the law, rather than constitute a representation of fact. If this case were to proceed to court on a challenge to the Commission's decision, the court would not require sworn testimony for argument on the law. The ultimate determination whether a reimbursable state-mandated program exists is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.)

³⁸ *County of San Diego, supra*, 15 Cal.4th 68, 81.

³⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁴¹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁴²
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴³

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 6.⁴⁴ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁵ 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.”⁴⁶

Issue 1: The Commission does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).

As discussed above, the test claim pleads Education Code sections 47605 and 47611.5, and Government Code section 3540.1, as added and amended by Statutes 1999, chapter 828. These statutes make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) These code sections, however, as amended by Statutes 1999, chapter 828, were the subject of a prior Commission decision. Thus, the Commission does not have jurisdiction to reconsider its prior final decision on these statutes.

⁴¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴³ *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; Government Code sections 17514 and 17556.

⁴⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

⁴⁵ *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

⁴⁶ *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.

At its July 28, 2006 hearing, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05), which alleged these same statutes that extend the collective bargaining provisions of the EERA to charter schools. The test claim statutes require each charter school petition to contain, “[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school....”⁴⁷ Moreover, the scope of representation under the EERA for charter school employees may include discipline and dismissal, “if the charter ... does not specify that it shall comply with those statutes and regulations ... that establish and regulate tenure or a merit or civil service system.”⁴⁸

The Commission denied the *Charter Schools Collective Bargaining* test claim based on the following findings:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5(b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of “A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA].” (Ed Code, § 47605(b)(5)(O).)

The claimant did not request reconsideration of the Commission’s decision in *Charter Schools Collective Bargaining* (99-TC-05), nor was the decision challenged in court.⁴⁹ Thus, the Commission’s decision in 99-TC-05 is a final, binding decision. Once a decision of the Commission becomes final and has not been set aside by a court it cannot be reconsidered.⁵⁰

⁴⁷ Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828.

⁴⁸ Education Code section 47611.5(c), Statutes 1999, chapter 828.

⁴⁹ Government Code section 17559 authorizes any party to request reconsideration within 30 days after the statement of decision is delivered or mailed to the claimant, and authorizes the parties to challenge the Commission’s decision under Code of Civil Procedure section 1094.5.

⁵⁰ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

Staff finds, therefore, that the Commission does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).

Thus, the “test claim statutes” over which the Commission has jurisdiction in this claim (and as used in the remainder this analysis) are the following Education Code sections: 1628, 42100, 47602, 47604.3, 47605, 47613.1, 47652, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47612.1 (Stats. 2002, ch. 1058) and 47626 (Stats. 1999, ch. 828).

Issue 2: Do the remaining test claim statutes impose a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution?

A. There is no evidence in the record that county offices of education, county superintendents of schools, or county boards of education have incurred costs mandated by the state for the activities imposed uniquely on counties.

The claimant, SDUSD, is seeking reimbursement for the costs incurred by school districts and county offices of education as a result of the test claim statutes. The test claim documents, however, provide no evidence of costs mandated by the state for the county offices of education (including the county superintendents of schools or county boards of education) activities in the test claim.

The claimant has the burden to prove that new mandated activities result in increased costs mandated by the state in an amount of at least \$1,000.⁵¹ At the time this test claim was filed in 2003, the Commission’s regulations required that all assertions or representations of fact: (1) be supported with documentary evidence authenticated by a declaration signed under penalty of perjury by persons authorized and competent to do so; and (2) be based on the declarant’s personal knowledge, information, or belief.⁵² The requirement is still in the law today.⁵³

The test claim, signed and certified by the claimant’s accounting director that the statements in the test claim are true and correct, includes the following statement: “School districts and county offices of education have incurred or will incur costs in excess of \$1000 per fiscal year to perform the activities described in section B above.” This statement may be sufficient to show costs incurred by county offices of education for those requirements that apply equally to both school districts and county offices.

Claimant has filed no evidence, however, regarding the alleged costs mandated by the state for the activities that apply solely to county offices of education. The activities unique to county offices of education in this test claim include the following:

- Receive from each school district an approved annual statement of all receipts and expenditures of the charter school for the preceding fiscal year, and verify its

⁵¹ Government Code sections 17514, 17564.

