ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

February 1, 2006 – December 31, 2006

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562
www.csm.ca.gov

TABLE OF CONTENTS

INTRODUCTION

The Commission on State Mandates (Commission) is required to report to the Legislature on January 15 of each year on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.[1]

This report includes four Statements of Decision adopted by the Commission during the period from February 1, 2006 through December 31, 2006.

This report includes summaries and complete text of the Commission's decisions. Each decision is based on the administrative record of the claim and includes findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1188.2.

[1] Government Code section 17601.

SUMMARY OF DENIED CLAIMS

Charter School Collective Bargaining, 99-TC-05

The test claim statutes subject charter schools to the 1975 Educational Employment Relations Act (EERA) or "Rodda Act." The EERA governs labor relations in California public schools, and allows school district employees to organize and become represented by an employee organization or union. The EERA also defines the issues that may be negotiated between the school district and the employee organization, and defines the rules for negotiations, mediation, and dispute of grievances. The test claim statutes also amended the EERA to define "public school employer" as "the governing board of a school district, a county board of education or a county superintendent of schools, *or a charter school that has declared itself a public school employer,* and require each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."

The test claimant also alleges increased costs for county boards of education for conducting hearings for the change in an existing charter school's charter, and a higher level of service for school districts that would be required to assume the collective bargaining obligations for charter schools when charter schools within their districts elect not to be the public school employer.

The Commission denied this test claim for the following reasons:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, are not activities subject to article XIII B, section 6.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state.

Reconsideration of Mandate Reimbursement Process, No. 05-RL-4204-02 (CSM 4204 & 4485)

In 2005, AB 138 directed the Commission to reconsider whether the *Mandate Reimbursement Process (MRP)* mandate constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since the mandate was enacted. MRP established the reimbursement process for state mandated programs.

Under MRP, all costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. These activities include, but are not limited to, preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions.

Government Code section 17556 states that mandate reimbursement is not required if the alleged statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or expressly included in* a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Inasmuch as MRP was enacted to implement the Constitutional initiative known as Proposition 4 that enacted article XIII B, section 6, as the Legislature expressly states in Government Code section 17500, the Commission found that section 17556, subdivision (f), applies to this claim.

Therefore, the Commission determined that the MRP mandate does not impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

Mandate Reimbursement Process II, 05-TC-05

AB 2856 was enacted in 2004, to change the way claimants filed test claims with the Commission, and created a process for claimants and state agencies to develop reasonable reimbursement methodologies to streamline the reimbursement process.

Government Code section 17556 states that mandate reimbursement is not required if the alleged statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or expressly included in* a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

The Commission determined that Government Code section 17556 applies to the test claim statutes alleged here so that it does not impose 'costs mandated by the state' within the meaning of article XIII B, section 6 and Government Code sections 17514 and 17556.

Related Litigation

California School Boards Association, et al. v. State of California, et al.
Sacramento County Superior Court, Case No. 06CS01335
CSM 06-L-01 ***[Reconsideration of Brown Act Reform, School Accountability Report Cards, and Mandate Reimbursement; Mandate Reimbursement II]***
Date Filed: September 11, 2006

Summary of the Case: On September 13, 2006, the Commission was served with this complaint, which challenges three Commission decisions on reconsideration directed by the Legislature that ended reimbursement on these programs. In addition to the statutes directing the reconsideration of these programs, Assembly Bill 138 was enacted (eff. July 19, 2005) to amend Government Code section 17556, subdivision (f), and expand the exceptions to reimbursement to include activities that are necessary to implement or reasonably within the scope of a voter initiative. Petitioners include the California School Boards Association (CSBA), Education Legal Alliance, County of Fresno, City of Newport Beach, Sweetwater Union High School District, and the County of Los Angeles. The State of California, the Commission, and the State Controller have been sued as respondents and defendants.
Current Status: The court heard the case on January 5, 2007, and took the matter under submission.

Racial Profiling: Law Enforcement Training (K-14), 02-TC-05

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

The Commission determined that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities or a reimbursable state-mandated program on K-14 school districts, within the meaning of article XIII B, section 6 of the California Constitution.

COMMISSION ON STATE MANDATES
STATEMENTS OF DECISION
DENIED TEST CLAIMS

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 47605, subdivision (b)(5)(O) and 47611.5; Government Code section 3540, et seq., Statutes 1999, Chapter 828; Filed on November 29, 1999 By Western Placer Unified School District, Claimant.	Case No.: 99-TC-05 *Charter School Collective Bargaining* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on July 28, 2006*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during two regularly scheduled hearings on May 25, 2006, and July 28, 2006. David Scribner, Scribner Consulting Group, Inc. appeared for and represented Western Placer Unified School District. Eric Premack appeared for Charter Voice at the May 25, 2006 hearing. Susan Geanacou appeared for the Department of 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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 7 to 0.

Summary of Findings

As to the test claim statutes, the Commission finds as follows:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.

- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,[2] charter schools are exempt from most laws governing public education.[3] California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.[4]

The test claim statutes subject charter schools to the Educational Employment Relations Act (EERA) or "Rodda Act."[5] Enacted in 1975, the EERA governs labor relations in California public schools with the stated purpose as follows:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems … by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers …and to afford certificated employees a voice in the formulation of educational policy.[6]

The EERA creates a process for groups of school district employees that share a 'community of interest' to organize and become represented by an employee organization (or union).[7] The EERA also defines the issues that may be negotiated between the school district and the

---

[2] Education Code section 47601 includes these reasons, among others, in the Legislature's intent behind establishing charter schools.

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

[4] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> [as of January 13, 2006].

[5] The EERA is in Education Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

[6] Education Code section 3540

[7] Education Code section 3543.

employee organization,[8] and defines the rules for negotiations,[9] mediation,[10] and dispute of grievances.[11] It also establishes the Public Employment Relations Board (PERB)[12] to administer the EERA and referee labor disputes.

The Test Claim Statutes

Education Code section 47605, subdivision (b)(5)(O)[13] requires each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."

Education Code section 47611.5 was also added by the test claim legislation. Subdivision (b) states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of [the EERA]." Subdivision (f) of section 47611.5 requires, "By March 31, 2000, all existing charter schools …[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter." Subdivision (c) defines the scope of representation to include discipline and dismissal of charter school employees "if the charter … does not specify that it shall comply with those statutes and regulations … that establish and regulate tenure or a merit or civil service system."

The EERA, in Government Code section 3540.1, subdivision (k), as amended by the test claim legislation, defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code*." (Italicized text added by Stats. 1999, ch. 828.)

Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided a related test claim: *Charter Schools*, (CSM-4437).[14] The Commission found that Statutes 1992, chapter 781 (Ed. Code, §§ 47605 & 47607) is a reimbursable state-mandated program on school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its Statement of Decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (Ed. Code, §§ 47605, subds. (j)(1) & (k)(3), 47605.5, 47607, & 47614) impose reimbursable state-mandated

[8] Education Code section 3543.2.

[9] Education Code section 3543.3.

[10] Education Code section 3548. Impasse procedures are also in this section.

[11] Education Code section 3543.

[12] Education Code section 3541.

[13] References herein are to the Education Code unless otherwise indicated.

[14] *Charter Schools* (CSM-4437) Statement of Decision adopted on July 21, 1994; parameters and guidelines adopted on October 18, 1994.

activities on school districts and/or county offices of education activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions. School districts may charge a fee from one to three percent of the charter school's revenue for "supervisorial oversight" of the charter school.[15] This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

The Commission was scheduled to hear the *Charter Schools III* test claim[16] at the April 26, 2006 Commission hearing, but it was continued to the May 25, 2006 hearing. The *Charter Schools III* claim alleges various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools.

Related Commission Decisions on Collective Bargaining/EERA

In the *Collective Bargaining* statement of decision, the Board of Control determined that Statutes 1975, chapter 961 (the EERA) is a reimbursable mandate. Parameters and guidelines were adopted on October 22, 1980, and amended seven times before the decision on the next related claim: *Collective Bargaining Agreement Disclosure* (97-TC-08).

On March 26, 1998, the Commission adopted the decision for the *Collective Bargaining Agreement Disclosure* (97-TC-08) test claim. The Commission found that Government Code section 3547.5 (Stats. 1991, ch. 1213) and CDE Management Advisory 92-01 is a reimbursable mandate for requiring K-14 school districts to publicly disclosing the major provisions of all collective bargaining agreements after negotiations, but before the agreement becomes binding.

The parameters and guidelines for *Collective Bargaining Agreement Disclosure* (97-TC-08) were adopted in August 19, 1998, and consolidated with the *Collective Bargaining* parameters and guidelines. The reimbursable activities in the consolidated parameters and guidelines can be summarized as follows:

1. Determination of appropriate bargaining units for representation and determination of the exclusive representatives:
    a. Unit determination;
    b. Determination of the exclusive representative.
2. Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.
3. Negotiations: reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings,

[15] Education Code section 47613 (former section 47613.7, added by Stats. 1998, ch. 34).

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

providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.

4. Impasse proceedings:

   a. Mediation;

   b. Fact-finding publication of the findings of the fact-finding panel.

5. Collective bargaining agreement disclosure.

6. Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.

7. Unfair labor practice adjudication process and public notice complaints.

In another related decision adopted in December 2005, the *Agency Fee Arrangements* Statement of Decision (CSM 00-TC-17, 01-TC-14), found that a portion of the EERA (Gov. Code, §§ 3543, 3546 & 3546.3, Cal. Code Regs, tit. 8 §§ 34030 & 34055) and its regulations constitute a reimbursable state-mandated program on K-14 school districts for deducting fair share fees and paying the amount to the employee organization, providing the exclusive representative of a public employee with the home address of each member of a bargaining unit, and for filing with PERB a list of names and job titles of persons employed in the unit described in the petition within a specified time.

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. After summarizing the test claim statutes, claimant states their consequence will be "school districts (including county superintendents of schools that sponsor charter schools), or the charter school will incur the cost of collective bargaining, depending upon the election of the charter school."[17] Claimant alleges the following activities:

- On county superintendents of schools, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code section 3540 through 3549 for charter schools granted under the authority of a county board of education when the charter school elects not to be the public school employer. The county board will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding its status as the public school employer. Although this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[18]
- On school districts, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code

[17] Test Claim, page 3.

