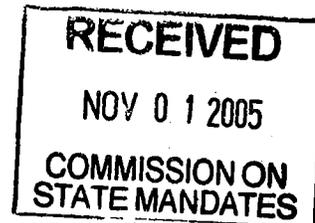




November 1, 2005

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



Dear Ms. Higashi:

As requested in your letter dated October 3, 2005, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School District asking the Commission to determine whether specified costs are incurred by the school district and the county office of education (hereafter, districts) as required by statute to implement legislation which resulted from the settlement of the *Eliezer Williams, et al, vs. State of California* case (Claim Number 05-TC-04).

The pieces of legislation implementing the *Williams* settlement are far reaching and cross several different agency areas. The claimants have identified several new duties that resulted from the *Williams* settlement legislation, which they assert are reimbursable State mandates. This response will only pertain to the area(s) for which State Allocation Board (Board) and the OPSC are directly responsible. Following please find responses to the questions addressed in your letter:

- 1. Do the provisions listed in the notice impose a new program or higher level of service within an existing program upon local entities within the meaning of Section 6, Article XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?**

Participation in the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (LPP), established through Education Code (EC) Sections 17000 through 17066, and the Leroy F. Greene State School Facilities Program of 1998 (SFP), established through EC Section 17070.10 et. seq., by districts is voluntary and not a compulsory activity. The Education Code does not compel districts to obtain funding from the State through the SFP as a condition of building or modernizing schools. Districts may choose to build facilities through the use of district-raised funds. Program elements are only required if districts choose to participate in the program.

Participation in the Deferred Maintenance Program (DMP), established through EC Sections 17582 through 17588 and 17591 through 17592.5, is also voluntary on the part of districts. EC Section 17582 states that "...a district *may* establish an account to be known as the "district deferred maintenance account..." No requirement is made in statute that a district is required to establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district-raised funds.

The State Relocatable Classroom Law of 1979 (SRCP), established under EC Section 17085 et. seq., is another elective program from which school districts may lease relocatable classrooms on an annual basis. As a condition of receipt of a building under the SRCP, a school district must certify that it will, at its own expense, make all necessary maintenance repairs, renewal and replacement to ensure that the relocatable classroom(s), furniture, and equipment are at all times kept in good repair, working order and condition.

As a result of the *Williams* legislation, good repair is now defined by the Interim Evaluation Instrument (IEI). To evaluate the conditions of a facility, the District may use the IEI, created by the OPSC, or it may use an alternative tool or system provided that it contains, at minimum, the components addressed in the IEI. Ensuring that school facilities are in good repair has always been a requirement of the SFP, LPP, DMP, or SRCP. Furthermore, the requirement for the establishment of a facility inspection system (FIS) to ensure that all schools are in good repair, as described under number 3 of the legislative digest, Statutes of 2004, Chapter 900, Senate Bill 550, of Section One, Part A of the test claim, is only required if a district chooses to participate in these programs. Therefore, it is our opinion that the declarations of the test claim that Chapter 900, Statutes of 2004, increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel as a result of implementing the requirement for a FIS is unfounded, as it only applies to districts choosing to participate in the SFP, LPP, DMP, or SRCP.

Additionally, Part A, Section 2: Regulatory Mandates of the test claim pertains to the School Facilities Needs Assessment Grant Program and the Emergency Repair Program administered by the Board. The School Facilities Needs Assessment Grant Program requires districts to obtain the services of a qualified inspector, as specified in the regulations adopted by the Board, to conduct an in-depth assessment of the facilities at certain school sites. The regulations adopted by the Board did not expand upon the requirements for the assessment as set forth in Education Code 17592.70. This is a state-mandated program and funds are provided for this purpose. The Emergency Repair Program is a voluntary program. Districts may request reimbursement for the cost of repairs to building systems or components that are in a condition that poses a health and safety threat to students and staff while at school.

**2. Does Government Code Section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the State?**

Yes. It appears that Government Code Section 17556(d) precludes the Commission from finding that any provisions of the test claim impose costs mandated by the State.

Government Code Section 17556(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 increase level of service.*

Statute allows a school district the authority to raise program costs through the passage of local bonds and other revenue sources including developer fees for capital outlay needs.