⁵² Former California Code of Regulations, title 2, section 1183(d)(3)(C)(4).

⁵³ Government Code section 17553(b)(2); California Code of Regulations, title 2, sections 1183.03, 1187.5.

mathematical accuracy, and transmit the annual statement to the Superintendent of Public Instruction.⁵⁴

- Review, require information, hold a public hearing, and approve or deny a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education.⁵⁵
- Initially review appeals of a charter petition denied by the school district, after which a petitioner could appeal to the State Board of Education.⁵⁶

In addition, county superintendents of schools are authorized by the test claim statutes to monitor the operations of a charter school and investigate its operations.⁵⁷

The declaration from SDUSD does not satisfy the evidentiary requirement that county offices of education have incurred costs mandated by the state for these activities. Such an assertion would have to be supported by documentary evidence authenticated by declarations from employees of a county office of education or persons authorized by a county office who are competent to make assertions of the facts based on personal knowledge, information, or belief. Since that evidence has not been filed with the Commission, staff finds that the activities required to be performed by county office of education or county superintendent of schools pursuant to Education Code sections 1628, 42100(a), 47604.4(a), 47605(j)(1) and 47605.6, (Stats. 2002, ch. 1058) do not impose a reimbursable state-mandated program. Staff makes no findings on whether these statutes constitute a state-mandated new program or higher level of service on county offices of education, county superintendents of schools or county boards of education.

B. There is no evidence in the record that charter schools have incurred costs mandated by the state.

The test claim also seeks reimbursement for activities required of charter schools.

As stated above, claimant has the burden when filing a test claim to prove that new mandated activities result in increased costs mandated by the state in an amount of at least \$1,000.⁵⁸ In doing so, claimant must comply with the Commission's regulations that require assertions or representation of fact be supported with documentary evidence authenticated by a declaration

⁵⁴ Education Code sections 1628 and 42100(a), (Stats. 2002, ch. 1058).

⁵⁵ Education Code section 47605.6, (Stats. 2002, ch. 1058).

⁵⁶ Education Code section § 47605(j)(1). Before the 2002 test claim statute, petitioners whose charter petitions were denied by the school district could choose to appeal the decision to either the COE or directly to the State Board of Education. (former § 47605(j)(1).)

⁵⁷ Education Code section 47604.4(a), (Stats. 2002, ch. 1058).

⁵⁸ Government Code sections 17514, 17564.

signed under penalty of perjury by persons authorized and competent to do so. The assertions in the declaration must be based on the declarant's personal knowledge, information, or belief.⁵⁹

The only evidence in the record of costs mandated by the state is the declaration from the accounting director of SDUSD, which states: "School districts and county offices of education have incurred or will incur costs in excess of \$1000 per fiscal year to perform the activities described in section B above."

There is no documentary evidence in the record authenticated by declarations from employees of a charter school, or from persons authorized by a charter school who are competent to make assertions based on personal knowledge, information, or belief that charter schools have incurred costs mandated by the state for the following activities that apply to charter schools themselves:

- Approve an annual statement of all receipts and expenditures for the preceding fiscal year and file it with the entity that approved the charter school.⁶⁰
- Promptly respond to all reasonable inquiries from a county office of education that has jurisdiction over the school's chartering authority, including, but not limited to, inquiries regarding its financial records, and to consult with the county office regarding any inquiries.⁶¹
- Notify the county superintendent of schools of the county in which the charter school is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.⁶²
- After receiving approval for its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the school district governing board of the additional locations.⁶³
- For charter schools that receive approval of their petitions upon appeal to the county board of education or State Board of Education to be subject to all the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition.⁶⁴

⁵⁹ Former California Code of Regulations, title 2, section 1183(d)(3)(C)(4). Government Code section 17553(b)(2); California Code of Regulations, title 2, sections 1183.03, 1187.5.

⁶⁰ Education Code section 42100(b), (Stats. 2002, ch. 1058).

