

# SixTen and Associates

## Mandate Reimbursement Services

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May 25, 2004

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

**RECEIVED**

MAY 27 2004

**COMMISSION ON  
STATE MANDATES**

Re: Test Claim 03-TC-16  
San Jose Unified School District  
Parental Involvement Programs

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated April 28<sup>1</sup>, 2004, to which I now respond on behalf of the test claimant.

**A. The Comments of DOF are Incompetent and Should be Excluded**

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

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

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

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<sup>1</sup> Although the Proof of Service attached to the comments of DOF states that the document was mailed on April 28, 2004, the envelope in which the document was received is postmarked May 3, 2004.

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

The comments of DOF do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of DOF not be included in the Staff's analysis.

**B. Education Code Sections 11500 et seq.**

Education Code Section 11502 provides that it is the purpose and goal of the chapter to do all of the following:

- (a) To engage parents positively in their children's education by helping parents to develop skills to use at home that support their children's academic efforts at school and their children's development as responsible future members of our society.
- (b) To inform parents that they can directly affect the success of their children's learning, by providing parents with techniques and strategies that they may utilize to improve their children's academic success and to assist their children in learning at home.
- (c) To build consistent and effective communication between the home and the school so that parents may know when and how to assist their children in support of classroom learning activities.
- (d) To train teachers and administrators to communicate effectively with parents.
- (e) To integrate parent involvement programs, including compliance with this chapter, into the school's master plan for academic accountability.

DOF argues that Section 11502 only states the purpose and goal of the chapter and does not create a mandate for a new program or higher level of service. DOF overlooks section 11504 which requires school districts to adopt a policy on parent involvement, consistent with the purposes and goals set forth in Section 11502, for each school not governed by Section 11503. Therefore, read in conjunction with section 11504, section 11502 creates a new program or higher level of service.

Education Code Section 11503 provides that the governing board of each school district shall establish a parent involvement program for each school in the district that receives funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and that the program is required to contain at least several identified elements.

DOF agrees that Education Code Section 11503 mandates the establishment of parent involvement programs, but argues that the establishment of those programs is only required for schools that receive federal funds under the cited Act, as amended. DOF therefore, claims that since the decision to receive federal funds is an option, the costs of the mandated activities are not reimbursable. DOF avoids the obvious conclusion that, even if a school district should "elect" not to receive these federal funds, it would be required to establish a parent involvement program under Education Code Sections 11502 and 11504 anyway.

DOF also overlooks the ruling in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 (hereinafter "Sacramento II") which holds that a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate.

(1) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of

their employees.

(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter Sacramento I) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).<sup>2</sup>

In other words, Sacramento I concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(3) Sacramento II Litigation

After remand, the case proceeded through the courts again. In Sacramento II, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of Sacramento I which held that the loss of federal funds and tax credits did not amount to "compulsion."

(d) Sacramento II "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of

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<sup>2</sup> Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

"If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

"However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

"Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

The test for determining the existence of a mandate is whether compliance with the test claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates*, (1992) 11 Cal.App.4th 1564,

1582

The process for such a determination is found in Sacramento II, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.

DOF has not attempted to apply this analysis to any portion of the test claim legislation. Therefore, its argument lacks any foundation when claiming that any of the test claim statutes contain no reimbursable mandates because the test claim activities are discretionary.

**C. Education Code Section 49091.10**

Education Code Section 49091.10, subdivision (a), requires that all primary supplemental instructional materials and assessments, including textbooks, teacher's manuals, films, tapes, and software shall be compiled and stored and made available promptly for inspection by a parent or guardian.

As to these mandated requirements, DOF argues that schools, "as a practical matter" already store these materials and, therefore, the mandate does not impose a higher level of service.

Education Code Section 49091.10, subdivision (b), states that a parent or guardian has the right to observe instruction and other school activities that involve his or her child and reasonable accommodation of parents and guardians shall be considered; and upon written request by the parent or guardian, school officials shall arrange for the parental observation of the requested class or classes or activities by that parent or guardian in a reasonable timeframe.

As to these mandated requirements, DOF also argues that "[S]imilarly, arranging for parent class observation and inspection of materials does not represent a higher level of service imposed on the schools..."

Test claimant first points out that DOF does not argue that these activities are not "new," therefore any argument that they do not represent a higher level of service does not bar a finding of a reimbursable mandate. Government Code Section 17514 defines

“costs mandated by the state” to be costs incurred as a result of *either* a new program *or* higher level of service.