[18] Test Claim, page 3-4.

sections 3540 through 3549 for charter schools within their districts when the charter school elects not to be the "public school employer" under Section 47611.5. The school district that granted the charter will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding [their] status as the public school employer. Although this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[19]

- In those cases where the charter school declares itself to be the "public school employer" … new reimbursable activities as the "public school employer" required to assume the collective bargaining obligations of Government Code sections 3540 through 3549. In addition to the costs of collective bargaining, an existing charter school is now mandated to amend its charter to include its declaration regarding its status as a "public school employer."[20]

As to the collective bargaining activities, claimant alleges activities "that mirror those already allowed under the Collective Bargaining reimbursement program."[21] Thus, claimant summarizes the activities listed in the *Collective Bargaining* parameter and guidelines listed above.

In comments submitted in July 2000 in response to the Department of Finance, claimant asserts:

> [W]here the charter school elects to be the 'public school employer' it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act.

Claimant agues that charter schools that make this election should be entitled to reimbursement under the current collective bargaining mandate reimbursement program. If, however, the charter school elects not to be the "public school employer' and the school district or the county office of education assume that role, claimant states that reimbursement should occur under the current collective bargaining program by amending the parameters and guidelines "to reflect the additional authority under which this obligation occurs."

Claimant refutes the assumption that charter school employees, for charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur in some cases by agreement of the parties; "however, in most cases the charter schools' employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units." Claimant includes with its comments a copy of Assembly Bill No. 842 (Migden), a bill that was introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant attaches Assembly Bill No. 842 (hereafter AB 842) to show that the legislative intent

---

[19] Test Claim, page 4.

[20] Test Claim, page 4.

[21] Test Claim, page 4, footnote 10.

was not for charter employees to join existing bargaining units. Thus, claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

State Agency Position

In comments submitted in June 2000, the Department of Finance (Finance) states,

> If a charter school elects [not[22]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Finance goes on to comment, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandated costs may be incurred."

No other state agencies submitted comments on the claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[23] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[24] "Its purpose 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."[25] A test claim statute or executive order may impose a reimbursable state-mandated

---

[22] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

[23] Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

> (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[24] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

program if it orders or commands a local agency or school district to engage in an activity or task.[26]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[27]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[28] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[29] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[30]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[31] -

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.[32] 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."[33]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

---

[26] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[27] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[28] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[29] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[30] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

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

[33] *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.

A. Are charter schools eligible claimants?

The test claim statutes include, in addition to the Education Code statutes pled by claimant, Government Code section 3540 et seq., the Educational Employment Relations Act (EERA). Because the Board of Control (the Commission's predecessor) already adjudicated the EERA in the *Collective Bargaining* test claim, as discussed above, this analysis of the EERA only applies to charter schools because the Commission does not have jurisdiction to reconsider the original EERA test claim.

Education Code section 47611.5, subdivision (a), states that the EERA applies to charter schools. Under subdivisions (b) and (f) of this section, as added by the test claim legislation, "all existing charter schools must declare whether or not they shall be deemed a public school employer ..." and must do so by March 31, 2000. Therefore, the first part of the analysis under issue 1 addresses whether these activities are subject to article XIII B, section 6 where the charter school has declared itself to be the public school employer. The second part of the analysis addresses whether these activities are subject to article XIII B, section 6 where the school district is the public school employer.

Charter School as "Public School Employer"

By way of background, charter schools are formed through a petition signed by either (1) at least one-half of the parents of the pupils that the charter school estimates will enroll in the school in its first year of operation; or (2) at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year.[34] Charters are submitted to a school district for approval or denial. The district must approve the charter unless it makes specified written findings regarding defects in the petition, the proposed program, or charter.[35] If the district denies the petition, petitioners can appeal to the county office of education or State Board of Education.[36] In certain situations, petitioners can apply for a charter directly to the county office of education[37] or State Board of Education.[38]

Finance comments, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandates costs may be incurred."

Claimant does not address the issue directly, but states in rebuttal to Finance's comments that if "the charter school elects to be the "public school employer" it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act." [Emphasis in original.]

---

[34] Education Code section 47605, subdivision (a)(1). In the case of an existing public school conversion to a charter school, the petition must be signed by not less than 50 percent of the permanent status teachers currently employed at the school (Ed. Code, § 47605, subd. (a)(2)).

[35] Education Code section 47605, subdivision (b).

[36] Education Code section 47605, subdivision (j).

[37] Education Code sections 47605.5 and 47605.6.

[38] Education Code section 47605.8.

The claimant in this case is a school district. The Commission finds that a school district does not have standing to claim reimbursement for activities alleged to be mandated on charter schools since school districts are not defined to include charter schools.[39] The Legislature has treated charter schools differently from school districts. In addition, as discussed below, the Commission finds that there is not a state mandate subject to article XIII B, section 6 when charter schools are deemed public school employers.

In the *Kern High School Dist.* case,[40] the California Supreme Court considered whether school districts have a right to reimbursement for costs in complying with statutory notice and agenda requirements for various education-related programs that are funded by the state and federal government. The court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. As the court stated, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."[41]

In this case, the charter school is *voluntarily* participating in the charter program at issue. Because charter schools are initiated by petition of either parents or teachers, they are created voluntarily. No state mandate requires them to exist. Rather, the charter is more in the nature of a contract than a state-imposed mandate. Consequently, based on the reasoning in the *Kern* case regarding voluntary participation, charters schools are not entitled to reimbursement under article XIII B, section 6.

Moreover, a charter school that elects to be the "public school employer" would be voluntarily subjecting itself to the provisions of the EERA. Section 47611.5 of the test claim statutes states:

> (b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. [¶]…[¶]
> (f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

Based on the Supreme Court's reasoning discussed above regarding voluntary participation, charter schools are not entitled to reimbursement under article XIII B, section 6.

Government Code section 17519 defines "school district" for purposes of mandate reimbursement, as "any school district, community college district, or county superintendent of schools." Thus, in addition to the reasons discussed above, charter schools are not eligible for reimbursement because they are not included in this definition.

---

[39] Government Code section 17519 defines 'school districts' for purposes of article XIII B, section 6. As to standing, Cf. *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 334-335.

[40] *Kern High School Dist., supra,* 30 Cal.4th 727.

[41] *Id.* at page 743. Emphasis in original.

The Education Code treats charter schools as school districts for some purposes, such as special education,[42] collective bargaining,[43] and apportionment of funds.[44] And charter schools are deemed school districts for purposes of "Sections 8 and 8.5 of Article XVI of the California Constitution [Proposition 98 school funding.]"[45]

These examples, however, underscore that charter schools are not treated as school districts for purposes of mandate reimbursement under article XIII B, section 6. Charter schools are not mentioned in the mandates statutes (Gov. Code, § 17500 et seq.), nor are they considered "school districts" for purposes of mandate reimbursement in the charter school statutes (Ed. Code, § 47600 et seq.). And as mentioned above, except as otherwise specified, charter schools are "exempt from the laws governing school districts."[46] This exemption includes the mandate reimbursement statutes (Gov. Code, § 17500 et seq.).

Charter schools were established in 1992 (Stats. 1992, ch. 781), long after the Commission's statutory scheme was enacted in 1984. Yet in spite of recent amendments to article XIII B, section 6,[47] as well as both the mandates and charter school statutory schemes,[48] the Legislature has not amended either scheme to make charter schools eligible claimants. Because the definition of "school district" in Government Code section 17519 does not include charter schools, they cannot be read into that definition. The Commission, like a court, may not add to or alter the statutory language to accomplish a purpose that does not appear on the face of the statute or from its legislative history, where the language is clear.[49]

As the California Supreme Court has stated, "Where a statute, with reference to one subject [whether school districts includes charter schools] contains a given provision, the omission of such provision from a similar statute concerning a related subject … is significant to show that a different intention existed."[50] Thus, that the Legislature deemed a "charter school" to be a school district for some purposes (such as special education for example) cannot be interpreted to mean that a "charter school" should be deemed a school district for other purposes, such as

---

[42] Education Code section 47604 et seq.

[43] Education Code section 47611.5.

[44] Education Code sections 47612, subdivision (c), 47650 and 47651.

[45] Education Code sections 47612, subdivision (c).

[46] Education Code section 47610.

[47] In November 2004, Proposition 1A was enacted to amend article XIII B, section 6, so that school district mandates are treated differently for purposes of mandate suspension, as well as mandates that "provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee … or … local government employee organization." (Cal. Const., art. XIII B, § 6, subds. (b)(4) & (b)(5).)

[48] For charter schools, in addition to the test claim statutes, see e.g., Statutes 2003, chapter 892. For the Commission, see e.g., Statutes 2004, chapter 890, Statutes 2002, chapter 1124, and Statutes 1999, chapter 643.

[49] *In Re. Jennings* (2004) 34 Cal. 4th 254, 265.

[50] *Id.* at page 273.

mandate reimbursement. The omission of "charter school" from the definition of school districts in Government Code section 17519 is significant to show a different intention: that charter schools are not eligible for mandate reimbursement.

Therefore, the Commission finds that charter schools are not eligible claimants for purposes of article XIII B, section 6 of the California Constitution, nor are they eligible claimants for purposes of this test claim.

Based on this analysis, the Commission finds that the requirement for the charter school to be subject to the EERA, as well as the charter school's charter to declare whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.

B. School district activities

School District or County Superintendent of Schools as "Public School Employer"

Education Code section 47611.5, subdivision (b), states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 … [the EERA]." Since the Legislature has made the school district the default public school employer if the charter school elects not to be the employer, the issue is whether doing so triggers mandated school district activities under article XIII B, section 6.

Claimant alleges the activities that mirror those listed in the *Collective Bargaining* parameters and guidelines are reimbursable for charter school employees: determination of appropriate bargaining units, elections and decertification of elections, negotiations, impasse proceedings, collective bargaining agreement disclosure, contract administration and adjudication of contract disputes, and unfair labor practice adjudication process and public notice complaints.

The Commission finds that the test claim statutes impose EERA (collective bargaining) activities on school districts (or county superintendents that act as school districts[51]) for charter schools. Therefore, the Commission finds that the test claim legislation is subject to article XIII B, section 6 when the school district acts as the public school employer, (for purposes of the EERA) for charter school employees.[52]

---

[51] Education Code section 35160.2 states, "For the purposes of Section 35160, [regarding the authority of school districts] "school district" shall include county superintendents of schools and county boards of education."