⁶¹ Education Code section 47604.3, (Stats. 2002, ch. 1058.)

⁶² Education Code section 47604.4(b), (Stats. 2002, ch. 1058).

⁶³ Education Code section 47605(a)(4) (Stats. 2002, ch. 1058). This is also true of a charter school petition approved by a county board of education. (Ed. Code, § 47605.6 (a)(3), Stats. 2002, ch. 1058.)

⁶⁴ Education Code section 47605(j)(1), (Stats. 2002, ch. 1058).

- Submit the annual financial audit reports for the preceding fiscal year to the Controller and, unless the county board of education is the chartering entity, the county superintendent of schools of the county in which the charter school is sited.⁶⁵
- For a charter school that is granted a charter from the governing board of a school district on or after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, to locate in accordance with the geographic and site limitations, as specified.⁶⁶
- For charter schools approved by the State Board of Education (SBE) to have their average daily attendance approved by and submitted to the SBE.⁶⁷
- For charter schools operated by the University of California, as specified, to declare in their charters that they are the employer of the charter school employees for the purposes of the EERA, as specified, and to amend their charters as specified.⁶⁸

Accordingly, staff finds that the following Education Code sections do not impose a reimbursable state-mandated program: Education Code sections 42100 (b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652, as amended by Statutes 2002, chapter 1058, and Education Code section 47626 as added by Statutes 1999, chapter 828. Staff makes no findings whether charter schools are eligible to claim reimbursement pursuant to article XIII B, section 6 of the California Constitution, or whether these statutes constitute a state-mandated new program or higher level of service.

C. Activities required of charter school petitioners are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

Before a charter school can be established as a local entity, a petition to establish the school must be filed with an existing school district, county office of education, or the State Board of Education. The petition can be organized by one or more persons seeking to establish a charter school, and is often organized by a group of teachers, parents and community leaders or by a community-based organization.⁶⁹ The test claim statutes amended the petition process, and require that the petition include additional information as follows:

- Identify a single charter school that will operate within the geographical boundaries of the district. If proposing to establish operations at additional sites, petitioners identify each location in the petition.⁷⁰

⁶⁵ Education Code section 47605(m), (Stats. 2002, ch. 1058).

⁶⁶ Education Code section 47605.1 (Stats. 2002, ch. 1058).

⁶⁷ Education Code section 47652, (Stats. 2002, ch. 1058.)

⁶⁸ Education Code section 47626, (Stats. 1999, ch. 828.)

⁶⁹ Education Code section 47605(a); California Department of Education website <<http://www.cde.ca.gov/sp/cs/>> as of November 14, 2011.

⁷⁰ Education Code section 47605(a)(1), (Stats 2002, ch. 1058).

- If the charter school is unable to locate within the jurisdiction of the chartering school district, to establish one site outside the boundaries of the school district but within the county within which that school district is located. If the school district where the charter proposed to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either: (A) the school has attempted to locate in a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the charter school chooses to locate; or (B) the site is needed for temporary use during a construction or expansion project.⁷¹
- If the charter school will serve high school pupils, include in the petition a description of how the school will inform parents about the transferability of courses to meet college entrance requirements, as specified.⁷²
- Include a description of the procedures to be used if the charter school closes, as specified.⁷³
- The description of the charter school's facilities shall specify where the school intends to locate.⁷⁴
- For petitioners to provide written notice of the charter's approval and a copy of the petition to the applicable county superintendent of schools and the California Department of Education.⁷⁵
- For a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education, to comply with the signature requirements⁷⁶ and petition notice⁷⁷ and petition format requirements,⁷⁸ as specified.

The claimant is seeking reimbursement for these activities.

However, a school district, such as SDUSD, is not a charter school petitioner. Charter school petitioners are teachers, parents, community leaders and organizations or any individual seeking to petition for a charter school.

Moreover, charter school petitioners cannot seek reimbursement under article XIII B, section 6, because petitioners are not a local governmental entity. Article XIII B, section 6 provides the

⁷¹ Education Code section 47605(a)(5), (Stats. 2002, ch. 1058).

