

ITEM 6

RECONSIDERATION OF PRIOR STATEMENT OF DECISION PROPOSED STATEMENT OF DECISION

Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3

Statutes 1989, Chapter 1463
Statutes 1992, Chapter 759
Statutes 1993, Chapter 1031
Statutes 1994, Chapter 824
Statutes 1997, Chapters 912 and 918

School Accountability Report Cards (04-RL-9721-11, 05-RL-9721-03)

Reconsideration Directed By
Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. (AB) 2855) as amended by
Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. (SB) 512)

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates (“Commission”) is whether the Proposed Statement of Decision accurately reflects the Commission’s decision on the reconsideration of *School Accountability Report Cards*, as directed by SB 512.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on the reconsideration of this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission’s vote on item 5 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the March 2006 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 912 and 918;

Test Claim No: 97-TC-21;

Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), and Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512).

No. 04-RL-9721-11, 05-RL-9721-03

School Accountability Report Cards

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

(Proposed for adoption on January 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on January 26, 2006. [Witness list will be included in the final Statement of Decision.]

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/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Background

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21) was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.

The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:

- Salaries paid to schoolteachers, school site principals, and school district superintendents.
- Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
- "The degree to which pupils are prepared to enter the work force."
- "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
- "The total number of minimum days, . . . , in the school year."
- Salary information provided by the Superintendent of Public Instruction.

The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.

- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

First Reconsideration Decision: *School Accountability Report Cards (04-RL-9721-11)*

Statutes 2004, chapter 895, section 18 (AB 2855), directed the Commission to reconsider the prior final decision in *School Accountability Report Cards* for Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918. AB 2855 named the other statutes with specificity, but did not include Statutes 1997, chapter 912; therefore the Commission found it did not have jurisdiction to reconsider that portion of the original *School Accountability Report Cards* decision.

The AB 2855 reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).) A fifth member was appointed to the Commission before the next hearing.

The Statement of Decision on the AB 2855 reconsideration was adopted at the July 28, 2005 Commission hearing, denying reimbursement for the reconsidered portions of the original test claim.

Second Reconsideration: *School Accountability Report Cards (05-RL-9721-03)*

The Legislature subsequently amended AB 2855, through Statutes 2005, chapter 677, section 53 (SB 512, urgency, operative Oct. 7, 2005), as follows (changes indicated in underline and strikethrough):

Section 18 of Chapter 895 of the Statutes of 2004 is amended to read:

Sec. 18. (a) Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, for paragraphs (1) to (5), inclusive, and on

or before January 31, 2006, for paragraph (6), reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes, particularly in light of federal and state statutes enacted and state court decisions rendered since these statutes were enacted:

- ~~(a)~~(1) Chapter 1463 of the Statutes of 1989.
- ~~(b)~~(2) Chapter 759 of the Statutes of 1992.
- ~~(c)~~(3) Chapter 1031 of the Statutes of 1993.
- ~~(d)~~(4) Chapter 824 of the Statutes of 1994.
- ~~(e)~~(5) Chapter 918 of the Statutes of 1997.
- (6) Chapter 912 of the Statutes of 1997.

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

(c) Notwithstanding any other provision of law, the parameters and guidelines associated with the test claim of 97-TC-21 shall be adjusted to conform to the decision of the Commission on State Mandates on its reconsiderations.

The Commission must now reconsider Statutes 1997, chapter 912, which was not originally included in the AB 2855 reconsideration statute, as well as amend the reimbursement period for the reconsidered test claim to conform with the express language of SB 512.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution² recognizes the state constitutional restrictions on the powers of local government to tax and spend.³ “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.”⁴ 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

² Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A 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.”

³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

task.⁵ 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.⁶

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.⁷ 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.⁸ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”⁹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁰

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 6.¹¹ 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.”¹²

Issue 1: What is the scope of the Commission’s jurisdiction and operative date of the reconsidered decisions directed by AB 2855 and SB 512?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may

⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁶ *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 Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁷ *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.)

⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁰ *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.

¹¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹² *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.

not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.¹³

The court in *Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 149-150, found that “in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918].)” In the amendments made by SB 512, the Legislature did not direct the Commission to set aside the AB 2855 reconsideration, completed July 28, 2005, and it is now past the 30-day time period in which a further reconsideration could have been requested pursuant to Government Code section 17559. Therefore, in the absence of a court or legislative order, the July 28, 2005 Statement of Decision is final, except for amending the period of reimbursement to conform to the express language of SB 512, as discussed below.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The original legislation did not stipulate a reimbursement period for any changes to the *School Accountability Report Cards* parameters and guidelines following the reconsideration of the underlying test claim decision. However, when AB 2855 was amended by SB 512 (urgency, operative Oct. 7, 2005), the intended operative date of the reconsidered decision was specified, as follows:

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus, both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005, for purposes of establishing the reimbursement period for the revised parameters and guidelines.

Issue 2: Is Statutes 1997, chapter 912 subject to article XIII B, section 6 of the California Constitution?

