

COMMISSION ON STATE MANDATES

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December 4, 2015

Mr. Arthur Palkowitz
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Test Claim Decision, Draft Expedited Parameters and Guidelines,
Schedule for Comments, and Notice of Hearing**
Training for School Employee Mandated Reporters, 14-TC-02
Education Code Sections 44690 and 44691; and Penal Code Section 11165.7
As Added or Amended by: Statutes 2014, Chapter 797 (AB 1432)
Lake Elsinore Unified School District, Claimant

Dear Mr. Palkowitz:

On December 3, 2015, the Commission on State Mandates (Commission) adopted the test claim decision approving the above-entitled matter. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

Draft Expedited Parameters and Guidelines. Pursuant to California Code of Regulations, title 2, section 1183.9, the Commission staff is expediting the parameters and guidelines process by enclosing draft parameters and guidelines to assist the claimant. The proposed reimbursable activities are limited to those approved in the decision by the Commission.

Review of Draft Expedited Parameters and Guidelines. Proposed comments may be filed on staff's draft proposal by **December 24, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(b).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Adoption of Parameters and Guidelines. After review of the draft expedited parameters and guidelines and all proposed comments, Commission staff will prepare a proposed decision and recommend adoption by the Commission.

Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Test Claimant and Department of Finance Submission of Letter of Intent. Within 30 days of the Commission's adoption of a decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.11 of the Commission's regulations to develop a *joint reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of

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costs mandated by the state. The written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs. Pursuant to the plan, the test claimant and the Department of Finance shall submit the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs. Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within 15 days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs. At least 10 days prior to the next hearing, Commission staff shall review comments and issue a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.) If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

The parameters and guidelines for this matter are set for hearing on **January 22, 2016**.

Sincerely,

 for
Heather Halsey
Executive Director

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

IN RE TEST CLAIM ON:
 Education Code Sections 44690 and 44691;
 and Penal Code Section 11165.7
 As Added or Amended by:
 Statutes 2014, Chapter 797 (AB 1432)
 Filed on June 1, 2015, by
 Lake Elsinore Unified School District,
 Claimant

Case No.: 14-TC-02
Training for School Employee Mandated Reporters
 DECISION PURSUANT TO
 GOVERNMENT CODE SECTION 17500
 ET SEQ.; CALIFORNIA CODE OF
 REGULATIONS, TITLE 2, DIVISION 2,
 CHAPTER 2.5, ARTICLE 7.
 (Adopted December 3, 2015)
 (Served December 4, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 3, 2015. Arthur Palkowitz and George Landon appeared on behalf of the claimant, Lake Elsinore Unified School District. Donna Ferebee and Kimberly Leahy appeared on behalf of the Department of Finance (Finance).

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the proposed decision to approve the test claim at the hearing by a vote of 4-0 as follows:

Member	Vote
Richard Chivaro, Representative of the State Controller, Vice Chairperson	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Absent
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Absent
Don Saylor, County Supervisor	Absent

Summary of the Findings

This test claim addresses Statutes 2014, chapter 797, which imposes new child abuse and neglect training requirements on school districts (K-12 school districts and county offices of education) for employees and persons working on their behalf who are identified as mandated reporters.

The Commission finds that Education Code section 44691 and Penal Code section 11165.7, as added and amended by Statutes 2014, chapter 797, impose a reimbursable state-mandated program on K-12 school districts and county offices of education for the following activities, beginning January 1, 2015:

1. Provide annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year, training in the detection of child abuse and neglect, the proper action that school personnel should take in suspected cases of child abuse and neglect, and information that failure to report is a misdemeanor punishable by up to six months in jail and/or up to a fine of one thousand dollars to the following persons:
 - a) Certificated and classified employees of the school district that are mandated reporters identified in the Penal Code, *except* those working for a school district police or security department; and
 - b) Those persons who are mandated reporters identified in the Penal Code that are working on a school district's behalf to carry out the school district's core mandatory function to educate students.

The training may be provided by either using the online training module developed by CDSS or an alternative training program that complies with the test claim statute. The costs to develop child abuse and neglect training are *not* mandated by the state. (Ed. Code § 44691(b)(1), (c); Penal Code § 11165.7(d).)

2. Develop a process for all persons required to receive training to provide proof of completing the training within the first six weeks of each school year or within the first six weeks of that person's employment. The process developed may include, but not necessarily be limited to, the use of a sign-in sheet or the submission of a certificate of completion to the applicable governing board or body of the school district. (Ed. Code § 44691(b)(2).)
3. If the online training provided by CDSS is not used, report to the CDE the training being used in its place. (Ed. Code § 44691(c).)