⁷² Education Code section 47605(b)(5)(A)(ii), (Stats. 2002, ch. 1058).

⁷³ Education Code section 47605(b)(5)(P), (Stats. 2002, ch. 1058).

⁷⁴ Education Code section 47605(g), (Stats. 2002, ch. 1058).

⁷⁵ Education Code section 47605(i) & (j)(6), (Stats. 2002, ch. 1058).

⁷⁶ Education Code section 47605.6(a)(1)(A) & (B), (Stats. 2002, ch. 1058).

⁷⁷ Education Code sections 47605.6(a)(3) (Stats. 2002, ch. 1058).

⁷⁸ Education Code section 47605.6(a)(4) (Stats. 2002, ch. 1058).

right to reimbursement only for local governmental entities that are subject to the tax and spend provisions of article XIII B. The Constitution does not provide mandate reimbursement rights to individuals either as taxpayers or recipients of governmental benefits and services.⁷⁹

Accordingly, staff finds that Education Code sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6(a)(1)(A) & (B), (a)(3), and (a)(4) (Stats. 2002, ch. 1058), do not impose a reimbursable state-mandated program.

D. Activities imposed on state agencies do not result in a state-mandated new program or higher level of service on school districts.

The following provisions in the test claim statutes apply solely to state agencies and do not mandate school districts to perform any activities.

- Authorize the SPI to amend reporting forms for the charter school's statement of all receipts and expenditures to accommodate changes in statute or government reporting standards,⁸⁰ and requires the forms to be adopted by the SBE as regulations.⁸¹
- Specifies how the charter school numbering system developed by the SBE works.⁸²
- Authorizes the SBE to review and approve petitions for state charter schools that operate at multiple sites throughout the state, and requires the SBE to adopt regulations regarding charter petition review.⁸³
- For average daily attendance generation, makes the pupil age and continuous enrollment requirements inapplicable to charter school programs in partnership with any of the following; the federal Workforce Investment Act of 1998, federally affiliated Youth Build programs, federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider, or the California Conservation Corps or local conversation corps certified by the California Conservation Corps, as specified.⁸⁴
- Amends the requirements for the SPI to make apportionments on behalf of charter schools that elect not to be funded with charter school block grants to apply to school districts in which all schools have been converted to charter schools.⁸⁵
- Requires, for charter schools approved by the SBE, the estimated average daily attendance to be approved by and submitted to the California Department of Education.⁸⁶

⁷⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 334.

⁸⁰ Education Code section 1628 (Stats. 2002, ch. 1058.)

⁸¹ Education Code section 42100(c) (Stats. 2002, ch. 1058.)

⁸² Education Code section 47602(a)(1) (Stats. 2002, ch. 1058.)

⁸³ Education Code section 47605.8 (Stats. 2002, ch. 1058.)

⁸⁴ Education Code section 47612.1 (Stats. 2002, ch.; 1058.)

⁸⁵ Education Code section 47613.1 (Stats. 2002, ch. 1058.)

⁸⁶ Education Code section 47652(a) (Stats. 2002, ch. 1058.)

Thus, staff finds that Education Code sections 1628, 42100(c), 47602(a)(1), 47605.8, 47612.1, 47613.1, 47652(a), as added or amended by Statutes 2002, chapter 1058, do not impose a state-mandated new program or higher level of service under article XIII B, section 6.

E. Education Code sections 47605 and 42100 impose a state-mandated new program or higher level of service on school districts.

Review and Consider Charter School Petitions Submitted to School Districts (§ 47605)

In the *Charter Schools* statement of decision, the Commission found that section 47605 (Stats. 1992, ch. 781) imposes a reimbursable state-mandated program on school districts for activities related to processing initial charter school petitions. School districts are required to review charter school petitions according to the standards and instructions in section 47605 (b). A school district is required to grant a charter school petition if the district is satisfied that the charter is consistent with sound educational practice. School districts must cite facts and make written findings in accordance with the statute in order to reject a charter petition (§ 47605(b)). When the *Charter Schools* test claim was approved, Education Code section 47605 (b) stated in relevant part the following:

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. . . A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (1) the charter school presents an unsound educational program for the pupils in the charter school.
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- (3) The petition does not contain the number of signatures required by subdivision (a) [from parents or guardians, and teachers]
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (d) [i.e., that the charter school is nonsectarian, will not charge tuition, and will not discriminate against any pupil].
- (5) The petition does not contain reasonably comprehensive descriptions of all the following:

. . . . [listing A through P categories, including for example, a description of the governance structure, suspension and expulsion procedures, employee qualifications and rights, and measurable pupil outcomes].