Test claimant next responds by reminding DOF that Government Code Section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the school district for those costs incurred after the operative date of the mandate. Therefore, even if school districts have been performing some of the mandated activities “as a practical matter,” the state is required to reimburse the school district for performing those activities once they become mandated.

Finally, DOF argues that any costs “should be minimal to none.” This is not one of the recognized exceptions to a finding of a mandate set forth in Government Code Section 17556. Also, this is an unverified statement of the DOF which attempts to contradict the sworn declaration supporting the test claim which estimates that school districts will incur more than \$1,000 in costs by complying with the test claim legislation.

**D. Education Code Section 49091.14**

Education Code Section 49091.14 requires that the curriculum, including titles, descriptions, and instructional aims of every course offered *shall be compiled* at least once annually in a prospectus and that each schoolsite *shall make its prospectus* available for review upon request. When requested, the prospectus *shall be reproduced and made available*. School officials may charge an amount not to exceed the cost of duplication of the prospectus.

DOF argues that the development of a curriculum is a school process. The reply to this argument is simple, the test claim does not seek reimbursement for the development of a curriculum.

DOF next argues that schools already have titles, descriptions and instructional aims of courses and that schools already make these materials available for parents and, therefore, these activities do not constitute a new program of higher level of service. The reply to this argument is, again, reminding DOF that Government Code Section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the school district for those costs incurred after the operative date of the mandate. Therefore, even if school districts have been performing some of the mandated activities set forth in Education Code Section 49091.14, the state is required to reimburse school districts for

performing those activities once they become mandated.

Finally, DOF argues that since school officials were given the authority to charge a fee for the cost of duplication, the costs are not reimbursable, citing Government Code Section 17556(d).

Subdivision (d) of Government Code Section 17556 provides:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service....”

Since DOF does not offer any evidence that the fees for the cost of duplication is in an amount sufficient to pay for the mandated program or increased level of service, its argument in this regard fails. Any fees received for the cost of duplicating the prospectus will be an offset to the total program costs, a fact recognized in the test claim at page 30, lines 3-6.

**E. Education Code Section 51101(a)(1)(2)(3)**

Education Code Section 51101, subdivision (a), subparagraphs (1), (2) and (3) provide that parents and guardians have the right to be informed by the school, and to participate in the education of their children, as follows:

(1) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs.

(2) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled.

(3) To volunteer their time and resources for the improvement of school facilities and school programs.

DOF first argues that allowing parent observation is not a higher level of service. DOF does not argue that the required activities are not new, therefore any argument that they do not represent a higher level of service does not bar a finding of a reimbursable mandate. Government Code Section 17514 defines “costs mandated by the state” to be

costs incurred as a result of either a new program or higher level of service.

DOF next argues that the costs of arranging and accommodating these observations should be minimal to none. This is not one of the recognized exceptions to a finding of a mandate set forth in Government Code Section 17556. Also, this is an unverified statement of the DOF which attempts to contradict the sworn declaration supporting the test claim which estimates that school districts will incur more than \$1,000 in costs by complying with the test claim legislation.

Next, DOF states that it "believes" that the required meetings can normally be accommodated during normal/base pay working hours for teachers and principals and, that to claim costs, districts should have to show that they have so many requested meetings with parents that it is not feasible to accommodate the request during normal working hours. Again this is not a recognized ground for the denial of reimbursement for a mandated activity. The DOF is asserting a standard which does not exist in law.

Finally, DOF argues that schools have to approve volunteer activities and have a choice whether or not to allow voluntary activities. DOF apparently ignores the provision in subdivision (a) that declares that parents have the right to participate in the education of their children by volunteering their time and resources for the improvement of school facilities and school programs. Therefore, schools are required to honor the rights of parents.

**F. Education Code Section 51101(a)(4)(5)**

Education Code Section 51101, subdivision (a)(4) provides that parents have the right to be informed by the school by being notified on a timely basis if their child is absent from school without permission.

Subdivision (a)(5) provides that parents have the right to be informed by the school by receiving the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests.

DOF concurs that these activities require a higher level of service but argues that the costs should be minimal. This is not one of the recognized exceptions to a finding of a mandate set forth in Government Code Section 17556. Also, this is an unverified statement of the DOF which attempts to contradict the sworn declaration supporting the test claim which estimates that school districts will incur more than \$1,000 in costs by

complying with the test claim legislation.

DOF also argues that the notices are already required by Education Code Section 48263<sup>3</sup> and are already reimbursed under the Notification of Truancy<sup>4</sup> and Habitual Truant<sup>5</sup> mandates. Neither of those existing Commission approved mandates require notification on a timely basis if a child is absent from school without permission or requires informing parents of the results of their child's performance on standardized tests and statewide tests or requires the provision of information on the performance of the school that their child attends on standardized statewide tests.