All other provisions in Education Code section 44691 and Penal Code 11167.5, as added or amended by the 2014 test claim statute, do not impose a reimbursable state-mandated program.

COMMISSION FINDINGS

I. Chronology

- 06/01/2015 This test claim was filed with the Commission.¹
- 06/04/2015 The test claim was deemed complete and issued for comment.
- 07/06/2015 The Department of Finance filed comments on the test claim.²
- 08/06/2015 Lake Elsinore Unified School District (claimant) filed rebuttal to Finance’s comments.³
- 09/24/2015 Commission staff issued the draft proposed decision.⁴

II. Background

A. Prior Law

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and substantively amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” or “CANRA.” The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment in Penal Code sections 11164 et seq. (footnotes omitted):

The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, Reporting Child Abuse: When Moral Obligations Fail (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.

¶...¶

The reporting law applies to three broadly defined groups of professionals: “health practitioners,” child care custodians, and employees of a child protective agency. “Health practitioners” is a broad category subdivided into “medical” and “nonmedical” practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subs. (i), (j); 11165.2.) “Child care custodians” include teachers, day care workers, and a variety of public health

¹ Exhibit A, Test Claim, page 1. Based upon the filing date of June 1, 2015, the potential period of reimbursement begins July 1, 2013. However, since the test claim statutes became effective on January 1, 2015, the potential period of reimbursement begins on the effective date of the statute that imposes a state mandate.

² Exhibit B, Department of Finance Comments on Test Claim.

³ Exhibit C, Claimant’s Rebuttal to Finance Comments.

⁴ Exhibit D, Draft Proposed Decision.

and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of “child protective agencies” consist of police and sheriff’s officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)

The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. “[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline.” (Stats. 1980, ch. 1071, § 5, p. 3425.)

To strike the “delicate balance” between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. “[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency ‘[R]easonable suspicion’ means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.” (§ 11166, subd. (a), italics added.) As one commentator has observed, “[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant.” (See Comment, Reporting Child Abuse: When Moral Obligations Fail, supra., 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a “child protective agency,” i.e., a police or sheriff’s department or a county probation or welfare department. The professional must make the report “immediately or as soon as practically possible by telephone.” The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a \$1,000 fine. (§ 11172, subd. (e).) . . .

Under the existing CANRA, all school district teachers and employees including instructional aides, teacher assistances, classified employees, and employees of a school district police or security department are mandated reporters. The previous version of CANRA also specified that employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed, however employers were not required to provide this training.

School districts that did not provide training were required to report to the California Department of Education the reasons why the training is not provided.⁵

B. Prior Commission Decisions

1. Child Abuse and Neglect Reporting Act (“CANRA”)

The Child Abuse and Neglect Reporting Act requires a mandated reporter, which includes a teacher and other types of school employees, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or has observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

The *CANRA*, 01-TC-21 test claim, filed by San Bernardino Community College District, alleged that amendments enacted between 1975 and 2001 to California’s mandatory child abuse reporting laws impose a reimbursable state-mandated program on school districts and community college districts.

On July 31, 2009, the Commission adopted the decision on the test claim, finding that K-12 school districts are not required to receive child abuse and neglect reports pursuant to Penal Code section 11165.9 and engage in follow-up reporting and investigation activities, but community college district police departments are required by the test claim statutes to perform these activities. In addition, the Commission determined that the statutes required all law enforcement agencies, including those maintained by K-12 school districts and community college districts, to receive reports of “known or suspected instances of child abuse” that require notification and cross-reporting to the appropriate agencies. However, pursuant to *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (*POBRA*), reimbursement under article XIII B, section 6 of the California Constitution was denied for these requirements because school districts and community college districts are authorized, but not required by the Education Code to employ peace officers and, thus, they are not mandated by state law to comply with these requirements.⁶

The Commission further concluded that Penal Code sections 11165.7 and 11174.3, as added or amended by statutes enacted between 1987 through 2001, mandate new programs or higher levels of service for K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, beginning July 1, 2000, for the following specific new activities:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7(d).)⁷

⁵ Exhibit E, Senate Appropriations Committee fiscal summary of AB 1432, as amended August 4, 2014, page 1.

⁶ Education Code sections 38000 and 72330.

⁷ This activity has been deleted and replaced by the test claim statute, effective January 1, 2015.

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3(a).)

2. Interagency Child Abuse and Neglect Investigation Reports (ICAN)

In a separate test claim, *Interagency Child Abuse and Neglect Investigation Reports (ICAN)*, 00-TC-22, the County of Los Angeles alleged that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on local agencies. The test claim pled a number of changes to the law, particularly a reenactment in 1980, and substantive amendments in 1997 and 2000.