The school district governing board must require the petitioner(s) to provide information regarding the proposed operation and potential effects of the school, including the facilities to be used, the manner in which administrative services are to be provided, and potential civil liability effects upon the school and the district, for the district's review and consideration. The petitioner shall also provide financial statements that include a proposed first-year operational budget, including startup costs, and financial projections for the first three years of operation (§ 47605 (g)).

These provisions are still in the law today. Although school districts retain discretion in the manner of the review and approval or denial of a charter petition, the review itself and the findings required on review are not discretionary.

Thus, the parameters and guidelines for *Charter Schools* include the following reimbursable activities:

Review and evaluate qualified charter petitions for compliance with criteria for the granting of charters. (§ 47605.)

Prepare for public hearings, to be done within thirty days of receiving the petition, to consider the level of community support for a charter school petition, and grant or deny the charter school petition within sixty days of receiving the petition, subject to one thirty-day continuance by agreement of the parties. (§ 47605.)

The 2002 test claim statute made several amendments to the charter school petition requirements. The test claim statute amended section 47605(b)(5) by requiring school districts to review and consider at a public hearing the following additional information in the petition:

- If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.⁸⁷
- A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.⁸⁸

The test claim statute also amended section 47605(a) and (g) by requiring school districts to require charter school petitioners to provide the following additional information for the school district's review and consideration:

⁸⁷ Education Code section 47605(b)(5)(A)(ii).

⁸⁸ Education Code section 47605(b)(5)(P).

- A description of where the charter school intends to locate in its description of facilities.⁸⁹ The test claim statute allows charter petitioners to propose to operate at multiple sites within a school district as long as each location is identified in the charter school petition. Charter school petitioners are also now authorized to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located, if the following conditions are satisfied:
 - Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
 - Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
 - Either the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.⁹⁰

If the school district denies the petition based on this additional information (for example, because the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition), the district is required to make written factual findings, specific to the particular petition, setting forth facts to support the findings.

The 2002 test claim statute also added subdivisions (a)(4) to section 47605 to require school districts to:

- Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.

Based on the plain language of the statute,⁹¹ staff finds that these requirements are mandated by the state. Since these activities were not required by prior law, they constitute a new program or higher level of service. In addition, these activities are unique to school districts and carry out the governmental function of providing a service to the public by providing additional notification and oversight in order to prevent the kind of problems that occurred with the Gateway Academy charter school discussed in the legislative history of the test claim statute.⁹²

⁸⁹ Education Code section 47605(g).

⁹⁰ Education Code section 47605(a)(1) and (5). There is no requirement in the statute that the school district that reviews the proposed charter petition issue the notices authorized by statute. The requirement for the school district chartering authority is to review the petition to determine if proper notice has been provided.

⁹¹ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

⁹² *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.)

Accordingly, staff finds that Education Code section 47605, as amended by Statutes 2002, chapter 1058, mandates a new program or higher level of service for school districts for the activities described above.

School District's Filing of Charter School Annual Statement of Receipts and Expenditures (§ 42100(a))

Education Code section 42100, as amended by Statutes 2002, chapter 1058, requires each charter school to approve an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and file the statement with the entity that approved the charter school.⁹³ As indicated in the discussion above, the governing board of the school district where the charter school is located approves the charter. Section 42100(a), as amended by the test claim statute, then requires the governing board of the school district to include with its annual statement of receipts and expenditures the statement received from the charter school, and file both statements with the county superintendent of schools on or before September 15 of each year.⁹⁴ The county superintendent of schools is required to verify the mathematical accuracy of the statements, prepare its own statement of receipts and expenditures, and transmit all statements (from the charter school, the school district, and the county) to the State Superintendent of Public Instruction.⁹⁵

Under prior law, school districts were not required to include the charter school's annual statement of receipts and expenditures with its own annual statement, or file the charter school's statement with the county superintendent of schools. School districts were only required by prior law to prepare and file their own annual statement of receipts and expenditures.