**G. Education Code Section 51101(a)(6)(7)**

Education Code Section 51101, subdivision (a)(6) permits parents to request a particular school for their child, and to receive a response from the school district.

Education Code Section 51101, subdivision (a)(7) provides that parents and guardians have the right to participate in the education of their children by having a school

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<sup>3</sup> Education Code Section 48263 requires that the minor and the parents or guardians of the minor be notified in writing of the name and address of the board or probation department when the minor pupil is referred to a school attendance review board or to the probation department when the minor pupil is an habitual truant, or is irregular in attendance at school, or is habitually insubordinate or disorderly during attendance at school.

<sup>4</sup> The Notification of Truancy mandate requires a district, upon a pupil's initial classification as a truant, to notify a pupil's parent or guardian of (1) the pupil's truancy; (2) that the parent or guardian is obligated to compel the pupil's attendance; and (3) that parents or guardians who fail to meet this obligation may be guilty of an infraction. A truancy occurs when a student is absent from school without a valid excuse more than three (3) days or is tardy in excess of thirty (30) minutes on each of more than three (3) days in one school year.

<sup>5</sup> The Habitual Truant mandate requires school districts to make a conscientious effort to schedule a conference with the parent or guardian of a pupil who has been determined to be a habitual truant by sending a notice to the pupil's parent or guardian and the pupil and, when necessary, by making a final effort to schedule a conference by making a telephone call to the parent or guardian. A pupil is declared to be a habitual truant upon the pupil's fourth truancy within the same school year.

environment for their child that is safe and supportive of learning.

Commenting on subdivision (a)(6), DOF cites subdivision (j)<sup>6</sup> of Education Code Section 48980 to argue that schools are already required to notify parents of all current statutory and local attendance options. DOF misses the point. The test claim statute states that parents have the right to request a particular school for their child without establishing any of the conditions of existing statutory programs. It is an unfettered right to make the request and to receive a response.

Commenting on subdivision (a)(7), DOF argues that providing a safe and supportive learning environment has always been the "general goal" of public education and, therefore, does not constitute a new program or higher level of service. The reply to this argument is, again, reminding DOF that Government Code Section 17565 provides that, if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the school district for those costs incurred after the operative date of the mandate. Therefore, even if it has always been the "general goal" of districts to provide a safe and supportive learning environment, the state is required to reimburse the school district for performing those activities once they become mandated. The DOF is again reminded that asserting uncodified "requirements", such as their "general goal" theory, is pointless.

**H. Education Code Section 51101 (a)(8)(9)(10)(11)(12)(13)(15)(16)**

Education Code Section 51101, subdivision (a)(8), provides that parents have the right to be informed and to participate in the education of their children by examining the curriculum materials of the class or classes in which their child is enrolled.

Education Code Section 51101, subdivision (a)(9), provides that parents have the right to be informed and to participate in the education of their children by being informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.

Education Code Section 51101, subdivision (a)(10), provides that parents have the right to be informed and to participate in the education of their children by having access to the school records of their child.

Education Code Section 51101, subdivision (a)(11), provides that parents have the

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<sup>6</sup> This citation is incorrect. The correct citation should be to subdivision (i).

right to be informed and to participate in the education of their children by receiving information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.

Education Code Section 51101, subdivision (a)(12), provides that parents have the right to be informed and to participate in the education of their children by being informed in advance about school rules, including disciplinary rules and procedures, attendance, retention, and promotion policies, dress codes, and procedures for visiting the school.

Education Code Section 51101, subdivision (a)(13), provides that parents have the right to be informed and to participate in the education of their children by receiving information about any psychological testing the school does involving their child and to deny permission to give the test.

Education Code Section 51101, subdivision (a)(15), provides that parents have the right to be informed and to participate in the education of their children by being able to question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

Education Code Section 51101, subdivision (a)(16), provides that parents have the right to be informed and to participate in the education of their children by being notified, as early in the school year as practicable, if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child.

As to all of the above mandated activities, DOF first argues that schools already keep curriculum materials and student records, thus allowing parents to examine them do not constitute a higher level of service. Allowing parents to examine records is not the same as being required to do so. Therefore, the activities are new programs. Test claimant again reminds DOF that Government Code Section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the school district for those costs incurred after the operative date of the mandate. Therefore, even if school districts have been "allowing" parents to examine curriculum materials and student records, the state is required to reimburse the school district for performing those activities once they become mandated.