In order for Statutes 1997, chapter 912 to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one 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.¹⁴ The court has held that only one of these findings is necessary.¹⁵

Statutes 1997, chapter 912 modified the content requirements for School Accountability Report Cards. Providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a

¹³ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

¹⁴ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to “promote a model statewide standard of instructional accountability and conditions for teaching and learning.”¹⁶ The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.¹⁷

Statutes 1997, chapter 912 also satisfies the second test that triggers article XIII B, section 6, because it requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a “program” and, thus, Statutes 1997, chapter 912 may be subject to article XIII B, section 6 of the California Constitution if the test claim legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 3: Does Statutes 1997, chapter 912 impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term “higher level of service” must be read in conjunction with the phrase “new program.” Both are directed at state-mandated increases in the services provided by local agencies.¹⁸

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.¹⁹ The court determined that the executive orders did not constitute a “new program” since schools had an existing constitutional obligation to alleviate racial segregation.²⁰ However, the court found that the executive orders constituted a “higher level of service” because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

The phrase “higher level of service” is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the

¹⁶ Education Code section 33126, as added to the Education Code by Proposition 98.

¹⁷ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d at page 172 states “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . administered by local agencies to provide service to the public.”

¹⁸ *County of Los Angeles*, *supra*, 43 Cal.3d at 56.

¹⁹ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.4th 155.

²⁰ *Id.* at page 173.

requirements go beyond constitutional and case law requirements. . . . While these steps fit within the “reasonably feasible” description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: “Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable.”²¹

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f) was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

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~~d~~ duties that ~~were~~ 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.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.

(a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

²¹ *Ibid.*

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card “is not limited to” the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1997, CHAPTER 912:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), “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” do not impose reimbursable state mandates.

Education Code section 33126, as amended by Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 912, follows. Amendments to Education Code section 33126 by Statutes 1997, chapter 912 are indicated in underline and strikethrough:

~~In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model school accountability report card.~~

(a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

~~(a)~~ (b) The ~~model~~ school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period. After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, the school accountability report card shall include pupil achievement by grade level, as measured by the results of the statewide assessment. Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent

provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System information for the most recent three-year period.

(5) The total number of the schools's credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials and Any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other pupil support services.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the work force.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

~~(b) In developing the statewide model school accountability report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the superintendent, composed of practicing classroom teachers, school administrators, parents, school board~~

~~members, classified employees, and educational research specialists. However, the majority of the task force shall consist of practicing classroom teachers.~~

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

In the original test claim filing, the claimants alleged the test claim statutes “impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98.”²² Claimants specifically alleged that Statutes 1997, chapter 912 “amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:”

- (1) Results by grade level of specified student assessment tools (such as SAT scores) for the most recent three-year period;
- (2) the one year dropout rate for the schoolsite over the most recent three-year period;
- (3) the distribution of class sizes by grade level, the average class size, and the percentage of pupil [sic] in kindergarten and grades 1 through 3 participating in the state’s Class Size Reduction Program;
- (4) the total number of credentialed teachers, the number of teachers relying upon emergency credentials, and the assignment of teachers outside of their subject area of competence for the most recent three-year period;
- (5) the annual number of school days dedicated to staff development for the most recent three-year period; and
- (6) suspension and expulsion rates for the most recent three year period.²³

The claimants argued that “districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards” for the additional activities alleged.²⁴

First, we examine the language added by Statutes 1997, chapter 912 as subdivision (c). This subdivision does not actually require any new activities of school districts, nor were any allegations included with specificity in the original test claim filing. Activities from subdivision (c) were proposed at the parameters and guidelines phase, but were ultimately denied by the Commission because the specific activities were not pled at the test claim phase, and no determination was made in the 1998 Statement of Decision.²⁵ For completeness, the subdivision

²² *Test Claim Filing*, Administrative Record [AR], page 43.

²³ *Id.* at pages 44-45.

²⁴ *Id.* at page 45.

²⁵ June 25, 1998 Hearing, Proposed Parameters and Guidelines, Staff Analysis. (AR, p. 286.)

will be examined here. The provision begins: “It is the intent of the Legislature that schools *make a concerted effort to* notify parents of the purpose of the school accountability report cards . . .” [Emphasis added.] The plain meaning of “make a concerted effort to” is not the same as “shall,” which the Legislature could have expressed simply by using the word “shall.”²⁶ Any notification activities regarding the School Accountability Report Card contained in Education Code section 33126 are merely discretionary or precatory in nature -- if an activity may be performed at the option of the school district, there is no state mandate.²⁷ Explicit publication requirements for the School Accountability Report Card were established in Proposition 98, and remain good law in Education Code section 35256.²⁸

Education Code section 33126, as amended by Statutes 1997, chapter 912, also altered the express language of some of the School Accountability Report Card data elements originally required by Proposition 98. For the reconsideration directed by SB 512, the Commission must determine whether the portions of Education Code section 33126, subdivision (b), as amended by Statutes 1997, chapter 912, are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise “necessary to implement, reasonably within the scope of” the original initiative. Intent to *change* the law must not be presumed by an amendment. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.]²⁹

Proposition 98, “The Classroom Instructional Improvement and Accountability Act,” was adopted by the voters in 1988. The initial statement of “Purpose and Intent” declared, in part, “The People of the State of California find and declare that:”

(e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

²⁶ The word “shall” is used in subdivisions (a) and (b), but not in subdivision (c). “Of course, when different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended.” *People v. Jones* (1988) 46 Cal.3d 585, 596.