Based on section 42100's use of the word "shall"⁹⁶ staff finds that section 42100(a) is a state mandate on school districts to include the charter school's annual statement of receipts and expenditures with the annual statement of the district, and to file the charter school's statement with the county superintendent of schools by September 15 each year. .

Staff further finds that this section is a new program or higher level of service. Under a May 22, 2000 letter from the California Department of Education (CDE), charter granting agencies were required to include charter school financial information in the granting agency's annual statement of all receipts and expenditures. This letter was found to be a reimbursable "executive order" in the *Charter Schools III* (99-TC-14) statement of decision, but only for the

⁹³ Education Code section 42100(b).

⁹⁴ School districts are also required by law to assess the fiscal condition of the charter school pursuant to Education Code sections 47604.32 and 47604.33. Statutory fee authority is available for this and other supervisory oversight activities pursuant to Education Code section 47613. These statutes, however, have not been pled in this test claim, and staff makes no findings on these statutes or activities.

⁹⁵ Education Code sections 1628, 42100(a).

⁹⁶ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

period between May 22, 2000 and June 30, 2001. This is because the CDE sent another letter to county superintendents dated April 5, 2004, that states:

The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years.**⁹⁷ [Emphasis in original.]

According to the CDE letter, for the two fiscal years prior to the test claim statute (2001-2003), it was optional for a charter school to prepare an annual statement of all its receipts and expenditures for the preceding fiscal year.⁹⁸ The school district was not required to include a charter school's annual statement with its own and file the statement with the county superintendent of schools, before the 2002 test claim statute.

Staff further finds that section 42100(a) is a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public, and imposes unique requirements on school districts that do not apply generally to all residents and entities in the state.⁹⁹ The public receives a benefit from charter school financial reports that are forwarded to and verified by county superintendent of schools because the reporting advances the goal of fiscal responsibility in charter school expenditures of taxpayer dollars.

Thus, staff finds that, effective January 1, 2003, section 42100(a) (Stats. 2002, ch. 1058) is a state-mandated new program or higher level of service for a school district to include the charter school's annual statement of all receipts and expenditures for the preceding fiscal year with its own annual statement and file it, by September 15 each year, with the county superintendent of schools.

F. Education Code sections 47605 and 42100 impose costs mandated by the state on school districts within the meaning of Government Code sections 17514 and 17556.

As described above, the 2002 test claim statute mandates the following new activities on K-12 school districts:

⁹⁷ California Department of Education, letter to county and district superintendents, county and district chief business officials, and charter school administrators, April 5, 2004. See <<http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp>> as of November 14, 2011. .

⁹⁸ Although Statutes 2001, chapter 344, added section 47605(m) to require charter schools to transmit a copy of their annual, independent financial audit reports for the preceding fiscal year to their chartering entities and CDE, this report is not the same as the annual statement of all receipts and expenditures.

⁹⁹ *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.)

1. Review and consider at a public hearing the following additional information in the charter school petition:
 - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.¹⁰⁰
 - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.¹⁰¹
 - c) A description of where the charter school intends to locate in its description of facilities.¹⁰²
 - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
 - (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
 - (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
 - (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.¹⁰³
2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.¹⁰⁴
3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.¹⁰⁵

¹⁰⁰ Education Code section 47605(b)(5)(A)(ii).

¹⁰¹ Education Code section 47605(b)(5)(P).

¹⁰² Education Code section 47605(g).

¹⁰³ Education Code section 47605(a)(1) and (5).

¹⁰⁴ Education Code section 47605(b).

¹⁰⁵ Education Code section 47605(a)(4).

