

SixTen and Associates Mandate Reimbursement Services

KEITH B. PETERSEN, President
P.O. Box 340430
Sacramento, CA 95834-0430
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

November 13, 2012

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

Re: Test Claim 03-TC-16
Education Code Sections 11500 et al.
San Jose Unified School District
Parental Involvement Programs

Dear Ms. Halsey:

I have received the Commission's Draft Staff Analysis (DSA) dated October 23, 2012, for the above-referenced test claim to which I respond on behalf of the test claimant. Issues raised by the DSA, but not responded to by this letter, are not waived.

The DSA relies on four erroneous standards to determine whether the various Education Code sections pled in the test claim are reimbursable.

1. NEW PROGRAM STANDARD OF REVIEW

The DSA (10) states that to determine if a program is new or imposes a higher level of service, the statutes pled must be "compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order." This standard is applied for the analysis of several code sections pled in the test claim. This is incorrect. The test claim was filed September 25, 2003. The filing was effective prior to the September 30, 2003, effective date of Statutes of 2002, Chapter 1124 (for mandates that became effective before January 1, 2002)¹, which first established at

¹ Statutes of 2002, Chapter 1124, is generally effective September 30, 2002. However, the amendment that added Government Code Section 17551,

Government Code section 17551, subdivision (c), time limits for filing on statutes enacted after December 31, 1974. Based on the date the test claim was submitted, the standard of review is to compare the statutes pled on the effective date of the test claim filing to the status of the law as of December 31, 1974, pursuant to Government Code section 17514.

The Commission, however, decided to the contrary on this issue in the March 24, 2011, Statement of Decision for 02-TC-25/31/46, Discrimination Complaint Procedures, relying upon *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859. The legal issue here is identical to that in the Discrimination Complaint Procedures test claim. The test claimant raises it here for purposes of the record and does not waive the issue.

2. PRACTICAL COMPULSION FOR PARENTAL INVOLVEMENT PROGRAMS

In the May 25, 2004, rebuttal to the Department of Finance response to the test claim, the test claimant asserted the foundation argument that school districts are practically compelled to adopt and operate the state statutory version of a parent involvement program in order to continue implementing the federal Title 1 program. The DSA determination that some of the relevant Education Code sections pled in the test claim are not mandated relies upon this threshold issue. It is the magnitude of coercion created by the loss of federal funds and inability to continue the program, not any proof of an actual penalty, that is the measure of the issue. Sections 11500 et seq., were adopted in 1990, after the Hawkins-Stafford amendments (1988), which were in turn subsequent to the original adoption of the ESEA (1965). The federal program funds are substantial and have resulted in institutionalized and continuous comprehensive services to students. Districts would be required to discontinue the historic and significant ESEA services to students just to avoid establishing and operating the state parental involvement program.

However, the Commission has consistently decided to the contrary for these types of funding and subsequent mandate circumstances in other test claim determinations. The test claimant raises it here for purposes of the record and does not waive the issue.

subdivision (c), delayed the effective date of that subdivision for mandates effective before January 1, 2002, by one year to September 30, 2003:

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, *or in the case of mandates that became effective before January 1, 2002*, the time limit shall be one year from the effective date of this subdivision. (Emphasis added)

3. POLICIES NOT IMPLEMENTED ARE MEANINGLESS

Relying upon the “plain meaning” of the code language, the DSA (13) concludes that the mandate to adopt a Section 11503 or 11504 policy is not a mandate to establish or operate a parent involvement program. The requirement to establish a policy compels implementation as a practical matter or it is without legal or practical significance. The DSA interpretation would mean that the Legislature mandated that districts adopt policies stating affirmative duties with no requirement to implement those duties.

Section 51101(a) requires the schools to inform parents of enumerated rights, but the DSA (20) concludes that the Section does not impose “any specific activities on schools to effectuate these rights,” rather, that these rights are “effectuated elsewhere in the Education Code.” However, Section 51101 (a) neither states that the linkage exists nor uniformly cites other code sections where these programs may exist. The notice and enumeration of rights in Section 51101(a) compels implementation as a practical matter or it is without practical significance.

Similarly, the DSA (22) concludes that Section 51101 (b) only requires the district to work with parents to develop and adopt a policy that outlines the manner in which the school staff and parents will share responsibility for the program activities, but not that the district actually has to implement the program policies, because implementation is not specifically stated in the code section.

For all these code sections, the DSA analyzes the legislation into absurdity by isolating the policy language from the new program language. The DSA should consider the legislation in its totality.

4. INFERRED “LINKAGE” IS CONTRIVED

The DSA has created a doctrine of inferred linkage and then parses the Legislature’s language into inertness using contradictory reliance on the “plain meaning” of statutes in order to accommodate the conclusions reached in the DSA. Creating a doctrine of inferred linkage is the purview of an appellate court and not within the purview of an administrative law agency.

Contrary to the artificial linkage by the DSA (20) to other, but not cited, Education Code sections, Section 51101 stands alone as an enforceable mandate. To assume some unstated linkage occurs with other code sections is to abandon the precarious reliance on the “plain meaning” of the language of the statute, since there is no language in Section 51101(a) establishing this “effectuating” linkage. This violates the rule that the Commission “can only presume the lawmakers meant what they said, and cannot insert requirements into the language of a statute that is not plainly there.” (DSA 22) Further, as a practical matter, if those other code sections were repealed, Section 51101(a) would remain without the other sections to “effectuate” the mandate, and the DSA

reliance on those sections would fail. Section 51101(a) does not rely upon those other code sections as a source of the mandate, so the DSA has no basis to conjure up this novel linkage.

Nor is the DSA (20) conclusion that these rights are "effectuated" in other code sections is "supported by the fact that some of the rights delineated by Education Code section 51101(a) have already been analyzed in prior commission decisions." There is no indication that Section 51101(a) was considered in those decisions. Whether the similar activities are currently reimbursed by other approved mandates is a parameters and guidelines issue, not a legal threshold issue for the test claim.

Pleading Sections 49091.10 and 49091.14 in the test claim as a separate source of the mandated activities does not establish the linkage of "effectuation" desired by the DSA (20). Rather, the fact that newer legislation (1998) may seem redundant to existing law is actually an argument against the concept of any purposeful linkage by the Legislature. For a contrary example, note that the DSA (25) states that "(i)t must be noted that the policy mandated to be adopted in section 51101 (b) is not specifically linked to the parent involvement policy mandated [by] section 11504 "and concludes that "the Legislature enacted section 51101 without reference to section 11504." In this case, where there is no stated linkage, the DSA does not infer a linkage even though the DSA states that "school districts can comply with both code sections by adopting a single policy that includes the content required by section 51101(b) and is also consistent with the purposes and goals set forth in section 11502." Thus, even though the "purposes and goals" of the two sections are essentially the same, the DSA finds no inferred linkage. Strangely, there was no stated linkage to Section 51101 in Sections 49091.10 and .14, but the DSA concluded there was some "effectuating" linkage, even though those sections were also enacted "without reference" to each other. The DSA reasoning is not consistent.

The DSA should be modified to analyze the code sections for reimbursement without utilizing the inferred linkage.

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Heather Halsey, Executive Director

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November 13, 2012

Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents, if any, are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on November 13, 2012, at Sacramento, California, by



Keith B. Petersen

C: Commission electronic service list