The Commission approved the test claim on December 6, 2007, for any city, county, and city and county that incurs increased costs beginning July 1, 1999, or later for specified activities added by subsequent statutes for the following categories of activities:

For agencies authorized to receive reports from mandated reporters of suspected child abuse to:

- Refer those reports to the correct agency when the recipient agency lacks jurisdiction;
- Cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices;
- Report to licensing agencies;
- Make additional reports in the case of a child's death from abuse or neglect;
- Distribute the standardized forms to mandated reporters;
- Investigate reports of suspected child abuse for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice;
- Forward to the Department of Justice a report in writing of every case the agency investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive;

- Notify suspected abusers of listing in the Child Abuse Central Index; and
- Retain records, as specified.

In addition, a small number of activities were also approved for county licensing agencies and district attorneys' offices, as provided.

C. The Test Claim Statute; Statutes 2014, Chapter 797 (AB 1432)

Education Code section 44691(a), as added by Statutes 2014, chapter 797, effective on January 1, 2015, requires the California Department of Education (CDE), in consultation with the Office of Child Abuse Prevention (OCAP) in the California Department of Social Services (CDSS), to:

- Develop and disseminate information to all school districts, county offices of education, state special schools and diagnostic centers operated by the state, and charter schools, and their school personnel, regarding the detection and reporting of child abuse;
- Provide statewide guidance on the responsibilities of mandated reporters who are school personnel; and
- Develop appropriate means of instructing school personnel in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect, including, but not limited to, an online training module to be provided by CDSS.

Education Code section 44691(b) requires school districts to annually train, using an online training module provided by the CDSS or other training as specified, employees and persons working on their behalf who are mandated reporters as defined in Penal Code section 11165.7, on the mandated reporting requirements. The list of school district employees defined as mandated reporters and required to be trained is broad and includes the following: teacher; instructional aide; teacher's aide or assistant; a classified employee; an administrative officer or certificated pupil personnel employee; an employee of a county office of education whose duties bring the employee into contact with children on a regular basis; an employee of a school district police or security department; and an athletic coach, athletic administrator, or athletic director that provides any combination of instruction for K-12 pupils.⁸ The training shall be provided to school personnel hired during the course of the school year, and shall include information that failure to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable by up to six months confinement in county jail, or by a fine of \$1,000, or both. In addition, school districts are required to develop a process for all persons required to receive training under the bill to provide proof of completing this training within the first six weeks of each school year or within six weeks of that person's employment. The process may include, but not be limited to, the use of a sign-in sheet or the submission of a certificate of completion to the applicable governing body of the school district.

Finally, section 44691(c) requires school districts that do not use the online training module provided by CDSS, to report to CDE the training being used in its place.

⁸ Penal Code section 11165.7(a).

Penal Code section 11165.7 defines who is a mandated reporter and, as amended by Statutes 2014, chapter 797, replaces the requirement that schools report why they do not provide training, with the requirement that school districts and county offices of education train mandated reporters in their duties under the child abuse laws, including child abuse and neglect identification and reporting pursuant to Education Code section 44691.

According to the author of the test claim statute the additions to law are needed because:

In recent years, there has been an alarming increase in the incidents of unreported child abuse where one or more additional school employees were aware of the incident—illustrating gaping holes in these mandated reporters’ knowledge of CANRA [California Child Abuse Neglect Reporting Act]. In the Redwood City School District, a teacher was arrested in the abuse of two five-year-old special needs students. In the wake of this horrible incident, five staff members were fired for failing to report the abuse despite their knowledge of it.

In the Brentwood Union School District, eleven employees knew but failed to tell authorities about an incident in which a special education teacher, who had already been convicted of child abuse, kicked an autistic student. The incident resulted in a \$950,000 settlement to the student's family. Although district documents in the Brentwood case illustrate that school officials conducted an internal investigation into the incident, parents ultimately reported the incident to police.

Despite the Child Abuse and Neglect Reporting Act's clear reporting requirements, school districts are merely 'encouraged' rather than required to provide employees who qualify as mandated reporters with training on either abuse identification or abuse reporting. The absence of training is a failure of our system that leaves millions of students at risk every single day.⁹

According to the Child Abuse Mandated Reporter Training Project cited in the committee analysis:

[I]n California, it is estimated that four children die each day in this country as a result of child abuse and neglect. The Federal Child Abuse Reporting act was passed in 1974 to address this issue. Over the years, numerous amendments have expanded the definition of child abuse and the list of persons who are required to report suspected child abuse. The CAMRTP is funded by the DSS, Office of Child abuse Prevention (OCAP) and the goal of this project is to have free training available for mandated child abuse reporters so they may carry out their responsibilities properly. Currently the CAMRTP provides free online training modules that are specifically tailored for educators.¹⁰

⁹ Exhibit E, Assembly Committee on Public Safety bill analysis on AB 1432, as amended February 11, 2014.