4. Include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.¹⁰⁶

The issue is whether the school districts have incurred costs mandated by the state within the meaning of Government Code section 17514 for these activities, and whether any exceptions to reimbursement in Government Code section 17556 apply in this case.

Government code section 17514 defines "costs mandated by the state" as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contends that all activities required by the statutes result in increased costs mandated by the state within the meaning of Government Code section 17514. The claimant's declaration of costs is intended to cover all activities claimed, and asserts that no exception to reimbursement identified in Government Code section 17556 applies to this claim.

The Department of Finance contends that school districts have fee authority provided by Education Code section 47613 sufficient to pay for the mandated activities and, thus, this test claim should be denied pursuant to Government Code section 17556 (d). Education Code section 47613 authorizes school districts to charge fees to charter schools based on a small percentage of the charter school's revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) "for the actual costs of supervisory oversight." It states in relevant part the following:

(a) Except as set forth in subdivision (b), a chartering authority may charge for the actual costs of supervisory oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering authority may charge for the actual costs of supervisory oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

[¶]...[¶]

(e) For the purposes of this section, a chartering authority means a school district, county board of education, or the state board, that granted the charter to the charter school.

(f) For purposes of this section, "revenue of the charter school" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.¹⁰⁷

¹⁰⁶ Education Code section 42100(a).

¹⁰⁷ "A charter school is eligible for its share of state and local public education funds, which share is calculated primarily, as with all public schools, on the basis of its ADA. (Ed. Code, § 47612; see also *id.*, § 47630 et seq.)" *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1186.

Government Code section 17556 (d) provides that the Commission cannot find costs mandated by the state if “[t]he ... school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

The issue is whether the fee authority in section 47613 for “supervisory oversight” applies to the activities mandated by Education Code section 42100(a) and 47605, as amended by the 2002 test claim statute, and if so, whether the revenue from the fee authority is sufficient to pay for the mandated activities.

First, staff finds that the fee authority in section 47613 does not apply to the activities identified in 1. and 2. above to review and consider at a public hearing the additional information required by Education Code section 47605 to be included in the charter school petition since the proposed charter has not yet been approved. The plain language of Education Code section 47613 states that the fee may be charged against the revenue of a charter school. Charter school petitioners are not yet a charter school and cannot receive revenue until the charter is approved. Thus, Government Code section 17556(d) does not apply to deny this claim with respect to the activities required by section 47605 to review and consider additional information in the charter school petition, or to make specific findings supporting a denial of the petition based on the additional information. Nor is there any evidence in the law or the record that other exceptions identified in Government Code section 17556 apply to deny these activities. Thus, staff finds that the activities mandated by Education Code section 47605 and listed in 1. and 2. above impose costs mandated by the state within the meaning of Government Codes section 17514.

However, staff finds that the fee authority for “supervisory oversight” applies to the remaining activities identified in 3 and 4 above; to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school’s annual statement of receipts and expenditures for the preceding fiscal year with the school district’s own annual statement and file it with the county superintendent of schools by September 15 each year.

“Supervisory oversight” is not expressly defined in section 47613, but it has been interpreted broadly. The fee authority in section 47613 was originally enacted in 1998 as section 47613.7.¹⁰⁸ In *Wilson v. State Board of Education*, the court determined the validity of the Charter Schools Act and recognized in its analysis that the chartering authority – whether the authority is a school district, county, or the state – has supervisory oversight over their charter schools based on Education Code sections 47604.3, 47607, and 47613.7.¹⁰⁹ Section 47613.7 was the fee authority statute at the time, and provided the same authority to school districts and other chartering authorities to charge either one or three percent of the charter school’s revenue for “supervisory oversight.” Section 47604.3 requires the charter school to respond to and consult with the chartering authority regarding “all reasonable inquiries,” including financial inquiries, of the chartering authority. Section 47607 further provides that “the authority that granted the charter may inspect or observe any part of the charter school at any time.” That section also requires

¹⁰⁸ Statutes 1998, chapter 34.

¹⁰⁹ *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1142.

that a renewal or material revision to the charter is governed by the standards and criteria identified in section 47605. Section 47605(a)(4) imposes the mandate to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.