Government Code Section 17556(e):

*The statute or executive order provides for offsetting savings to local agencies or school district which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate.*

Senate Bill 6, Chapter 899, Statutes of 2004 (Alpert) allocated funding based on a per-pupil formula outlined in EC Section 17592.70 (c) for all impacted districts to perform the comprehensive needs assessment as required by the provisions of the School Facilities Needs Assessment Grant Program.

**3. Have funds been appropriated for this program (e.g. State budget) or are there any other sources of funding available? If so, what is the source?**

All districts that choose to participate in either the LPP or the SFP must establish a restricted account for the exclusive purpose of providing money for ongoing and major maintenance of school buildings in order to comply with the requirement that the project (funded under those programs) is at all times kept in good repair. School districts must deposit a minimum of two percent of the applicant school district General Fund budget for that fiscal year for each fiscal year throughout the term of the lease agreement of all projects construction under the LPP. School districts must deposit into this account a minimum of at least three percent of the applicant school district total General Fund expenditures each fiscal year for 20 years after the receipt of SFP funds (deposits in excess of two and a half percent may count toward the districts' DMP contributions for school districts choose to participate in the DMP).

For districts who participate in the DMP, the DMP receives its funding annually. The State matches the districts' deferred maintenance program contributions up to a specified level. Eligible projects may consist of major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing and floor systems as well as other purposes listed in Education Code Section 17582.

The SRCP does not provide funding to districts for lease payments and maintenance costs of the relocatable classrooms.

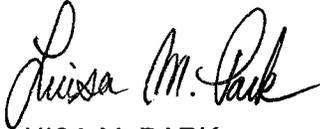
Each school site that is required to perform a needs assessment pursuant to the School Facilities Needs Assessment Grant Program is provided with ten dollars (\$10) per pupil, a minimum of \$7,500 per school, for this purpose. The Emergency Repair Program provides 100 percent reimbursement for the cost of repair or eligible replacement projects.

For the reasons stated above, the OPSC believes districts do not have to incur costs to establish a FIS as the requirement to establish a FIS is only required if participating under our voluntary programs. Furthermore, the statute that imposed the School Facilities Needs Assessment Grant Program included additional revenue that was specifically intended to fund the costs of the state mandate.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 3, 2005 letter have been provided with copies of this letter via either United States mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Chris DeLong, Policy Manager, at [chris.delong@dgs.ca.gov](mailto:chris.delong@dgs.ca.gov) or (916) 322-5263.

Sincerely,

A handwritten signature in cursive script that reads "Luisa M. Park".

LUISA M. PARK  
Executive Officer  
Office of Public School Construction

LMP:LK

Attachments

Attachment A

DECLARATION OF THE OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
CLAIM NO. 05-TC-04

I am currently employed by the State of California, Department of General Services, Office of Public School Construction (OPSC), am familiar with the duties of OPSC, and am authorized to make this declaration on behalf of OPSC.

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

November 1, 2005  
at Sacramento, CA

Lori Morgan  
Lori Morgan  
Deputy Executive Officer

## PROOF OF SERVICE

Test Claim Name: Williams Case Implementation  
Test Claim Number: 05-TC-04

I, Robert Young, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1130 K Street, Suite 400, Sacramento, CA 95814.

On November 1, 2005, I served the attached recommendation of the Office of Public School Construction in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pick up location at 1130 K Street, Suite 400, Sacramento, CA 95814, addressed as follows:

Mr. Keith B. Petersen  
Six Ten & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Ms. Lora Duzyk  
San Diego County Office of Education  
6401 Linda Vista Road  
San Diego, CA 92111-7309

Ms. Dianne L. Russo  
Sweetwater Union High School District  
1130 Fifth Avenue  
Chula Vista, CA 91911-2896

Mr. Arthur Palkowitz  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

Ms. Jesse McGuinn  
Department of Finance (A-15)  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Ms. Sandy Reynolds  
Reynolds Consulting Group, Inc.  
P.O. Box 894059  
Temecula, CA 92589

Ms. Harmeet Barkschat  
Mandate Resources Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95360

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

Mr. Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Mr. David E. Scribner  
Scribner Consulting Group, Inc.  
3840 Rosin Court, Suite 190  
Sacramento, CA 95834

Mr. Robert Miyashiro  
School Services of California, Inc.  
1121 L Street, Suite 1060  
Sacramento, CA 95814

I declare under penalty or perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 1, 2005, at Sacramento, California.

*Robert Young*  
Robert Young