[52] On page 4 of the test claim, in footnote 9, claimant states the "school district that granted a charter will incur additional costs … to conduct a hearing for the material change in an existing … charter … to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (CSM 4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

Claimant alleges, as to county superintendents of schools, a higher level of service as the public school employer that is required to assume the collective bargaining obligations of Government Code sections 3540 through 3549 for charter schools granted under the authority of a county board of education when the charter school elects not to be the public school employer.

Although a county board of education may grant a charter petition,[53] and may be a 'public school employer,'[54] the test claim statute does not expressly apply to county boards of education. There is no provision under section 47611.5 for a county board to be assigned the public school employer role. According to section 47611.5, subdivision (b), either the charter school elects to be the public school employer, or the school district becomes so by default. Therefore, the Commission finds that claimant's alleged activity for county boards of education is not a mandate subject to article XIII B, section 6.[55]

Findings on denial

Claimant pleads section 47605, subdivision (b)(5) which requires written findings when denying a charter petition. In subparagraph (O), the findings must state, when applicable, that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]."

Although this statute merely describes a provision that the charter must contain, it also requires school districts to make a written finding when denying a charter for lack of this public school employer declaration. Although preexisting law required written findings on denial, the plain language of section 47605, subdivision (b)(5)(O) adds the lack of a public school employer designation as another potential reason for denying a charter petition. Therefore, as a requirement imposed on school districts when making applicable findings, the Commission finds that section 47605, subdivision (b)(5)(O) is subject to article XIII B, section 6.

Although in the *Charter Schools III* test claim (99-TC-14), the claimant pled that the activity of making written findings on denial of a charter is reimbursable, the statutes pled in that claim did not contain the public school employer declaration requirement of subdivision (b)(5)(O). Thus, the Commission finds that it has jurisdiction over this test claim statute, because subdivision (b)(5)(O) was not pled in the *Charter Schools III* test claim.

---

[53] Education Code sections 47605, subdivision (j)(1), 47605.5 and 47605.6.

[54] Government Code section 3540.1, subdivision (k).

[55] On page 4 of the test claim, in footnote 8, claimant states that the "county board of education … will incur additional costs of having to conduct a hearing for the material change in an existing … charter in order to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement for school districts (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

C. Does the test claim legislation constitute a "program" within the meaning of article XIII B, section 6?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. [56] Only one of these findings is necessary to trigger article XIII B, section 6.[57]

Of the activities discussed above, only the following that are subject to article XIII B, section 6 are now under consideration:

- Subjecting school districts to the EERA (collective bargaining, Gov. Code, § 3540 et seq.) for charter school employees (Ed. Code, § 47611.5) when the district assumes the role of public school employer.
- Including in written findings when denying a charter petition that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

The Commission finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6. Although courts have generally held that mandates that affect employee benefits do not constitute a program within the meaning of article XIII B, section 6,[58] the EERA transcends ordinary employee rights or benefits.

For example, Government Code section 3540 specifically declares the EERA's legislative intent: "It is the purpose of this chapter to … afford certificated employees *a voice in the formation of educational policy.*" [Emphasis added.] Moreover, Government Code section 3543.2 of the EERA includes the following: "[T]he exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of

---

[56] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[57] *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

[58] In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, the court held that legislation affording local agency employees the same increased level of workers' compensation benefits to employees in private organizations was not a program. Likewise, in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, the court held that legislation requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system was not a program. Also, the court in *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a program. And in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, the California Supreme Court determined that providing unemployment compensation protection to a city's employees was not a service to the public.

courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law."[59]

The courts have held that although numerous private schools exist, education is a peculiarly governmental function and public education is administered by local agencies to provide a service to the public.[60] Thus, because the test claim statutes affect the educational policy of school districts that are public school employers as to their charter school(s), the Commission finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?

To determine whether the "program" is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before enacting the test claim legislation.[61] And the test claim legislation must increase the level of governmental service provided to the public.[62] Each activity is discussed separately.

EERA

The issue is whether subjecting charter schools to the EERA for charter school employees creates any new school district activities, thereby imposing a new program or higher level of service on school districts. The Commission finds that it does not.

Finance, in its June 2000 comments on the test claim, states,

> If a charter school elects [not[63]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Claimant, in response to Finance's comments, states that Finance seems to argue that "if the charter school elects not to be the "public school employer" that the school district and/or county office of education will not assume any additional state mandated costs." Clamant assumes that Finance takes the position that these costs would be covered by the current collective bargaining reimbursement program. According to claimant:

---

[59] In addition to certificated employees, the EERA also applies to classified employees. (Gov. Code, § 3540.1 subd. (e)).

[60] *Long Beach Unified School Dist.* (1990) 225 Cal.App.3d 155, 172.

[61] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[62] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[63] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

> [I]n those instances where a charter school elects not to be the 'public school employer' and the school district or the county office of education assumes this responsibility that the costs for collective bargaining can be covered under the current collective bargaining mandated reimbursement program. However, the parameters and guidelines for the collective bargaining reimbursement program would have to be amended to reflect the additional authority under which this obligation occurs."

Claimant goes on to refute the assumption that employees of charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur in some cases by agreement of the parties; "however, in most cases the charter schools' employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units. Claimant includes with its comments a copy of AB 842 (Migden), a bill introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant includes AB 842, apparently attempting to show that the legislative intent was not for charter employees to join existing bargaining units. Claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

The Commission disagrees. Other than claimant's assertions[64] and AB 842 (which was not enacted), claimant provides no evidence or legal authority that charter school employees, in a school district where the charter school is not the public school employer, would not join established collective bargaining units. Rather, the statutory scheme authorizes the new employees to join the established units[65] so that the school district is not required to engage in new activities with regards to the new charter school employees.

As to claimant's assertions regarding AB 842, where the Legislature simultaneously enacts a bill and rejects another, there is inference of legislative intent.[66] The legislative intent of AB 842, however, does not reveal whether charter school employees join existing bargaining units. It merely demonstrates that the Legislature did not enact AB 842 to force them to do so. Thus, legislative rejection of AB 842 sheds little light on the issue of whether charter school employees join existing bargaining units.

Therefore, the Commission finds that subjecting charter schools to the EERA for charter school employees does not create any new activities – and therefore is not a new program or higher level of service - for school districts.

---

[64] As to claimant's assertions, statements of fact are to be accompanied by a declaration under penalty of perjury (Cal. Code Regs, tit. 2, § 1183.03, subd. (d)). The record contains no such claimant declaration in its comments in response to Finance, or in any comments on the issue of charter school employees joining existing bargaining units when the school district is the public school employer.

[65] Education Code section 47611.5.

[66] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3rd 1379, 1396.

Findings on Denial

The next issue is whether the following is a new program or higher level of service on school districts: including in written findings when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Preexisting law (Stats. 1998, ch. 34) requires the school district to make written findings of fact, as specified, to support denying a charter petition. Preexisting law did not, however, specify the lack of a public school employer declaration as one of the possible findings. Therefore, the Commission finds that it is a new program or higher level of service for a school district to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).) Because this is now the sole activity that constitutes a new program or higher level of service under this test claim, it alone is considered below.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[67] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

With its test claim, claimant files a declaration from the Western Placer Unified School District that it "will/has incurred significantly more than $200[68] to implement these new duties mandated by the state for which Western Placer Unified School District has not be [sic] reimbursed…" The new duties for which it claims to have incurred costs, however, do not include making findings to deny a charter petition for lack of declaration as to the public school employer for purposes of the EERA (Ed. Code, § 47605, subd. (b)(5)(O)). Thus, there is no evidence in the record that the claimant has or will incur the cost of making this written finding.

The Commission must base its findings on substantial evidence in the record.[69]

---

[67] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[68] The current requirement is $1000 in costs (Gov. Code, § 17564, as amended by Stats. 2004, ch. 890).

[69] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515. Government Code section 17559, subdivision (b).

> …[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[70]

The Commission's finding must be supported by:

> …all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."[71]

The administrative record, including claimant's declaration, does not indicate that there are costs for making written findings on denial for lack of a declaration in the charter as to the public school employer. Therefore, because of this lack of evidence in the record, the Commission finds that test claim statute (Ed. Code, § 47605, subd. (b)(5)(O)) does not impose increased "costs mandated by the state" on school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

CONCLUSION

For the reasons indicated above the Commission finds that, as to the test claim statutes:

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

[70] *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

[71] *Ibid.*

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR COMMISSION DECISION ON: Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459 Claim Nos. CSM 4204 & 4485 Directed by Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138) Effective July 1, 2006	No. 05-RL-4204-02 (CSM 4204 & 4485) *Mandate Reimbursement Process* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on May 25, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 25, 2006. Abe Hajela appeared on behalf of School Innovations and Advocacy, representing, ACSA, CASBO, San Francisco, Palos Verdes, Pomona, and St. Helena Unified School Districts, and San Bernardino and San Diego County Offices of Education. Allan Burdick and Juliana Gmur, Maximus, appeared on behalf of the City of Newport Beach. Leonard Kaye appeared on behalf of the County of Los Angeles. David Scribner, Scribner Consulting Group, Inc., appeared on behalf of the Grant Joint Union High School District. Susan Geanacou appeared on behalf of the Department of 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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 4 to 3.

Summary of Findings

The Commission finds that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution.

The Commission also finds that, effective July 1, 2006, Statutes 1984, chapter 1459 does not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Mandate Reimbursement Process* Statement of Decision (Nos. 4204 & 4485) and parameters and guidelines.

Therefore, the Commission hereby denies the *Mandate Reimbursement Process* test claim, (Nos. 4204 & 4485), effective July 1, 2006.

BACKGROUND

Statutes 2005, chapter 72, section 17 (AB 138) directs the Commission to reconsider whether the *Mandate Reimbursement Process* mandate constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, as follows:

> (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202[72] on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006.