In 2003, sections 47604.32 and 47604.33 were added to the Education Code to clarify that the school district's "supervisory oversight" fee authority is for chartering entities such as school districts to, among other things, "monitor the fiscal condition of each charter school under its authority" and to "ensure that each charter school under its authority complies with all reports required of charter schools by law."¹¹⁰ One of the reports required of the charter school is the final unaudited report for the full prior year, which is the report that triggers the school districts mandate provided in Education Code section 42100 to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.¹¹¹ These statutes were enacted as a result of an audit by the Bureau of State Audits that recommended making the chartering entities' oversight roles and responsibilities explicit.¹¹²

Thus, staff finds that the fee authority provided in Education Code section 47613 applies to the mandated activities in sections 42100(a) and 47605(a)(4) to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.

However, there is no evidence in the record that the one or three percent fee revenue is sufficient to pay for the mandated activities, as required by Government Code section 17556(d). There is no evidence showing the actual costs of the two mandated activities, or the amount of revenue

¹¹⁰ Education Code section 47604.32(c) & (d).

¹¹¹ Education Code sections 42100 and 47604.33. See also, CDE's published summary financial reporting calendar, which states that the report required by Education Code section 42100 will satisfy the report requirement in section 47604.33: < <http://www.cde.ca.gov/fg/sf/fr/calendar11summary.asp> > as of November 14, 2011.

¹¹² Assembly Committee on Education, Analysis of AB 1137 (2003-2004 Reg. Sess.) as amended March 27, 2003, p. 6. The Bureau of State Audits found that the chartering entities they reviewed could not document that the fees they charged corresponded to the actual costs of oversight. (Bureau of State Audits, "California's Charter Schools: Oversight At All Levels Could Be Stronger to Ensure Charter Schools' Accountability" November 2002, page 3.)

In 2007, the Legislature amended Education Code section 47613 to require the California Research Bureau to "prepare and submit to the Legislature . . . a report on the key elements and actual costs of charter school oversight" for purposes of the supervisory oversight fee in section 47613. (§ 47613(g), Stats. 2007, ch. 650.) That report has not yet been issued.

received. At the time this test claim was filed, claimants only had to estimate costs for all claimed activities to be at least \$1,000.¹¹³ Moreover, the fee revenue applies to many other oversight activities that are not included in this test claim.¹¹⁴

Accordingly, staff finds that the activities mandated by Education Code sections 42100(a) and 47605(a)(4) impose costs mandated by the state. If this test claim is approved, any fee revenue received by a school district pursuant to Education Code section 47613 and applied to these activities will be identified as offsetting revenue in the parameters and guidelines.

III. Conclusion and Recommendation

Staff finds that Education Code sections 42100 and 47605 (Stats. 2002, ch. 1058) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution for school districts to do as follows:

1. Review and consider at a public hearing the following additional information in the charter school petition:
 - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.¹¹⁵
 - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.¹¹⁶
 - c) A description of where the charter school intends to locate in its description of facilities.¹¹⁷
 - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
 - (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;

¹¹³ Government Code section 17564.

¹¹⁴ For example, Education Code section 47604.32 requires chartering authorities to visit each charter school at least annually; ensure that the charter school complies with all reports required by law; monitor the fiscal condition of each charter school; and provide timely notification to the state when a renewal of a charter is granted or denied, the charter is revoked, or the charter school ceases operation.

¹¹⁵ Education Code section 47605(b)(5)(A)(ii).

¹¹⁶ Education Code section 47605(b)(5)(P).

¹¹⁷ Education Code section 47605(g).

- (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
 - (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.¹¹⁸
2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.¹¹⁹
 3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.¹²⁰
 4. Include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.¹²¹

The fee authority provided in Education Code section 47613 applies to activities 3 and 4, and will be identified in the parameters and guidelines as offsetting revenue.

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

¹¹⁸ Education Code section 47605(a)(1) and (5).

¹¹⁹ Education Code section 47605(b).

¹²⁰ Education Code section 47605(a)(4).

¹²¹ Education Code section 42100(a).