¹⁰ Exhibit E, Assembly Committee on Education bill analysis on AB 1432, as amended March 26, 2014. The Federal Child Abuse Reporting Act is found in 42 United States Code, section 13031, and applies to “[a] person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility ...”

To implement the test claim statute, CDSS developed a free, self-paced online training course (“Mandated Reporter Training for Educators”), which takes between 90 and 180 minutes and includes instruction on the following topics: what the law requires of you as a mandated reporter, how to spot indicators of possible child abuse or neglect, how to talk to children about suspected abuse, how to make a report, what happens after a report is filed, and special issues related to child abuse reporting in the school environment.¹¹

In addition, for those districts that do not use the CDSS online training module, CDE has developed a form for reporting the alternative training used, in accordance with Education Code section 44691(c). The form asks the district to identify the name and title of the alternative training, the contact information for the training provider, and a description of the training, including topics covered. The form also asks an “optional” question about why alternate training was used and why the district did not use the training module created by CDSS.¹²

III. Positions of the Parties

A. Claimant

Lake Elsinore Unified School District’s June 1, 2015 test claim filing alleges that the 2014 amendments to the child abuse reporting statute in Penal Code section 11165.7, and the addition of Education code section 44691, result in reimbursable increased costs mandated by the state. The test claim alleges new activities for school districts as follows:¹³

- Provide annual training to their employees in child abuse detection and mandatory reporting obligations under CANRA, including, child abuse and neglect detection, reporting procedures, and notice that failure to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable up to six months in jail, a fine of \$1,000, or both. Training must occur within six weeks of the school year, or within six weeks of employment for a new hire. (Ed. Code § 44691(b)(1); Penal Code § 11165.7(d).)
- Develop a process for all persons required to receive training under this section to provide proof of completing the training within the first six weeks of the school year or within the first six weeks of that person’s employment. (Ed. Code § 44691(b)(2).)
- Report to CDE the training being used in place of the CDSS online module, for those school districts that do not use the online training module developed by CDSS. (Ed. Code § 44691(c).)

The filing includes a declaration from the Lake Elsinore Unified School District Deputy Superintendent & Fiscal Support Services, George Landon, stating that the district will incur unreimbursed costs estimated at \$107,262 for fiscal year 2014-2015 for “the annual increased costs incurred by the claimant to implement the alleged mandate for one hour of training for

¹¹ Exhibit E, CDSS Mandated Reporter training home-page, available at: <http://educators.mandatedreporterca.com/default.htm>, accessed July 23, 2015.

¹² Exhibit E, “Reporting on Alternative Training Provided for Mandatory Reporters,” form developed by CDE, available at: <http://www.cde.ca.gov/ls/ss/ap/>, accessed July 23, 2015.

¹³ Exhibit A, Test Claim, pages 7-8, 12-13.

employees that are mandated reporters.”¹⁴ In rebuttal to Finance comments, the District reiterates its assertions from the claim filing and argues that Finance fails to address the budgeting or appropriations for funding allocated to the activities alleged in the claim.¹⁵

B. Department of Finance

On July 6, 2015, Finance submitted comments on the test claim that to the extent new responsibilities are established for local educational agencies, there are many resources and methods available to meet this responsibility effectively and cost efficiently. Finance asserts the cost to school districts for the training should be minimal due to the free online training modules provided by the CDSS; the list of in-person trainers compiled by CDSS, some at no-cost and as short as an hour; as well as other free resources made available on the CDE website specifically developed for school districts.

IV. 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.”¹⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁷

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.¹⁸
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.¹⁹

¹⁴ Exhibit A, Test Claim, page 20.

¹⁵ Exhibit C, Claimant’s Rebuttal to Finance Comments, page 2.

¹⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁷ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

¹⁸ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

¹⁹ *Id.*, pages 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56).

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.²⁰
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²¹

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 6.²² The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²³ 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.”²⁴

A. The Test Claim Statute Imposes a State-Mandate on K-12 School Districts to Provide Training to Specified School District Employees, and Specified Persons Who Are Working on a School District’s Behalf to Carry Out the School District’s Core Mandatory Function, Who Are Mandated Reporters; and to Develop a Process for All Persons Required to Receive Training Pursuant to Education Code Section 44691 to Provide Proof of Completing the Training.

1. The test claim statute requires K-12 school districts to provide annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year, training in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect, and to develop a process that provides proof of completion of the training. The development of training is not required by the plain language of the statute.