The Test Claim Statutes

Statutes 1975, chapter 486 and Statutes 1984, chapter 1459 established the reimbursement process for state mandated programs. Chapter 486 was enacted four years before article XIII B, section 6, much of which was based on the provisions in the Revenue and Taxation Code.[73] Chapter 1459, on the other hand, is a legislative implementation of article XIII B, section 6.[74] Chapter 486 established the reimbursement process before the Board of Control (Rev. & Tax Code, § 2240 et seq.), while chapter 1459 established the reimbursement process before the Commission on State Mandates (Gov. Code, § 17500 et seq.). Government Code section 17500, until amended by Statutes 2004, chapter 890, made it clear that the legislature's purpose was "to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution."

---

[72] Although the actual numbers for this claim are CSM 4204 and 4485, the legislative intent of this section is evident because the bill contains the name of the program and the citation to Statutes 1975, chapter 486, and Statutes 1984, chapter 1459.

[73] A number of former Revenue and Taxation Code sections predate article XIII B, section 6 and even the 1975 test claim statute: for example, those added or amended by Statutes 1972, chapter 1406, Statutes 1973, chapter 358, and Statutes 1974, chapter 457.

[74] Government Code section 17500 et seq. is the legislative implementation of article XIII B, section 6. *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal. App. 4th 976, 984.

Chapter 486 added articles 3 and 3.5 to Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code. Section 2250 in chapter 3.5 states:

> The State Board of Control, pursuant to the provisions of this article, shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for all costs mandated by the state as required by Section 2229, 2230 or 2231 and by Article 3 (commencing with Section 2240).

Similarly, chapter 1459,[75] requires the Commission to hear and decide claims, and provides the "sole and exclusive procedure" by which local agencies or school districts may claim reimbursement.[76]

Commission Statement of Decision and Parameters and Guidelines

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that the test claim statutes impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines,[77] determining that the following activities are reimbursable:

> A. Scope of the Mandate
>
> Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.
>
> B. Reimbursable Activities—Test Claims
>
> All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.
>
> Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

[75] Government Code sections 17550 and 17551.

[76] Government Code section 17552.

[77] See pages 229-230 of the Administrative Record.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

The phrase, "including court responses, if an adverse Commission ruling is later reversed" under heading "B" above was amended out in March 1987 and replaced with "including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order." (See Administrative Record, p. 229).

In addition to this March 1987 amendment, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims.[78] Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997),[79] 1997 (amended Sept. 1997),[80] 1998 (amended Oct. 1998),[81] 1999 (amended Sept. 1999),[82] 2000 (amended Sept. 2000),[83] 2001 (amended Oct. 2001),[84] 2002 (amended Feb. 2003),[85] 2003 (amended Sept. 2003),[86] 2004 (amended Dec. 2004),[87] and 2005 (amended Sept. 2005).[88] In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

---

[78] Administrative Record, page 295 et seq. (especially pp. 302-303).

[79] Administrative Record, pages 355-426, especially page 425.

[80] Administrative Record, pages 427-473.

[81] Administrative Record, pages 477-551. This amendment also removed the cap on claims for legal costs, so that those costs would be claimed under the contracted services provision.

[82] Administrative Record, pages 569-678. This amendment also updated text to conform with 1998 amendments to the Commission's statutory scheme, updated parameters and guidelines text, and included reimbursement for participation in Commission workshops.

[83] Administrative Record, pages 679-736.

[84] Administrative Record, pages 737-763.

[85] Administrative Record, pages 781-904.

[86] Administrative Record, pages 905-986.

[87] Administrative Record, pages 987-1044.

[88] Administrative Record, pages 1045-1106.

State Agency Position

No state agencies submitted comments on this reconsideration. The comments of the state parties in the original test claim are in the Administrative Record (pp. 29-32 & 127-130).

Local Entity Positions

County of Los Angeles

The County of Los Angeles, ("Los Angeles") in comments submitted December 22, 2005, argues that section 6 of article XIII B of the California Constitution does not prohibit reimbursing claiming costs for allowable state mandated programs, and states it is "the only way that the State has established to meet its constitutional obligation to local governments." Los Angeles also reiterates the County of Fresno's ("Fresno" the original claimant) argument that the state has chosen, from other alternatives, a costly claiming procedure for meeting its obligation under article XIII B, section 6 thereby making the preparation and processing of claims a mandate on the state and local government. Los Angeles repeats the findings in the original statement of decision, as well as Fresno's arguments that the claims reimbursement process is not a voluntary one. Los Angeles quotes from *San Diego Unified School Dist .v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876 to point out that mandate reimbursement processing required under the test claim legislation is a mandatory program, and that no federal law is implicated. Los Angeles also asserts that the mandate reimbursement process ("MRP") is an administrative one that must be exhausted before litigation, and that the original SB 90 legislation was a state-local partnership. According to Los Angeles, if reimbursement is excluded for the MRP, the original intent of SB 90 is violated because local agencies are no longer protected from state mandates. Finally, Los Angeles cites *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, which states "Unsupported legislative disclaimers are insufficient to defeat reimbursement" and "The Legislature cannot limit a constitutional right." Los Angeles attaches a declaration that, among other things, claiming costs are well in excess of $1000 annually.

City of Newport Beach

On December 23, 2005, the City of Newport Beach ("Newport Beach") also filed comments, the gist of which is that "the activities of the MRP program were properly found by the Commission to be reimbursable state-mandated activities within the meaning of Article XIII B, section 6, of the California Constitution and the recent case law does nothing to disturb that initial decision."

As to the argument that the mandate reimbursement process predated 1975, Newport Beach asserts that the claiming process is far more complex and involves far more resources than is described in former Revenue and Taxation Code section 2164.3. Further, Newport Beach states that MRP is part and parcel of each individual state-mandated program, and the new program or higher level of service at issue can be found in the compliance with the new claiming instructions. Thus, the date that the underlying program is established is also the date the MRP portion of that program is established, so the MRP mandate is not the result of a statute enacted before 1975. As to whether the MRP is "reasonably within the scope" of an initiative (Proposition 4, which established article XIII B , section 6) Newport Beach cites the history of Propositions 13 and 4, concluding that the MRP process "is not necessary to implement, nor is even conceivably within the scope of duties necessary to implement the constitutional provisions enacted by the people." Newport Beach also notes that the present claiming instructions consist

of 633 pages of forms and instructions for local governments to claim reimbursement, alleging that "… the administrative process was not adopted by the people with the passage of Proposition 9 [sic] which enacted Article XIIIB, Section 6. … The people of the State of California did not envision this sort of process when it enacted Article XIIIB, section 6."

Newport Beach also states that the MRP program is not voluntary. After discussing *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859 and *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, Newport Beach distinguishes *City of Merced* and states, "Once the state embarked on creating the administrative process currently in place, the claimants are bound to follow it – failure to do so results in a loss of the constitutionally guaranteed reimbursement."

In comments on the draft staff analysis submitted March 17, 2006, Newport Beach again cites the *San Diego Unified School Dist.* case, arguing that the essence of its direction is to "look to the intention of the Legislature and the voters before applying a rule of law to ensure that the intent is not thwarted." According to Newport Beach, the proposed application of Government Code section 17556, subdivision (f), in the draft staff analysis "impermissibly limits local government's constitutional right to reimbursement" and "interferes with local government contracts for the provision of services attendant to MRP… [which is] barred by the Contracts Clause of the U.S. Constitution." Newport Beach also asserts that staff's application of Government Code section 17556, subdivision (f) violates the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. Newport Beach alleges that the Legislature's enactment of AB 138 circumvents the law by causing a review of a decision two decades later, which review is barred by res judicata and collateral estoppel. Thus, Newport Beach contends that the proper challenge to the original MRP decision was by writ of mandate, which was never filed.

Grant Joint Union High School District

On March 10, 2006, the Grant Joint Union High School District ("Grant") submitted comments on the draft staff analysis. Grant argues that the draft staff analysis' conclusion fails to strictly construe article XIII B, section 6, is not supported by the plain meaning rule, and fails to meet the intent behind the enactment of Proposition 4. Grant's comments review the history of Proposition 4, emphasizing language in the voter pamphlet that the measure "will not allow the state government to force programs on local governments without the state paying for them." According to Grant, article XIII B, section 6 and the Proposition 4 ballot pamphlet address the activities the state must perform regarding subvention for mandates, and are silent as to activities the local government must perform. Thus, Grant argues that only the sections in the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that impose activities on the state, not local government, are necessary to implement and reasonably within the scope of article XIII B, section 6. Grant also argues that the portions of Government Code section 17500 et seq. that impose on local government any part of the state's burden to provide a subvention of funds exceeds the voters' mandate to the state and article XIII B, section 6.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[89] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[90] "Its purpose 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."[91] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[92]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[93]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[94] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test

---

[89] Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

> (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[90] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

[92] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[93] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[94] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

claim legislation.[95] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[96]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[97] -

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.[98] 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."[99]

Issue 1: Commission jurisdiction and effective date of decision.

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission's jurisdiction in this case is based solely on Statutes 2005, chapter 72, the reconsideration statute. Absent this statute, the Commission would have no jurisdiction to review and reconsider its decision on MRP since the decision was adopted and issued well over 30 days ago.[100]

Thus, the Commission must act within the jurisdiction granted by Statutes 2005, chapter 72, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[101] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Statutes 2005, chapter 72 and review this test claim "in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted."

Section 17 of chapter 72 of Statutes 2005, as cited above, includes the following: "Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006." Local agencies and school districts have incurred costs in preparing claims that are currently pending before the Commission. Thus, in order to avoid retroactive application of

---

[95] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[96] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

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

[99] *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.

[100] Government Code section 17559.

[101] *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

the statute,[102] the Commission finds that this decision on reconsideration applies to any costs incurred pursuant to Statutes 1984, chapter 1459, on or after July 1, 2006.

In comments on the draft staff analysis, Newport Beach argues that the test claim statute violates principles of res judicata and collateral estoppel. Newport Beach states, "The Legislature, acting through A.B. 138 seeks to interject itself into the Commission process well after the process has resolved an issue. … And in so doing, the Legislature circumvents the law and does what no party to the test claim can do – cause a review of a decision two decades later."