²⁷ *Kern High School District, supra*, 30 Cal.4th 727, 742.

²⁸ Education Code section 35256, as added by Proposition 98, requires that: “(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.”

²⁹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

Proposition 98, section 13, provides: “No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor.” (Emphasis added.) Statutes 1997, chapter 912 was passed by a two-thirds vote of the Legislature and signed by the Governor.³⁰ The statute also affirmatively states: “The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.”³¹ The Commission must presume legislative amendments to the requirements for the School Accountability Report Card are constitutionally valid,³² and thus any amendments must further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a “new program.”

Regarding the data amendments from Statutes 1997 chapter 912, the original claimants agreed that any requirements “to include the original thirteen components listed in Proposition 98 do not impose a reimbursable state-mandated new program,” since this falls squarely within the long-standing exception to costs mandated by the state articulated in Government Code section 17556, subdivision (f). However, there was no comparison made between the original 13 data elements explicitly established in Proposition 98, and the amendments of 1997. In the test claim filing, all amendments to the precise language of Education Code section 33126 were alleged to impose a new program or higher level of service, and costs mandated by the state.

Proposition 98 requires “every local school board to prepare a School Accountability Report Card to guarantee accountability.” A system that allowed every school to decide what standards to use to provide such information would not allow the public to make meaningful comparisons or “guarantee accountability.” For example, the original requirement to provide information on “(b)(1) student achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals,” now specifies which test results are to be provided to establish such achievement and progress. This provides a mechanism to allow comparisons between School Accountability Report Cards, while still providing the same basic information required by Proposition 98.

The same is true for the other changes to subdivision (b), as amended by Statutes 1997, chapter 912. For another example, in subdivision (b)(2), the original requirement that the School Accountability Report Card describe “(2) Progress toward reducing dropout rates,” was amended to specify that this includes “the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period.” Staff finds that these types of

³⁰ Bill history found at <http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0551-0600/ab_572_bill_19971012_history.html> (Stats. 1997, ch. 912) [as of Nov. 1, 2005.]

³¹ AR, page 77.

³² Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: “An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.”

clarifications, although not “expressly included” in the original language of the initiative, are “duties that are necessary to implement” or “reasonably within the scope of,” “a ballot measure approved by the voters in a statewide or local election.” (Gov. Code, § 17556, subd. (f).) Therefore, the Commission finds that even if a higher level of service was successfully established for any of the amendments to Education Code section 33126, subdivision (b) by Statutes 1997, chapter 912, no costs mandated by the state can be found due to the limitations established by Government Code section 17556, subdivision (f).

Even in the absence of Government Code section 17556, subdivision (f), there is a separate and independent ground for finding that the test claim legislation does not impose costs mandated by the state. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two hours of domestic violence training. The court upheld the Commission’s decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required.

The court found:

Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a “higher level of service.” In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, “costs” for purposes of Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

[¶]...[¶]

[M]erely by adding a course requirement to POST’s certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Finally, the court concluded (*id.*, at p. 1195):

Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim legislation].

Likewise here, by amending a few data components in the existing School Accountability Report Card, the state has not shifted from itself to districts “the burdens of state government,” when “the directive can be complied with by a minimal reallocation of resources.” In exercising its jurisdiction to decide test claims, the Commission must follow precedential judicial decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court’s published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, “Key Statewide Averages Fiscal Year 2001-02”³³ demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,³⁴ and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. “[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6.” (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) “No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes.” (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.)

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

We need not, and do not, determine whether claimants have been legally compelled to participate in the Chacon-Moscone Bilingual Bicultural Education program, or to maintain a related advisory committee. Even if we assume for purposes of analysis that claimants have been legally compelled to participate in the ... program, we nevertheless conclude that under the circumstances here presented, *the costs necessarily incurred* in complying with the notice and agenda requirements under that funded program *do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses.* [Emphasis added.]

(*Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, staff concludes that state funding received by schools under Proposition 98 is equivalent to “program funds” for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a separate and independent ground, the test claim legislation does not impose costs mandated by the state.

³³ At <<http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp>> [as of Nov. 1, 2005.]

³⁴ Over \$31 billion for fiscal year 2001-2002.

Thus, for the reasons stated above, the Commission finds that Statutes 1997, chapter 912, as it amended Education Code section 33126, does not impose a new program or higher level of service, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Statutes 2005, chapter 677, section 53:

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005 for purposes of establishing the reimbursement period for the revised parameters and guidelines.