DOF also argues that Education Code Section 48980 already requires schools to notify

parents of their child's progress, school rules, available programs, and other options. DOF is incorrect. Section 48980 only pertains to:

- (a) Rules of discipline; rights to be excused for religious reasons; excused absences; residency requirements for hospitalized students with temporary disabilities; parent's notifications of their child's temporary disabilities; the administration of immunization agents; the administration of prescribed medications; a parent's right to refuse consent for physical examination; medical and hospital services; comprehensive sexual health education; and communication devices in classrooms.
- (b) The availability of individualized instruction.
- (c) The schedule of minimum days and pupil-free staff development days.
- (d) The importance of investing for future college or university education for their children and appropriate investment options.
- (e) The requirement to successfully pass the high school exit examination.
- (f) An election to provide a fingerprinting program.
- (g) Including in each annual notice a copy of the district's written policy on sexual harassment.
- (h) Including in each annual notice a copy of the written policy of the school district regarding access by pupils to internet and online sites.
- (i) Advising the parent or guardian of all existing statutory attendance options and local attendance options available in the school district.
- (j) Making enrollment options available to the pupils within their districts.
- (k) Advising parents that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time.
- (l) Advising parents of the availability of state funds to cover the costs of advanced placement examination fees.

As can be seen, the requirements of the test claim legislation differ substantially from the requirements of Education Code Section 48980.

**I. Education Code Section 51101(a)(14)**

Education Code Section 51101, subdivision (a)(14), provides that parents have the right to be informed by the school through participation as a member of a parent advisory committee, schoolsite council, or site-based management leadership team. The subdivision goes on to say that in order to facilitate that parental participation, schoolsite councils are encouraged to schedule a biannual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions and that the meetings should be scheduled on weekends, and prior notice should be provided to parents.

DOF argues that scheduling a biannual open forum is encouraged but not required.

This argument of DOF ignores nearly all of the mandated activities such as participation as a member of a parent advisory committee, schoolsite council, or site-based management leadership team. It also ignores the meetings should be scheduled on weekends, and prior notice should be provided to parents. In as much as the right to participate is *the right* of the parent, arguing that schoolsite councils are only "encouraged" to schedule biannual open forums is not a persuasive argument. Even if the Commission makes that determination, all of the other described activities are still mandated and subject to reimbursement.

**J. Education Code Section 51101(b)**

Education Code Section 51101(b) requires that parents and guardians, including those whose primary language is not English, shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school. Each governing board of a school district is required to develop jointly with parents and guardians, and shall adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. The policy shall include, but is not necessarily limited to, the following:

- (1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.
- (2) A description of the school's responsibility to provide a high quality

curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.

(3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:

- (A) Monitoring attendance of their children.
- (B) Ensuring that homework is completed and turned in on a timely basis.
- (C) Participation of the children in extracurricular activities.
- (D) Monitoring and regulating the television viewed by their children.
- (E) Working with their children at home in learning activities that extend learning in the classroom.
- (F) Volunteering in their children's classrooms, or for other activities at the school.
- (G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

DOF concurs that the costs of developing and adopting these policies in schools that do not receive federal funds constitutes a higher level of service but that these costs are one-time and would be minimal.

DOF does not elucidate as to why these costs are limited to schools that do not receive federal funds.

The unverified statement of DOF that these costs are one-time is not correct. The above description of the activities show that they will change from time to time to meet the fluid changes that may be required to remain effective.

The argument of DOF that the costs should be minimal is not one of the recognized exceptions to a finding of a mandate set forth in Government Code Section 17556. Also, this is an unverified statement of the DOF which attempts to contradict the sworn declaration supporting the test claim which estimates that school districts will incur more than \$1,000 in costs by complying with the test claim legislation.

**K. Education Code Section 51101.1(a)(b)**

Education Code Section 51101.1, subdivision (a), provides that a parent or guardian's lack of English fluency does not preclude a parent or guardian from exercising the rights guaranteed under this chapter and requires school districts to take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language of the rights

and opportunities available to them pursuant to this section.

Education Code Section 511101.1, subdivision (b), provides that parents and guardians of English learners are entitled to participate in the education of their children pursuant to Section 51101 and as follows:

(1) To receive, pursuant to paragraph (5) of subdivision (a) of Section 51101, the results of their child's performance on standardized tests, including the English language development test.

(2) To be given any required written notification in English and the pupil's home language pursuant to Section 48985 and any other applicable law.

(3) To participate in school and district advisory bodies in accordance with federal and state laws and regulations.