The Commission disagrees. Although res judicata and collateral estoppel are jurisdictional issues that would, if found, prohibit a court or agency from rehearing a matter or issue, they do not apply here. One court explained these concepts as follows:

> The doctrine of res judicata is composed of two parts: claim preclusion and issue preclusion. Claim preclusion prohibits a party from relitigating a previously adjudicated cause of action; thus, a new lawsuit on the same cause of action is entirely barred. [Citations omitted.] Issue preclusion, or collateral estoppel, applies to a subsequent suit between the parties on a different cause of action. Collateral estoppel prevents the parties from relitigating any *issue* which was actually litigated and finally decided in the earlier action. [Citations omitted.] The issue decided in the earlier proceeding must be identical to the one presented in the subsequent action. If there is any doubt, collateral estoppel will not apply.[103]

Res judicata and collateral estoppel do not apply to this reconsideration. First, the issues in the prior test claim are not identical with those in this reconsideration. The issue in this reconsideration that did not exist in the original test claim is whether the claim is reimbursable "in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted." The Commission's decision in this claim is prospective only, and because the issues here involve law enacted subsequent to the original claim (an issue the original claim could not have addressed) the issues are not identical to those in the original decision. Specifically, this case considers the 2005 amendment to Government Code section 17556, subdivision (f), which is discussed below. There is nothing to prevent the Legislature from directing the Commission to prospectively reconsider a prior decision.

Not limited to a prospective statute, the Legislature can also enact a retroactive statute to supersede or modify res judicata. For example, in *Mueller v. Walker*,[104] the court awarded the husband his military pension benefits as his separate property in the divorce judgment, in accordance with a 1981 U.S. Supreme Court case. The Legislature, reacting to a time gap in federal law (between the case and a superseding federal statute) regarding distribution of military retirement benefits, enacted Civil Code section 5124 (eff. Jan. 1, 1984). This statute retroactively allows court modification of a community property settlement, judgment or decree, to include military retirement benefits. The husband argued that the California statue was unconstitutional or did not apply. The court disagreed, finding that:

---

[102] *McClung v. Employment Development Department* (2004) 34 Cal. 4th 467, 475.

[103] *Flynn v. Gorton* (1989) 207 Cal.App. 3d 1550, 1554.

[104] *Mueller v. Walker* (1985) 167 Cal.App. 3d 600, 607.

> [B]y positive act the Legislature has superseded and modified the preclusive effect of the doctrine of res judicata or collateral estoppel as applied to military retirement benefits in decrees or judgments or settlements which became final in the specified time frame. [¶]…[¶] Thus, the Legislature may modify the doctrine of res judicata, allow relitigation, for reasonable public policy grounds or other "rational bas[es]s. [Citations omitted.][105]

Although the statute at issue in the case is not retroactive as was the statute at issue in *Mueller*, the principle that the Legislature can supersede or modify res judicata applies to this reconsideration just as it did in *Mueller*. Therefore, the Commission has jurisdiction, based on Statutes 2005, chapter 72 (AB 138), to review this test claim.

Issue 2: Do the test claim statutes impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[106] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The test claim statutes in the former Revenue and Taxation Code sections (enacted by Stats. 1975, ch. 486) were repealed by Statutes 1986, chapter 879, so the Commission finds that they are not subject to article XIII B, section 6 of the California Constitution.

As to the other test claim statute, Statutes 1984, chapter 1459, the issue is whether Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, AB 138, eff. Jul.19.2005.), applies to it, which states:

> 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: [¶]…[¶]
>
> (f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

---

[105] *Id.* at page 607. Another court said that the Legislature may do this because res judicata and collateral estoppel are not generally considered constitutional rules. *People v. Carmony* (2002) 99 Cal.App.4th 317, 325-326.

[106] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

The Commission finds that this section applies to Statutes 1984, chapter 1459; and thus, the test claim legislation does not impose 'costs mandated by the state' within the meaning of Government Code section 17556.

Article XIII B, section 6 is a Constitutional initiative enacted in 1979 by Proposition 4. In interpreting the Constitution and Government Code section 17556, subdivision (f), it is important to remember the following:

> In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: … [A]ll intendments favor the exercise of the Legislature's plenary authority: If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.[107]

And one court called Government Code section 17556 a legislative interpretation of section 6.[108]

Government Code section 17500 et seq. (Stats. 1984, ch. 1459, an original test claim statute) was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent "in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution." Thus, Statutes 1984, chapter 1459 meets the standard of section 17556, subdivision (f), in that it is "necessary to implement [and] reasonably within the scope of" article XIII B, section 6.

Newport Beach argues that the mandate reimbursement process "is not necessary to implement, nor is even conceivably within the scope of duties necessary to implement the constitutional provisions enacted by the people." Citing that the present claiming instructions consist of 633 pages of forms and instructions, Newport Beach states, "the administrative process was not adopted by the people with the passage of Proposition 9 [sic] which enacted Article XIIIB, Section 6. … The people of the State of California did not envision this sort of process when it enacted Article XIIIB, section 6."

The Commission disagrees. The voters who adopted Proposition 4 are deemed aware of the prior administrative process in the Revenue and Taxation Code (former § 2201 et seq.) that directed reimbursement claims.[109] A reimbursement process was in place from after 1972, when S.B. 90 was adopted (Stats. 1972, ch. 1406) until 1986, when the Revenue and Taxation Code statutory scheme was repealed (Stats. 1986, ch. 879). In fact, the California Supreme Court recently stated that former Revenue and Taxation Code sections 2231 and 2207 "apparently had served as the model for the constitutional provision."[110] In 1990, the same court said, "the

---

[107] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 180.

[108] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 984.

[109] *In re Harris* (1989) 49 Cal. 3d 131, 136. According to *Williams v. County of San Joaquin* (1990) 225 Cal. App. 3d 1326, 1332, the Legislature and electorate "are conclusively presumed to have enacted the new laws in light of existing laws that have a direct bearing on them."

[110] *Kern High School Dist., supra,* 30 Cal.4th 727, 738.

procedures [after repeal of Rev. & Tax Code, § 2201 et seq.] for administrative and judicial determination of subvention disputes remain functionally similar."[111] Thus, whatever alternatives the Legislature had when enacting the test claim statutes are irrelevant, so long as the statutes fall within Government Code section 17556, subdivision (f): they are "necessary to implement [or] reasonably within the scope of" the Constitutional initiative that includes article XIII B, section 6.

Newport Beach also contends that Government Code section 17556, subdivision (f), is unconstitutional because it impermissibly limits local reimbursement and violates the contracts clause and due process clause of the Fourteenth Amendment. The Commission cannot find section 17556, subdivision (f) unconstitutional because article III, section 3.5 of the California Constitution prohibits a state agency from doing so. Thus, the Commission must follow Government Code section 17556, subdivision (f) as it stands.

As summarized above, Grant's comments emphasize language in the Proposition 4 voter pamphlet that the measure "will not allow the state government to force programs on local governments without the state paying for them." According to Grant, the conclusion that the test claim statute meets the standard of Government Code section 17556, subdivision (f), fails to strictly construe the Constitution. Grant argues that because article XIII B, section 6 and the Proposition 4 ballot pamphlet address the activities the state must perform regarding subvention for mandates, and are silent as to activities the local government must perform, the only sections of the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that impose activities on the state, and not local government, are necessary to implement and reasonably within the scope of article XIII B, section 6. Grant states that to hold otherwise fails to strictly construe article XIII B, section 6 and violates the plain meaning rule. Grant also argues that the portions of Government Code section 17500 et seq. that impose on local government any part of the state's burden to provide a subvention of funds exceeds the voters' mandate to the state and article XIII B, section 6.

The Commission disagrees. First, Grant misconstrues strict construction. "The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on **legislative powers** are not to be extended to include matters not covered by the language used."[112] Thus, since the process by which mandate reimbursement or subvention occurs is not expressly stated in article XIII B, section 6, strict construction of section 6 cannot restrict the "legislative powers" to enact Government Code section 17500 et seq. to implement the constitutional provision. These powers include enacting and amending Government Code section 17556, subdivision (f) that excludes from reimbursement a "statute … [that] imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election." As one appellate court has said, section 17556 is a legislative interpretation of article XIII B, section 6.[113]

---

[111] *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 62, fn. 5.

[112] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 985. [Emphasis added.]

[113] *Id.* at page 984.

Prior to Proposition 4's adoption in 1979, former Revenue and Taxation Code section 2253.2, subdivision (b)(4) prohibited the Board of Control from considering any claim if "The chaptered bill imposed duties which were expressly approved by a majority of the voters of the state through the initiative process." (Stats. 1977, ch. 1135). As preexisting law, the voters were presumed to know of this restriction and presumed to have enacted Proposition 4 in light of it.[114] This reimbursement restriction was made part of Government Code section 17556 by Statutes 1984, chapter 1489, and was amended into its current form by Statutes 2005, chapter 72. Thus, the voters intended to exclude voter initiatives from reimbursement when enacting Proposition 4 because of the presumption of voter awareness of the preexisting statutory scheme.[115] It is not within the Commission's power to ignore section 17556, as amended.[116]

As to Grant's attempt to restrict Government Code section 17500 et seq., by saying that section 17556, subdivision (f)'s language only applies to sections in the statutory scheme that impose requirements on the state, the Commission disagrees. The Legislature makes no such distinction, as section 17500 states:

> The Legislature finds and declares that … it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. It is the intent of the Legislature in enacting **this part** [Part 7 of Division 4 of Title 2 of the Government Code] to provide for the implementation of Section 6 of Article XIII B of the California Constitution. [Emphasis added.]

As declared by the Legislature, the entire process in part 4 (Gov. Code, § 17500 et seq.) is necessary to implement the constitutional provision enacted by Proposition 4, not merely those sections that impose requirements on the state. The California Supreme Court has said, "The administrative procedures established by the Legislature … are the exclusive means by which the state's obligations under section 6 [of article XIII B] are to be determined and enforced."[117] These procedures include section 17556, subdivision (f)'s exclusion from reimbursement those "duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide … election [Proposition 4, in this case]."

Inasmuch as Statutes 1984, chapter 1459 was enacted to implement the Constitutional initiative known as Proposition 4 that enacted article XIII B, section 6, as the Legislature expressly states in Government Code section 17500, the Commission finds that section 17556, subdivision (f), applies to this claim.

Therefore, the Commission finds that Statutes 1984, chapter 1459 does not impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

---

[114] *In re Harris, surpa,* 49 Cal. 3d 131, 136.