Education Code section 44691(b) requires K-12 school districts to provide training to “employees and persons working on their behalf who are mandated reporters as defined in Penal Code section 11165.7.” The training provided must consist of the information described in section 44691(a); i.e., training “in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect.” In addition, the training must “include information that failure to report is a misdemeanor punishable by up to six

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²² *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

²³ *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

²⁴ *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].

months in jail and/or up to a fine of one thousand dollars.”²⁵ The training must be provided annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year.²⁶

School districts can comply with the training requirement by using the free, self-paced online training module developed by the CDSS. The online training program provided by CDSS takes between 90 and 180 minutes and includes instruction on the following: what the law requires of a mandate reporter; how to spot indicators of possible child abuse or neglect; how to talk to children about suspected abuse; how to make a report; what happens after a report is filed; and special issues related to child abuse reporting in the school environment; and the potential penalties for failure to report.²⁷ Under these circumstances, only the staff time taken by school district employees and persons working on their behalf to take the training would be required.

Additionally, Education Code section 44691(b) states “[e]xcept as provided in subdivision (c)... [s]chool districts...who do not use the online training module provided by the State Department of Social Services shall report to the State Department of Education the training being used in its place.” The Commission finds that the plain language of Education Code section 44691(b) and (c) permits a school district to choose an alternative training program, and not use the training developed by CDSS. However, the statute does not require a district to develop a child abuse training program for mandated reporters. The legislative history of the test claim statute supports this conclusion as well. An earlier version of the bill, dated May 7, 2014 provided:

school districts...[shall] annually provide training, as appropriate, to their employees and persons working on their behalf, who are mandated reporters, on the mandated reporting requirements...²⁸

This version did not contain any language requiring school districts to provide the training using the online training module provided by CDSS. Thus, under this version, a school district could develop their own training course to comply with the bill. The committee analysis for this version of the bill discussed the cost that some districts had previously incurred to develop child abuse and neglect training when the training was encouraged by the state. Los Angeles Unified School District (LAUSD), for example, had previously spent \$85,000 to develop a child abuse awareness training video and an annual online assessment.²⁹

The subsequent version of the bill, amended May 23, 2015, tightened the language and stated that school districts shall:

²⁵ Education Code section 44691(b)(1); Penal Code section 11165.7(d).

²⁶ Education Code section 44691(b)(1) and (2).

²⁷ Exhibit E, CDSS Mandated Reporter training, home page, available at: <http://educators.mandatedreporterca.com/default.htm>, accessed July 23, 2015; CDSS Mandated Reporter training, lesson 2, “failure to report,” available at: <http://educators.mandatedreporterca.com/lesson2/lesson2p6.htm>, accessed September 16, 2015.

²⁸ Exhibit E, Assembly Bill No. 1432 (2013-2014 Reg. Sess.), as amended May 7, 2014.

²⁹ Exhibit E, Assembly Committee on Appropriations bill analysis on AB 1432, as amended May 7, 2014.

Except as provided in subdivision (c), *provide annual training, using the online training module provided by the department to their employees and persons working on their behalf who are mandated reporters...*³⁰

The exception provided in subdivision (c) acknowledges that some school districts, such as LAUSD, already developed training, and therefore, are permitted to continue to use the training already developed, in order to comply with the statute. The plain language of the test claim statute, as enacted, does not require school districts to develop a training program. Moreover, if a school district does not use the training developed by CDSS, it is required by Education Code section 44691(c) to report to CDE the training being used in its place.

And, finally, Education Code section 44691(b)(2) requires school districts to “develop a process for all persons required to receive training pursuant to this section to provide proof of completing the training within the first six weeks of each school year or within the first six weeks of that person’s employment.” Section 44691 further provides that the “process developed under this paragraph may include, but not necessarily be limited to, the use of a sign-in sheet or the submission of a certificate of completion to the applicable governing board or body” of the school district or county office of education.

Accordingly, the Commission finds that Education Code section 44691(b) and (c) and Penal Code section 11167.5(d), require K-12 school districts to provide annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year, training in the detection of child abuse and neglect and the proper action that school personnel should take in suspected cases of child abuse and neglect. In addition, the training shall include information that failure to report is a misdemeanor punishable by up to six months in jail and/or up to a fine of one thousand dollars. The training may be provided by either using the online training module developed by CDSS or an alternative training program that complies with the test claim statute. If a school district does not use the training developed by CDSS, it is required by Education Code section 44691(c) to report to CDE the training being used in its place. The development of child abuse and neglect training is not required by the plain language of the statute. In addition, school districts are required to develop a process that provides proof of completion of the child abuse and neglect training.