(4) To support their children's advancement toward literacy. School personnel shall encourage parents and guardians of English learners to support their child's progress toward literacy both in English and, to the extent possible, in the child's home language. School districts are encouraged to make available, to the extent possible, surplus or undistributed instructional materials to parents and guardians, pursuant to subdivision (d) of Section 60510, in order to facilitate parental involvement in their children's education.

(5) To be informed, pursuant to Sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures, and school improvement efforts.

DOF argues that Education Code Section 48985 already requires all notices, reports, statements, or records be sent to parents or guardians in the primary language if other than English.

Education Code Section 48985 provides that when 15 percent or more of the pupils enrolled in a public school speak a single primary language other than English, all notices, reports, statements, or records sent to the parent or guardian shall, in addition to being written in English, be written in such primary language, and may be responded to either in English or the primary language.

The test claim legislation is not limited to the 15 percent floor and goes far beyond just notices, reports, statements or records.

DOF also argues that providing parents with results of state-mandated standardized tests is already provided for in the State's funding for those programs. Without a reference to the state-mandated standardized tests to which DOF refers and the specific rules for notification to parents, it is impossible to reply to DOF's assertions.

**L. Education Code Section 51101.1(c)**

Education Code Section 51101.1, subdivision (c), provides that a school with a substantial number of English learners is encouraged to establish parent centers with personnel who can communicate with the parents and guardians of these children to encourage understanding of and participation in the educational programs in which their children are enrolled.

DOF argues that this activity is encouraged, but not required.

Section 51101.1 is part of a Parental Involvement Program added to the Education Code in 1998. Section 51100 sets forth the findings and declarations of the Legislature:

“(a) It is essential to our democratic form of government that parents and guardians of schoolage children attending public schools and other citizens participate in improving public education institutions. Specifically, involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education.

(b) Research has shown conclusively that early and sustained family involvement at home and at school in the education of children results both in improved pupil achievement and in schools that are successful at educating all children, while enabling them to achieve high levels of performance.

(c) All participants in the education process benefit when schools genuinely welcome, encourage, and guide families into establishing equal partnerships with schools to support pupil learning.

(d) Family and school collaborative efforts are most effective when they involve parents and guardians in a variety of roles at all grade levels, from preschool through high school.”

Section 51101 established that parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children.

Section 51101.1 was added to the Parental Involvement Program in 2002 as part of the

Parents Rights Act of 2002.<sup>7</sup> In addition to amending Section 51101, the 2002 Act recognized a special need for families with a substantial number of English learners. Because of the specialized needs of these families, in addition to other rights such as communication in native languages, the Legislature “encouraged” the establishment of parent centers with personnel who can communicate with the parents and guardians of these children to encourage understanding of and participation in the educational programs in which their children are enrolled. And, although subdivision (c) “encourages” parent centers, subdivision (a) requires that all school districts take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and their home language of their rights and opportunities available to them pursuant to this section.

In view of the above quoted Legislative findings and declarations and the grant to parents of the right to be informed and to participate, and the additional rights granted to parents and guardians of English learners, it is unrealistic for DOF to suggest that the establishment of parent centers to assist the parents of children with special needs is not legally required. Test claimant refers the Commission again to its reply proving that legal compulsion is not necessarily required for a finding of a mandate, above, beginning at page 3, and strongly suggests that this situation fits perfectly within the “legal and practical consequences of nonparticipation” portion of the Sacramento II test for determining whether strict legal compulsion is required.

#### CERTIFICATION

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

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

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<sup>7</sup> Chapter 1037, Statutes of 2002

## DECLARATION OF SERVICE

RE: Parental Involvement Programs 03-TC-16  
CLAIMANT: San Jose Unified School District

I declare:

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

On the date indicated below, I served the attached: letter of May 25, 2004, addressed as follows:

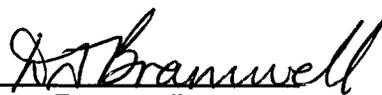
Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- |  |  |
|--|--|
| <p><input type="checkbox"/> <b>U.S. MAIL:</b> I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> <p><input type="checkbox"/> <b>OTHER SERVICE:</b> I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:<br/><br/>_____ (Describe)</p> | <p><input type="checkbox"/> <b>FACSIMILE TRANSMISSION:</b> On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> <b>PERSONAL SERVICE:</b> By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|--|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 5/25/04, at San Diego, California.

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

# Commission on State Mandates

Original List Date: 10/3/2003

Last Updated:

List Print Date: 10/07/2003

Claim Number: 03-TC-16

Issue: Parental Involvement Programs

Mailing Information: Completeness Determination

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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