[115] *Ibid. Williams v. County of San Joaquin, supra,* 225 Cal. App. 3d 1326, 1332.

[116] California Constitution, article III, section 3.5.

[117] *Kinlaw v. State of California, supra,* 54 Cal.3d 326, 328.

CONCLUSION

The Commission finds that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution.

The Commission also finds that effective July 1, 2006, Statutes 1984, chapter 1459 does not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Mandate Reimbursement Process* Statement of Decision (Nos. 4204 & 4485) and parameters and guidelines.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Statutes 2004, Chapter 890 (AB 2856); Government Code Sections 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005) Filed on September 27, 2005 By City of Newport Beach, Claimant.	Case No.: 05-TC-05 *Mandate Reimbursement Process II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on October 4, 2006*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Juliana Gmur and Glen Everroad appeared for and represented claimant City of Newport Beach. Susan Geanacou and Carla Castañeda appeared for the Department of 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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of four to one, with one abstention.

Summary of Findings

The Commission finds that the test claim statutes and executive orders do not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Background

The Test Claim Statutes and Executive Orders

Statutes 2004, chapter 890 amended the Government Code statutes that establish the process for seeking reimbursement for state-mandated costs under article XIII B, section 6. Although many code sections were amended by chapter 890, the claimant pled only Government Code sections 17553, 17557, and 17564, as well as California Code of Regulations, title 2, sections 1183 and 1183.13, regarding filing test claims and adopting parameters and guidelines.

Government Code section 17553 was amended by the test claim statute to incorporate the test claim filing requirements, so that a test claim filing must include the following:

- A detailed description of costs that arise from or are modified by the mandate.

- The actual increased costs incurred by the claimant during the fiscal year for which the test claim was filed.
- The actual or estimated annual costs that will be incurred to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- Identification of federal, state, and local funds dedicated for the alleged mandate.
- Declarations supporting actual or estimated costs that will be incurred, and declarations identifying all funds that will be used to offset the cost of the program.

Claimant also pled California Code of Regulations, title 2, section 1183, which was amended effective September 6, 2005, to remove most of the specific requirements for a test claim filing, which requirements were placed, in addition to others, into Government Code section 17553 by the test claim statute. Subdivision (d) of section 1183 now states, "All test claims, or amendments thereto … shall contain all of the elements and supplemental documents required by the form and statute."

The test claim statute also amended Government Code section 17557, which describes the adoption of parameters and guidelines, to add the following:

> (f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

Code of Regulations, title 2, section 1183.13, which claimant also pled, was added effective September 6, 2005, as follows:

> § 1183.13. Reasonable Reimbursement Methodology.
>
> (a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5,[118] should be considered; or if the Department of Finance,

---

[118] Government Code section 17518.5, the definition of Reasonable Reimbursement Methodology, was also added by Statutes 2004, chapter 890, the test claim statute. Because it was not pled by the claimant, the Commission makes no findings on this section, which states:

(a) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

(b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local

Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

The test claim statute also amended Government Code section 17564, which addresses the minimum dollar amount ($1000) for reimbursement claims and combined reimbursement claims. Section 17564[119] was amended to add the underlined text as follows:

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

---

agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(c) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance. (2) The Controller. (3) An affected state agency.

(4) A claimant. (5) An interested party.

[119] All references are to the Government Code unless otherwise indicated.

Prior Commission Decisions and Parameters and Guidelines

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459 (Gov. Code, § 17500 et seq., which establish the reimbursement process before the Commission) impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines, determining that the following activities are reimbursable:

> D. Scope of the Mandate
>
> Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.
>
> E. Reimbursable Activities—Test Claims
>
> All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. [**Note:** the phrase, "including court responses, if an adverse Commission ruling is later reversed" was amended out in March 1987 and replaced with "including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order."] These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.
>
> Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.
>
> F.Reimbursable Activities –Reimbursement Claims
>
> All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.
>
> Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

In addition to the March 1987 amendment indicated above, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims. Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997), 1997 (amended Sept. 1997), 1998 (amended Oct. 1998), 1999 (amended Sept. 1999), 2000 (amended Sept. 2000), 2001 (amended Oct. 2001), 2002 (amended Feb. 2003), 2003 (amended Sept. 2003), 2004 (amended Dec. 2004), and 2005 (amended Sept. 2005). In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

The *Mandate Reimbursement Process* mandate is suspended in the 2006 Budget for local agencies,[120] but is deferred for school districts with an appropriation of $1000.[121]

Reconsideration: Statutes 2005, chapter 72, section 17 (Assem. Bill No. 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, in light of subsequently enacted state or federal statutes or case law, and directed that the Commission's decision be effective July 1, 2006. Chapter 72 also states, "If a new test claim is filed on Chapter 890 of the Statutes of 2004, [the statute claimed in this test claim] the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202."

The Commission determined, at its May 25, 2006 hearing, that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it no longer imposes a state-mandated program. The Commission also determined that Statutes 1984, chapter 1459 no longer imposes a state-mandated program because Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, A.B. 138) prohibits the Commission from finding costs mandated by the state if "The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election." Finding that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 (which was enacted in Proposition 4, a ballot measure approved in a statewide election) the Commission denied the *Mandate Reimbursement Process* test claim effective July 1, 2006.

Claimant Position

Claimant alleges that the test claim statutes and regulations impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. As to Government Code section 17553, claimant pleads activities related to filing a test claim that is more detailed, including pleading actual costs, a review of offsets and available funding, inquiring of other jurisdictions to

---

[120] Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 48, 2005-2006 Reg. Sess.) amending Item 8885-295-0001, Schedule (3)(y).

[121] Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 44, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4). The original budget bill (Stats. 2006, ch. 47, Assem. Bill No. 1801, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4), appropriated $13.79 million.

establish a statewide cost estimate, and calculating a reasonable reimbursement methodology. In short, claimant alleges the following activities to comply with amended section 17553:

> [I]nterviews, conferences, research and document retrieval and review sufficient to plead with specificity the new activities required, the modified activities required, actual costs, annual actual or estimated costs, a statewide cost estimate, off-sets and funding sources, and prior Commission decisions and the drafting of declarations thereon … additional research, drafting of written responses, witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to those issues that result from the new pleading guidelines.[122]

In order to comply with amended section 17557, subdivision (f), and California Code of Regulations, title 2, section 1173.13, claimant alleges activities related to creating a reasonable reimbursement methodology, including,

> [A]ttendance at conferences … interviews, conferences, research and document retrieval and review sufficient to research and propose, defend or rebut a reasonable reimbursement methodology; drafting of a reasonable reimbursement methodology or written responses; witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to reasonable reimbursement methodology issues; as well as mailing and services costs.[123]

As to amended section 17564, subdivision (b), which was amended to require claims to be filed "in the manner prescribed in the parameters and guidelines and claiming instructions" claimant alleged that this would increase accounting requirements making claiming a laborious process through the additional research and compilation of materials. Claimant alleged the following to comply with section 17564, subdivision (b), as amended by the test claim statute, "interviews, conferences, research, calculations and document retrieval and review sufficient to comply with the claiming instructions."[124]

On September 18, 2006, claimant submitted comments that disagreed with the draft staff analysis' recommendation that the test claim be denied, as discussed below.

State Agency Position

No state agencies submitted comments on this test claim or the draft staff analysis.

---

[122] *Mandate Reimbursement Process II* test claim (05-TC-05), page 8.

[123] *Ibid.*

[124] *Ibid.*

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[125] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[126] "Its purpose 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."[127] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[128]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[129]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[130] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before their

---

[125] Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

> (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[126] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

[128] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[129] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[130] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

enactment.[131] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[132]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[133] -

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.[134] 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."[135]

Issue: Do the test claim statutes and executive orders impose "costs mandated by the state" within the meaning of Article XIII B, section 6 and Government Code sections 17514 and 17556?

Article XIII B, section 6 of the California Constitution provides:

> (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Pursuant to the plain language of this constitutional provision, the test claim statute must constitute a state-mandated program.[136]

Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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, or any executive order implementing any statute enacted on or after January 1, 1975,

---

[131] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[132] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

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

[135] *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.

[136] *Kern High School Dist., supra,* 30 Cal.4th 727, 735. *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1581.

which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Claimant alleges incurred costs ranging from $1500 to $36,800 to comply with the new test claim filing requirements.[137]

Reimbursement is not required, however, if any of the exceptions in Government Code section 17556 apply.

In this case, the sole issue is whether Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, Assem. Bill No. 138, eff. Jul.19, 2005) applies to the test claim statutes and executive orders. Section 17556, subdivision (f) states:

> 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: [¶]…[¶]
> (f) The statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or expressly included in* a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters. [Emphasis added.]

The Commission finds that this subdivision applies to the test claim statutes and executive orders so that it does not impose 'costs mandated by the state' within the meaning of article XIII B, section 6 and Government Code sections 17514 and 17556.

Article XIII B, section 6 is a Constitutional initiative enacted in 1979 by Proposition 4. In interpreting the Constitution and Government Code section 17556, subdivision (f), it is important to remember the following:

> In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: … [A]ll intendments favor the exercise of the Legislature's plenary authority: If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.[138]

And one court called Government Code section 17556 a legislative interpretation of section 6.[139]

---

[137] Test Claim 05-TC-05, page 10. This does not include additional costs to comply with the claiming instructions, of which claimant states: "Due to the highly speculative nature of compliance with the claiming instructions, no estimate can be made at this time." (*Id.*)

[138] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 180.

[139] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 984.

Government Code section 17500 et seq. was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent "in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution." Thus the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of section 17556, subdivision (f), in that they are "necessary to implement [or] reasonably within the scope of" article XIII B, section 6.

Since the Legislature has made this express declaration regarding Government Code section 17500 et seq., an analysis regarding whether these statutes and executive orders are "necessary to implement" or "reasonably within the scope of" article XIII B, section 6, is unnecessary.

Moreover, if the test claim statutes and executive orders are a voter mandate (or reasonably within its scope) they are not state mandates within the meaning of article XIII B, section 6.[140]

In comments on the draft staff analysis, claimant states that denial of the test claim would thwart the intent of the voters and the Legislature, as well as interfere with local government contracts for providing mandate reimbursement services, and violate the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. In response, the Commission raises the following three points.