2. The test claim statute imposes a state-mandated requirement on K-12 school districts to provide training to all school district certificated and classified employees that are mandated reporters, *except* those working for a school district police or security department, and to provide training to those persons who are mandated reporters that are working on a school district’s behalf to carry out the school district’s core mandatory function to educate students.

The activities required by the test claim statute are legally compelled and, thus, mandated by state law.³¹ However, the scope of the mandate to provide the training needs further analysis. Education Code sections 44691(a),(b) and Penal Code section 11167.5(d) mandate school districts to provide child abuse and neglect training for “their *employees and persons working on*

³⁰ Exhibit E, Assembly Bill No. 1432 (2013-2014 Reg. Sess.), as amended May 23, 2014.

³¹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2009) 30 Cal.4th 727, 731.

their behalf who are mandated reporters” as defined in Penal Code section 11165.7(a). As described below, the Commission finds that the test claim statute imposes a state-mandated program on K-12 school districts to provide training to all school district certificated and classified employees who are mandated reporters, except those working for a school district police or security department, and those persons who are mandated reporters that are working on a school district’s behalf to carry out the school district’s core mandatory function to educate students.

a) *K-12 school districts are not mandated by the state to provide child abuse and neglect training for employees of a school district police or security department.*

As stated above, the test claim statute requires school districts to provide child abuse and neglect training for school district employees who are mandated reporters. Penal Code section 11165.7(a)(16) identifies “an employee of a school district police or security department” as a mandated reporter. The Commission finds, however, that school districts are not mandated by the state to provide child abuse and neglect training for employees “of a school district police or security department” because the cost of these activities is triggered by a local discretionary decision.

In 2009, the Department of Finance challenged a decision of the Commission, arguing that school districts were not mandated by state law to comply with the requirements of the Peace Officer Procedural Bill of Rights Act (POBRA) because school districts were authorized, but not required to hire peace officers or maintain a police department. The court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (*POBRA*) stated there was no dispute that school districts are not legally compelled by state law to hire police and security officers based on the plain language of Education Code section 38000.³² Education Code section 38000(a) specifically states that “[t]he governing board of a school district *may establish a security department* under the supervision of a chief of security as designated by, and under the direction of, the superintendent of the school district.” Section 38000(b) states that “[t]he governing board of a school district *may establish a school police department* under the supervision of a school chief of police and, in accordance with Chapter 5 (commencing with Section 45100) of Part 25, may employ peace officers, as defined in subdivision (b) of Section 830.32 of the Penal Code, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district.”

The court also held there was no concrete evidence in the record that school districts are practically compelled to maintain their own police or security departments when they can rely on the general law enforcement resources of cities and counties. The court agreed that police protection is an essential and basic function of cities and counties, and that the requirements imposed by the POBRA statutes for city and county law enforcement personnel were “prima facie reimbursable,” even though cities and counties have discretion as to the number of personnel they hire. However, police protection is not an essential and basic function of a school district. “It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions” to educate students. A finding of practical compulsion requires a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such

³² *Department of Finance (POBRA)*, *supra*, 170 Cal.App.4th 1355, 1366.

severe adverse consequences. Accordingly, although school districts were required by law to comply with the POBRA statutes, reimbursement was not required because the statutes did not impose a state-mandated program on school districts.³³

The court's holding in *Department of Finance (POBRA)* decision applies in this case. School districts are not legally compelled by state law to hire police and security personnel. In addition, there is no evidence in the record that school districts are practically compelled to hire such personnel when they can rely on the general law enforcement resources of cities and counties.

Accordingly, the Commission finds that school districts are not mandated by the state to provide child abuse and neglect training pursuant to Education Code section 44691 (b),(c), and Penal Code section 11165.7(d), for employees "of a school district police or security department."

b) *Providing child abuse and neglect training for all other school district employees and persons working on the district's behalf to carry out the school district's core mandatory function to educate students is mandated by the state.*

The following employees of a K-12 school district are currently defined as mandated reporters in Penal Code section 11165.7(a): teacher; instructional aide; teacher's aide or assistant employed by a public school; a classified employee of a public school; a certificated pupil personnel employee of a public school; an administrator or employee of a public organization whose duties require direct contact and supervision of children; an employee of a county office of education whose duties bring the employee into contact with children on a regular basis; and an athletic coach, athletic administrator, or athletic director that provides any combination of instruction for K-12 pupils.³⁴

There are other mandated reporters listed in Penal Code section 11165.7(a) that may also be employed by a school district, including nurses and psychologists licensed under the Business and Professions Code.³⁵ Under existing law, school districts are required to "give diligent care to the health and physical development of pupils, and may employ certified persons for the work."³⁶ Pursuant to Education Code section 49426, nurses may be employed by a school district if the person is a registered nurse licensed under the Business and Professions Code who has completed the additional educational requirements for a health and development services credential. School nurses perform several duties, which include conducting immunization programs, accessing and evaluating the health and developmental status of pupils to identify specific physical disorders or other factors relating to the learning process, and contributing significant information in order to modify the pupils' educational plans.³⁷ Similarly, psychologists are identified as mandated reporters³⁸ and, pursuant to Education Code sections 49422 and 49424, school psychologists employed by a district must hold a services credential with a specialization in health, a school psychologist credential, or a general pupil personnel

³³ *Id.*, pages 1367-1368.