First, the Commission is unaware of any evidence that either the Legislature or the voters contemplated reimbursement for local agencies or school districts for the act of applying for reimbursement for state-mandated programs.

Second, based on enactment of A.B. 138 (Stats. 2005, ch. 72, eff. Jul.19, 2005) in light of article XIII B, section 6 and the Commission's statutory scheme (Gov. Code § 17500 et seq.), the Commission is looking to the legislative intent in recommending that this claim be denied.

Third, in response to claimant's contracts and due process arguments, the Commission does not have the authority to declare a statute unenforceable or unconstitutional, or refuse to enforce a statute.[141] This means that the Commission is prohibited from refusing to enforce A.B. 138's amendment to Government Code section 17556, subdivision (f), based on claimant's allegations.

Since the test claim statutes and executive orders do not impose costs mandated by the state, there is no need to analyze whether they constitute a new program or higher level of service within the meaning of article XIII B, section 6.

CONCLUSION

The Commission finds that the test claim statutes and executive orders do not impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

---

[140] Cf. *San Diego Unified School Dist., supra,* 33 Cal. 4th 859, 880. "[A]rticle XIII B, section 6, and the implementing statutes … provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs."

[141] California Constitution, article III, section 3.5.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Section 13519.4;

Statutes 1990, Chapter 480;
Statutes 1992, Chapter 1267;
Statutes 2000, Chapter 684;
Statutes 2001, Chapter 854;

Filed on September 13, 2002 by the Santa Monica Community College District, Claimant.

Case No.: 02-TC-05

Racial Profiling: Law Enforcement Training (K-14)

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on October 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 26, 2006. Keith Peterson, on behalf of claimant Santa Monica Community College, did not appear but sent an electronic mail message stating that the Commission should proceed on hearing the test claim and that his "objections are a matter of record for the previous four or five peace officer claims with the Merced and Kern treatment." Art Palkowitz from San Diego Unified School District appeared as an interested party. Carla Castaneda and Susan Geanaco appeared on behalf of the Department of 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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis denying this test claim at the hearing by a vote of 6-1.

Summary of Findings

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years.

The test claim statute does not mandate any activities. The decision by school districts or community colleges (hereafter, collectively "K-14 school districts") to establish police

departments and employ peace officers is discretionary. Furthermore, there is nothing in the test claim statute, the statute's legislative history, or the record for this test claim indicating that the Legislature intended the statute to protect the health and safety of the state's citizens on school district property in accordance with the Constitutional requirement for safe schools, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined,[142] and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by POST.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[143] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[144] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[145]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[146] The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[147]

The test claim statute requires every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[148] The training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[149]

---

[142] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[143] Penal Code section 13500 et seq.

[144] *About California POST*, <http://www.POST.ca.gov>

[145] Penal Code sections 13522 and 13523.

[146] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

[147] Penal Code section 13519.4, subdivision (c)(2).

[148] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. The Commission makes no findings regarding any substantive changes which may have been made in the 2004 statute since it was not pled in the test claim. Accordingly, the Commission will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[149] Penal Code section 13519.4, subdivision (f).

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510, who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[150]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[151] POST also developed a two-hour racial profiling refresher course curriculum, pursuant to subdivision (i).[152]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[153] for peace officer applicants after January 1, 2004,[154] and POST suggested that incumbent peace officers complete the five-hour training by July 2004.[155] POST can certify a course retroactively,[156] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the

---

[150] Penal Code section 13519.4, subdivision (i).

[151] Letter from POST, August 10, 2005:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. … The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitation the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

[152] Letter from POST, August 10, 2005.

[153] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[154] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

[155] POST Legislative Training Mandates, updated August, 2004.

[156] California Code of Regulations, title 11, section 1052, subdivision (d).

two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[157, 158]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers, and one other case regarding school peace officers, that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*; after the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years;
- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;

[157] Letter from POST, dated August 10, 2005.

[158] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace,* 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[159]

[159] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[160]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

[160] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

7. Peace Officer Procedural Bill of Rights

In April 2006, the Commission reconsidered a 1999 Statement of Decision in the *Peace Officer Procedural Bill of Rights* ("POBOR") test claim, to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions, as required by Statutes 2005, chapter 72. The Commission determined that the POBOR legislation did impose a reimbursable state-mandated program on school districts[161] for the following reasons:

- the Supreme Court in *San Diego Unified School Dist.* provided an example of circumstances in which a discretionary decision might, in a practical sense, constitute compulsion, i.e., that in light of a school district's constitutional obligation to provide a safe educational environment, incurring due process costs as result of the district's discretionary decision to expel a student for damaging or stealing property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct that warrant such expulsion, may in a practical sense constitute compulsion;
- the Legislature declared that: 1) the rights and protections provided to peace officers under the test claim legislation is a matter of statewide concern; 2) effective law enforcement depends upon the maintenance of stable employer-employee relations; and 3) in order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it was necessary to apply the legislation to all public safety officers;
- the Supreme Court in *Baggett v. Gates* (1982) 32 Cal.3d 128 held that the subject peace officers provided an "essential service" to the public and that the consequences of a

[161] *Peace Officer Procedural Bill of Rights* (05-RL-4499-01), Statement of Decision, April 26, 2006.

breakdown in employment relations between peace officers and their employers ─ a situation the POBOR legislation was intended to prevent ─ would create a clear and present threat to the health, safety, and welfare of the citizens of the state; and

- the Supreme Court in *In re Randy G.* (2001) 26 Cal.4th 556 held that, pursuant to article I, section 28, subdivision (c), of the California Constitution, school districts have an obligation to provide safe schools, and California fulfills that obligation by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.

Claimant's Position

The claimant states that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for K-14 school districts.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development of policies and procedures, and periodic updates of policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training to prevent racial profiling, pursuant to Penal Code section 13519.4.
- Development and implementation of tracking procedures, commencing January 1, 2002, to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending expanded training for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Development and implementation of tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code section 13519.4, subdivision (i).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending refresher courses for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (i).

Position of Department of Finance (DOF)

DOF stated in its comments that the test claim statute does not result in a reimbursable state-mandated program for the following reasons:

- The test claim statute does not impose an obligation on any *law enforcement agency* to provide training — rather the statute imposes the requirement on the *law enforcement officer* — and three previous test claims are cited in which the Commission has found this to be the case.

- The statute does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.
- The statute does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, POST has determined that officers attending the courses on racial profiling are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, rather these costs are incurred directly by POST, a state agency. POST has made efforts to ensure that the course is available at a number of locations throughout the state to minimize travel costs and officer time away from regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, DOF does not view these costs as any different from those that would be incurred if the officer were on vacation or sick leave.
- To the extent a local agency has a policy or agreement with an employee association to provide additional leave to the employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

DOF further noted that the test claim identifies Statutes 1992, chapter 1267, and Statutes 1990, chapter 480, as legislation that are alleged to contain a mandate. The chapters are relevant to providing legislative history of the issue, but do not appear to be specifically related to the new duties identified in this claim. DOF cited a previous test claim denied by the Commission — *Law Enforcement Racial and Cultural Diversity Training – CSM 97-TC-06* — which was based on Statutes 1992, chapter 1267, and thus it does not seem appropriate to include references to these chapters as a part of this claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[162] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[163] "Its purpose 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."[164] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[165] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[166]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[167] To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[168] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[169]

---

[162] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[163] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist*.) (2003) 30 Cal.4th 727, 735.

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

[165] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[166] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist*.); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[167] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[168] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[169] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[170]

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.[171] 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."[172]

The analysis addresses the following issue:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

Issue 1: Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

The claimant pled in the test claim Penal Code section 13519.4, as added and amended by four statutes.[173] The 1990 statute enacted the first version of Penal Code section 13519.4, directing POST to develop and disseminate guidelines and training for law enforcement officers on the racial and cultural differences among the residents of California. It did not impose any activities on local law enforcement agencies. The Commission also notes that the 1992 statute was pled and determined in a previous test claim, *Law Enforcement Racial and Cultural Diversity Training* (97-TC-06), which was denied by the Commission and was not appealed. Therefore, the Commission no longer has jurisdiction over that test claim and the 1992 statute. The 2001 statute made one spelling correction to subdivision (c) of Penal Code section 13519.4, and therefore is not relevant for this analysis. Accordingly, the analysis addresses only the provisions of the 2000 statute as that legislation affects Penal Code section 13519.4.

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies or school districts. If the language does not mandate or require local entities to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

---

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

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

[172] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[173] 1) Statutes 1990, chapter 480; 2) Statutes 1992, chapter 1267; 3) Statutes 2000, chapter 684; and 4) Statutes 2001, chapter 854.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government entities.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local government entities.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local government entities.

A. Does Penal Code section 13519.4 mandate any activities on school districts?

Penal Code section 13519.4, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded [racial profiling] training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002.

Subdivision (i) states in pertinent part:

> Once the initial basic [racial profiling] training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

Claimant contends that Penal Code section 13519.4 mandates K-14 school districts to: 1) develop, implement and periodically update policies and procedures to insure that each law enforcement officer employed by the district participates in the expanded and refresher racial profiling training; 2) develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates and successfully completes the expanded and refresher racial profiling training; and 3) pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending the expanded and refresher racial profiling training.

The plain meaning of Penal Code section 13519.4, subdivisions (f) and (i), requires only that each law enforcement officer attend the expanded and refresher racial profiling training. Nothing in the test claim statute requires the employer of law enforcement officers to develop and implement policies, procedures, or tracking measures to ensure that the officers attend the required training. Further, nothing in the statute requires employers to pay for travel, subsistence or meals for these officers.

Thus, the only activities for which the claimant has requested reimbursement that could possibly be considered mandated are: 1) the unreimbursed costs of the actual training; and 2) substitute salaries for the officers while attending the training.

1. K-14 School District Police Officers are Subject to the POST Racial Profiling Training Requirements

To determine whether any activities are mandated of K-14 school districts, the first issue which must be addressed is whether K-14 school district police officers are subject to these requirements. Penal Code section 13519.4, subdivision (f), requires "[e]very law enforcement officer in this state," to attend expanded racial profiling training. Subdivision (i) requires "each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST]" to attend refresher training. As explained below, K-14 school district police officers hired to enforce the law are required to attend both the initial and refresher racial profiling training.

Penal Code section 13510, subdivision (a), states that, "[f]or the purpose of raising the level of competence of local *law enforcement officers*, [POST] shall adopt … rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of … police officers of a district authorized by statute to maintain a police department …" (Emphasis added.) Subdivision (a) further states that, "[POST] also shall adopt, and may from time to time amend, rules establishing minimum standards for training … police officers of a district authorized by statute to maintain a police department…" Thus, POST is required to adopt minimum standards for the recruitment and training of police officers of districts that are authorized to maintain police departments.

Education Code section 38000[174] authorizes the formation of school district police departments and hiring of peace officers: "(a) The governing board of any school district may establish a … police department… [T]he governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school

[174] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

district." Section 38001 states that "persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are *peace officers*, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code."

Education Code section 72330,[175] subdivision (a), authorizes the formation of community college police departments and hiring of peace officers: "The governing board of a community college district may establish a community college police department and … may employ personnel as necessary to *enforce the law* on or near the campus of the community college and on or near other grounds or properties [of] the community college…" Subdivision (c) states that "[p]ersons employed and compensated as members of a community college police department, when so appointed and duly sworn, are *peace officers* as defined in … the Penal Code."

Penal Code section 830.32 provides:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.
>
> (a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 72330 of the Education Code.
>
> (b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 38000 of the Education Code.
>
> (c) Any peace officer employed by a K-12 public school district or Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer. (Emphasis added.)

Furthermore, Penal Code section 832.3, subdivisions (f) through (h), state the following:

> (f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer …
>
> (g) [POST] shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the unique safety needs of a school environment. This course is intended to supplement any other training requirements.

[175] Derived from 1959 Education Code section 25429.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

Thus, K-14 school district police officers are considered peace officers when their primary duties are to enforce the law, and pursuant to those duties would also be considered part of the broader classification of "law enforcement officer" for purposes of POST. Since they are also required to attend basic training and specialized school peace officer training prescribed by POST, these police officers would also be considered law enforcement officers who "adhere to the standards approved by POST." Accordingly, those K-14 employees who exercise the duties of "peace officer" are "law enforcement offers" in the state who are required to attend initial and refresher racial profiling training pursuant to Penal Code section 13519.4, subdivisions (f) and (i).

2. K-14 School Districts Are Not Mandated by the State to Comply with the POST Racial Profiling Training Requirements

The next issue is whether K-14 school districts that employ such peace officers are mandated by the state to comply with the racial profiling training requirements. As noted above, in 1959 both K-12 school districts and community college districts were granted statutory *authority* to establish police departments and employ peace officers. However, while counties and cities are mandated by the California Constitution to establish sheriff or police forces,[176] K-12 school districts and community college districts are not expressly required to do so.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[177] Although the Legislature is permitted to authorize K-14 school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[178] and Article I, section 28, subdivision (c), of the California Constitution requires K-12 school districts to maintain safe schools,[179] the Constitution does not specifically require K-14 school districts to operate police departments or employ school security officers independent of the public safety services provided by the cities and counties a school district serves.

---

[176] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, regarding counties, states that the Legislature shall provide for an elected county sheriff. Section 5, regarding city charters, specifies that city charters are to provide for the "government of the city police force."

[177] California Constitution, article IX, section 1.

[178] California Constitution, article IX, section 14.

[179] Article I, section 28, subdivision (c), of the California Constitution provides that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

The case law is instructive in analyzing whether programs are mandatory or discretionary. The first significant case addressing the issue was *City of Merced v. State of California* (1984)

153 Cal. App. 3d 777. In that case, the test claim statute had revised the California eminent domain laws to include a new requirement that the owner of a business conducted on condemned property is entitled to compensation for loss of goodwill.[180] The City claimed reimbursement for its required compensation to the business owner for good will pursuant to the new statute, in proceedings to acquire property under the City's power of eminent domain. The court held that, because it was clear from the Legislature's intent in enacting the new statute that the decision to exercise eminent domain is left to the *discretion of the entity authorized to acquire the property*, the payment for loss of goodwill was not a state-mandated cost.[181]

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the Supreme Court addressed another aspect of the issue, i.e., whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. There, the district had voluntarily participated in various school-related educational programs establishing councils and advisory committees, where participation resulted in state or federal funding grants to operate the programs.[182] Subsequent legislation, in an effort to make such councils and advisory committees more open and accessible to the public, required certain notice and agenda requirements claimed by the school district to constitute a reimbursable state-mandated program.[183]

The court found in this case that the notice and agenda requirements did not constitute a reimbursable state-mandated program, reasoning as follows:

> First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that **program to pay** required program expenses — including the notice and agenda costs here at issue.

---

[180] *City of Merced, supra,* 153 Cal.App.3d 777, 782.

[181] *Id.* at page 783.

[182] *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[183] *Ibid.*

The court also stated that although it analyzed the legal compulsion issue, the court found it "*unnecessary* in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that *even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion*, the circumstances presented in this case do not constitute such a mandate."[184] (Emphasis added.) The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse" — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)[185]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the legal compulsion issue. In that case, the test claim statute required the district to afford a student specified hearing procedures whenever an expulsion recommendation was made and before a student may be expelled.[186] The court held that hearing costs incurred as a result of *statutorily required* expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[187] The court found the factor that triggered the mandate was the *state statute* requiring an expulsion recommendation, and that state statute did not implement a federal law or regulation then in existence.[188]

Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's argument that the hearing procedures were mandated even when the district exercised its discretion, despite the *City of Merced* and *Kern High School Dist.* cases. The court stated:

---

[184] *Id.* at page 736.

[185] *Id.* at 731.

[186] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[187] *Id.* at pages 881-882.

[188] *Ibid.*

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment …, the incurring of [due process hearing] costs cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [the discretionary expulsion provisions] for damaging or stealing school or private property, suing or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct … that warrant such expulsion."
>
> Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [the] Education Code … discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."[189]

In response to these arguments, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[190] (Emphasis added.) The court provided the following explanation:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B,
>
> section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been proper. For example, as explained above, in *Carmel Valley, supra,*190 Cal.App.3d 531, … an executive order requiring that county firefighters be provided with protective clothing and

[189] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

[190] *Id.* at page 887.

> safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538 … .) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable *for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc.* We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result. (Emphasis added.) [191]

The Supreme Court did not decide the issue in *San Diego Unified School Dist.* on that basis, however, stating: "[i]n any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis."[192] Ultimately, no reimbursement was allowed where the district exercised its discretion in recommending an expulsion, because the court found that "all hearing costs … triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal [due process] law …"[193]

Nevertheless, both *Kern High School Dist.* and *San Diego Unified School Dist.* demonstrate the Supreme Court's hesitation to apply the rule from *City of Merced,* where that rule would preclude reimbursement in *every* instance that an entity makes an initial discretionary decision which in turn triggers mandated costs.

In summary, the *Kern High School Dist.* case provided an example of "practical" compulsion, i.e., where a local entity might face substantial penalties for nonparticipation in a program, and thus reimbursement might be appropriate. The court in *San Diego Unified School Dist.* supported the district's argument regarding "practical" compulsion in the circumstance where a K-12 school district makes a discretionary decision to expel a student who commits one of the acts set forth in the Education Code's discretionary provisions, in order to fulfill its legal obligations under the constitutional requirement to provide a safe, secure and peaceful learning environment at the school. The court in *San Diego Unified School Dist.* also expressed concerns that the intent of article XIII B, section 6, might not be carried out if the *City of Merced* rule were used to preclude reimbursement "for the simple reason" that the local agency's decision to employ firefighters, and how many to employ, involves an exercise of discretion.

---

[191] *Id.* at pages 887-888.

[192] *Id.* at page 888.

[193] *Id.* at page 890.

One additional case, *In re Randy G.* (2001) 26 Cal.4th 556, is relevant for this analysis. There, the Supreme Court held that pursuant to the safe schools provision of the Constitution,

K-12 school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the K-12 safe schools constitutional provision by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[194]

As previously noted, reimbursement has been denied, pursuant to *Kern*, for activities imposed on K-14 school districts when those activities were triggered by the district's discretionary decision to establish a police department and employ peace officers, since there was neither any legal compulsion to establish a police department, nor any "practical" compulsion in the form of "substantial penalties" for the school district to fail to establish a police department.

On the other hand, the Commission has approved reimbursement for activities imposed on K-14 school district police departments in light of the constitutional requirement for safe schools coupled with the Legislature's declaration that the condition being addressed by the test claim statute would "create a clear and present threat to the health, safety, and welfare of the citizens of the state." Thus, previous interpretations of the *San Diego Unified School Dist.* case have allowed reimbursement where the test claim statute establishes a direct connection to the need to provide safe schools pursuant to the Constitution.

In the test claim statute at issue here, pursuant to the *Kern High School Dist.* case, K-14 school districts have neither the legal compulsion nor any practical compulsion to establish a police department and employ peace officers, since the statutes authorize but do not require establishment, and no "substantial penalties" would be imposed for the district's failure to establish a police department. In addition, the Commission finds that the purpose of the test claim statute is not to provide safe schools. Thus, there is no showing of practical compulsion pursuant to the *San Diego Unified School Dist*. case.

The test claim statute requires racial profiling training for "every law enforcement officer" in California. In Penal Code section 13519.4, subdivision (c), the Legislature declared that:

> (1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.
>
> (2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.
>
> (3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

[194] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

Although the test claim statute affects all law enforcement officers in the state, and addresses a "discriminatory practice" that presents a "great danger to the fundamental principles of a democratic society," it does not provide a direct connection to the constitutional requirement to provide safe schools. There is no evidence in the test claim statute or its legislative history, or the record of this test claim, which indicates that the Legislature intended the statute to protect the health and safety of the citizens on school district property. Therefore, no "practical" compulsion with regard to safe schools can be found with this test claim statute.

Furthermore, since the constitutional provision requiring safe schools does not apply to community colleges, the cases cited above do not address the issue for community college districts.

No other indications by the Supreme Court, the Constitution or the Legislature support a finding that *reimbursement should be allowed* when triggered by a K-14 school district's discretionary decision to establish a police department and employ peace officers, and there is no other evidence in the record to support such a finding.

CONCLUSION

The Commission concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.