³⁴ Penal Code section 11165.7(a)(1)-(5), (8), (9), (42).

³⁵ Penal Code section 11165.7(a)(21).

³⁶ Education Code section 49400.

³⁷ Education Code section 49426.

³⁸ Penal Code section 11165.7(a)(21).

services credential. The primary objective of a school psychologist “is the application of scientific principles of learning and behavior to ameliorate school-related problems and to facilitate the learning and development of children in the public schools of California.”³⁹

The test claim statute also requires school districts to provide training to persons working on their behalf who are mandated reporters under the Penal Code. For example, federal law requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services.⁴⁰ The term “related services” means those services necessary for a pupil to receive a free and appropriate education and may include counseling, psychological, rehabilitation, and medical services, and these services are required to be provided by school districts.⁴¹ The Legislature has stated its intent that psychological and health services for individuals with exceptional needs shall be available to each school site.⁴² To implement legislative intent, Education Code sections 56361.5, 56366, and 56369 provide that a school district may contract with hospitals, nonpublic and nonsectarian schools, and other public agencies to provide special education or related services to individuals with exceptional needs. If a person is employed by a hospital, nonpublic and nonsectarian school, or another public agency that contracts with a school district to provide special education services, and is also identified as a mandated reporter (i.e., a physician, psychologist, nurse, or counselor licensed under the Business and Professions Code; or a teacher’s aide employed at a private school),⁴³ then the school district is required by the test claim statute to provide to those persons the child abuse and neglect training.

The list of mandated reporters required to receive child abuse and neglect training by a school district is broad and includes certificated and classified employees, and many of those persons working on behalf of a district. As recognized by the courts, school districts may have discretion with respect to the number of employees they hire and how they carry out their core mandatory function to educate students. Nevertheless, when carrying out their core mandatory function, new activities required by state law are mandated by the state.⁴⁴

Accordingly, the Commission finds that the test claim statute imposes a state-mandate on K-12 school districts to provide training to all school district certificated and classified employees that are mandated reporters, except those working for a school district police or security department, and those persons who are mandated reporters that are working on a school district’s behalf to carry out the school district’s core mandatory function to educate students.

B. The State Mandated Activities Impose a New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 of the California Constitution.

³⁹ Education Code section 49424.

⁴⁰ Title 20, United States Code, section 1401(26); Code of Federal Regulations, title 34, section 300.34.

⁴¹ Education Code sections 56000, 56030, and 56363.

⁴² Education Code section 56001(l).

⁴³ Penal Code section 11165.7(a)(2), (21).

⁴⁴ *Department of Finance (POBRA)*, *supra*, 170 Cal.App.4th 1355, page 1367; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th page 888.

As stated above, the Commission finds that the following activities are newly required and mandated by the state on K-12 school districts beginning January 1, 2015:

1. Provide annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year, training in the detection of child abuse and neglect, the proper action that school personnel should take in suspected cases of child abuse and neglect, and information that failure to report is a misdemeanor punishable by up to six months in jail and/or up to a fine of one thousand dollars to the following persons:
 - a) Certificated and classified employees of the school district who are mandated reporters identified in the Penal Code, *except* those working for a school district police or security department; and
 - b) Those persons who are mandated reporters identified in the Penal Code who are working on a school district's behalf to carry out the school district's core mandatory function to educate students.

The training may be provided by either using the online training module developed by CDSS or an alternative training program that complies with the test claim statute. The costs to develop child abuse and neglect training are *not* mandated by the state. (Ed. Code § 44691(b)(1), (c); Penal Code § 11165.7(d).)

2. Develop a process for all persons required to receive training to provide proof of completing the training within the first six weeks of each school year or within the first six weeks of that person's employment. The process developed may include, but not necessarily be limited to, the use of a sign-in sheet or the submission of a certificate of completion to the applicable governing board or body of the school district. (Ed. Code § 44691(b)(2).)
3. If the online training provided by CDSS is not used, report to the CDE the training being used in its place. (Ed. Code § 44691(c).)

These activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution because they are unique to local school districts and provide an increased level of service to the public.⁴⁵ As described in the Background, the test claim statute increases the level of service provided to the public because it was enacted in light of the finding that “there has been an alarming increase in the incidents of unreported child abuse where one or more additional school employees were aware of the incident—illustrating gaping holes in these mandated reporters’ knowledge of CANRA.”⁴⁶ According to the Assembly Floor analysis, “[t]he absence of training is a failure of our system that leaves millions of students at risk every single day.”⁴⁷ The Commission finds that providing training to ensure reporting of child abuse provides a service to the public.

⁴⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁴⁶ Exhibit E, Assembly Committee on Public Safety bill analysis on AB 1432, as amended February 11, 2014.

⁴⁷ Exhibit E, Assembly Floor analysis on AB 1432, as amended August 4, 2014.

Accordingly, the newly required activities impose a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

C. The Test Claim Statute Imposes Costs Mandated by the State Pursuant to Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

Government Code section 17514 provides in relevant part the following:

“Costs mandated by the state” means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975...which mandates a new program or higher level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

Government Code section 17564(a) requires that a test claim need only allege costs exceeding \$1,000. In addition, section 17556 provides several exceptions to “costs mandated by the state.”

The claimant, Lake Elsinore Unified School District, submitted a declaration from George Landon, Deputy Superintendent & Fiscal Support Services, which declares on May 21, 2015 that an additional \$107,262 will be incurred for “the annual increased costs incurred by the claimant to implement the alleged mandate for one hour of training for employees that are mandated reporters.” Claimant also asserts that the statewide cost to implement the alleged mandate is estimated at \$10,000,000.⁴⁸ There is no analysis or evidence provided regarding how this estimate was calculated. There is no evidence that the exceptions in Government Code section 17556 apply to this test claim, or evidence disputing the claimant’s assertion of costs.

Therefore, the Commission finds that the test claim statute imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, with the period of reimbursement beginning January 1, 2015.

V. Conclusion

Based on the foregoing analysis, the Commission finds that Education Code section 44691 and Penal Code section 11165.7, as added and amended by Statutes 2014, chapter 797, impose a reimbursable state-mandated program on K-12 school districts and county offices of education for the following activities, beginning January 1, 2015:

1. Provide annually, within the first six weeks of each school year, and within the first six weeks of employment for school personnel hired during the course of the school year, training in the detection of child abuse and neglect, the proper action that school personnel should take in suspected cases of child abuse and neglect, and information that failure to report is a misdemeanor punishable by up to six months in jail and/or up to a fine of one thousand dollars to the following persons:
 - a) Certificated and classified employees of the school district who are mandated reporters identified in the Penal Code, *except* those working for a school district police or security department; and

⁴⁸ Exhibit A, Test Claim, page 14.

- b) Those persons who are mandated reporters identified in the Penal Code who are working on a school district's behalf to carry out the school district's core mandatory function to educate students.

The training may be provided by either using the online training module developed by CDSS or an alternative training program that complies with the test claim statute. The costs to develop child abuse and neglect training are *not* mandated by the state. (Ed. Code § 44691(b)(1) and (c); Penal Code § 11165.7(d).)

- 2. Develop a process for all persons required to receive training to provide proof of completing the training within the first six weeks of each school year or within the first six weeks of that person's employment. The process developed may include, but not necessarily be limited to, the use of a sign-in sheet or the submission of a certificate of completion to the applicable governing board or body of the school district. (Ed. Code § 44691(b)(2).)
- 3. If the online training provided by CDSS is not used, report to the CDE the training being used in its place. (Ed. Code § 44691(c).)

All other provisions in Education Code section 44691 and Penal Code 11167.5, as added or amended by the 2014 test claim statute, do not impose a reimbursable state-mandated program.

COMMISSION ON STATE MANDATES

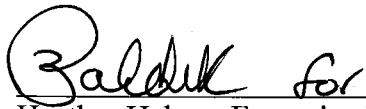
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RE: **Decision**

Training for School Employee Mandated Reporters, 14-TC-02
Education Code Sections 44690 and 44691; Penal Code Section 11165.7
As Added or Amended by: Statutes 2014, Chapter 797 (AB 1432)
Lake Elsinore Unified School District, Claimant

On December 3, 2015, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: December 4, 2015

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 4, 2015, I served the:

**Test Claim Decision, Draft Expedited Parameters and Guidelines,
Schedule for Comments, and Notice of Hearing**

Training for School Employee Mandated Reporters, 14-TC-02

Education Code Sections 44690 and 44691; and Penal Code Section 11165.7

As Added or Amended by: Statutes 2014, Chapter 797 (AB 1432)

Lake Elsinore Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 4, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/29/15

Claim Number: 14-TC-02

Matter: Training for School Employee Mandated Reporters

Claimant: Lake Elsinore Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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