

ITEM 12
TEST CLAIM
REVISED FINAL STAFF ANALYSIS

Pupil Discipline Records
00-TC-10

Education Code Sections 48201, 48900.8, and 49079
Statutes 1997, Chapter 637 (AB 412); Statutes 2000, Chapter 345 (AB 29)¹

Consolidated with

Notification to Teachers: Pupils Subject to Suspension or Expulsion II
00-TC-11

Education Code Sections 48201 and 49079; Statutes 2000, Chapter 345 (AB 29)

Carpinteria Unified School District, Sweetwater Union High School District,
and Grant Joint Union High School District, Co-Claimants

EXECUTIVE SUMMARY

The test claims were filed in May 2001, and allege reimbursable activities for school districts that request suspension and expulsion records for transfer pupils, as well as provide these records. Claimants also allege activities to inform any teacher of the transfer pupil of specified acts for which the pupil was suspended or expelled, and to inform teachers of pupils of specified acts (hate violence, sexual harassment, harassment/threats/intimidation, and terroristic threats, all as statutorily defined) for which the pupil was suspended or expelled, or of which the pupil is reasonably suspected to have engaged.

One activity is in dispute: whether it is a state mandate, upon a pupil's transfer from one school district to another, to provide a pupil's records that result in the pupil's suspension or expulsion from school or expulsion from the school district. The determination whether a statute creates a reimbursable state-mandated program is a question of law based on the plain language of the statute.² Although providing the pupil's records is reciprocal to requesting them, section 48201, subdivision (b)(1), does not expressly require the school district to provide "any records that the district maintains in the ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil" that resulted in suspension or expulsion. Staff finds, therefore, that providing the pupil's records is not mandated by the state. The

¹ Staff makes no findings on Education Code section 48900.8 (Stats. 1997, ch. 637) in this test claim. It was originally alleged in an amendment to the *Pupil Suspensions II* test claim (98-TC-15) that was filed in June 1999. Therefore, section 48900.8 is addressed in *Pupil Suspensions II*, which has an earlier reimbursement date than the current consolidated claim.

² *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81

Commission has the authority, however, to determine at the parameters and guidelines phase whether providing the records is the most reasonable method to comply with the mandate to request the records, based on the authority in Government Code section 17557 and California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

As to the remaining test claim statutes, for reasons stated in the analysis, staff finds that they impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 and 17556, to do the following activities:

- For a school district³ into which a pupil is transferring to request from the school district in which the pupil was last enrolled, any records the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. (Ed. Code, § 48201, subd. (b)(1), as amended by Stats. 2000, ch. 345.)
- For a school district, upon receipt of a pupil's transfer record, to inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district, and to inform the teacher of the act that resulted in that action. (Ed. Code, § 48201, subd. (b)(1), as amended by Stats. 2000, ch. 345.)
- For a school district to “inform the teacher of each pupil who has engaged in or is reasonably suspected to have engaged in, any of the acts described ... in Section 48900.2,^[4] 48900.3,^[5] 48900.4,^[6] and 48900.7^[7] that the pupil has engaged in, or is reasonably suspected to have engaged in, those acts.” This information is based on any records maintained by the district in its ordinary course of business, or received from a law enforcement agency. (Ed. Code, § 49079, subd. (a), as amended by Stats. 2000, ch. 345.) According to preexisting subdivision (d) of section 49079, this information provided to the teacher regarding pupil offenses is from the previous three school years.

Staff Recommendation

Staff recommends the Commission adopt the staff analysis to partially approve the test claim for the activities listed above.

³ These activities also apply to a county office of education that acts as a school district.

⁴ Education Code section 48900.2 refers to sexual harassment, as specified.

⁵ Education Code section 48900.3 refers to hate violence, as specified.

⁶ Education Code section 48900.4 refers to harassment, threats or intimidation, as specified.

⁷ Education Code section 48900.7 refers to terroristic threats against school officials or school property, or both, as specified.

STAFF ANALYSIS

Claimants

Sweetwater Union High School District, Grant Joint Union High School District and Carpinteria Unified School District

Chronology

- 05/09/2001 Test Claim (00-TC-10) filed by Sweetwater Union High School District
- 05/11/2001 Test Claim (00-TC-11) filed by Carpinteria Unified School District
- 06/25/2001 Department of Finance requests extension of time to file comments
- 06/27/2001 Commission staff grants request and extends filing date to July 27, 2001
- 08/01/2001 Department of Finance submits comments on the test claim
- 09/18/2001 Claimant Carpinteria Unified School District submits rebuttal comments
- 07/07/2004 Claimant Carpinteria Unified School District adds Grant Joint High School District as a co-claimant
- 06/06/2006 Commission staff consolidates the test claims (00-TC-10 and 00-TC-11)
- 11/16/2006 Commission staff issues draft staff analysis
- 01/02/2007 Department of Finance submits comments on the draft staff analysis
- 01/11/2007 Commission staff issues final staff analysis
- 01/23/2007 Claimant Sweetwater Union High School District requests postponement of hearing
- 03/05/2007 Department of Finance submits comments on the final staff analysis
- 03/07/2007 Claimant Sweetwater Union High School District submits comments on the final staff analysis
- 03/15/2007 San Diego Unified School District submits comments on the final staff analysis
- 03/30/2007 Commission staff issues revised final staff analysis

Background

The test claim statutes make various changes to the Education Code as follows.

Request for pupil records (§ 48201, subd, (b).): Education Code section 48201, under the compulsory education law,⁸ requires a parent or guardian of any minor between the ages of 6 to 16 years who removes the minor from a school district before the completion of the current school term to enroll the pupil in a “school of the city, city and county, or school district to which the minor is removed.”

⁸ Education Code section 48200 et seq. All further references are to the Education Code unless otherwise indicated.

Statutes 2000, chapter 345 amended section 48201 by adding a new subdivision (b) as follows:

(b)(1) Upon a pupil's transfer from one school district to another, the school district into which the pupil is transferring shall request that the school district in which the pupil was last enrolled provide any records that the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. Upon receipt of this information, the receiving school district shall inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district and shall inform the teacher of the act that resulted in that action.

(2) A school district, or school district officer or employee, is not civilly or criminally liable for providing information under this subdivision unless it is proven that the information was false and that the district or district officer or employee knew or should have known that the information was false or the information was provided with a reckless disregard for its truth or falsity.

(3) Any information received by a teacher pursuant to this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

Teacher notification (§ 49079): Statutes 2000, chapter 345 also amended Education Code section 49079, subdivision (a), by expanding the list of "offenses" (those listed in §§ 48900.2, 48900.3, 48900.4, & 48900.7) for which the school district must inform the teacher that each pupil has engaged in, or in which the pupil is reasonably suspected to have engaged.⁹

⁹ Before the 2000 amendment, section 49079 stated the district must inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of section 48900.

The offenses in section 48900 are listed by subdivision as follows: (a) caused, attempted to cause, or threatened to cause physical injury to another person, or willfully used force or violence on another, except in self defense; (b) possessed, sold or otherwise furnished any firearm, knife, explosive, or other dangerous object unless the pupil has permission, as specified; (c) unlawfully possessed, used, sold, or otherwise furnished, or being under the influence of, any controlled substance, as defined; (d) unlawfully offered, arranged, or negotiated to sell any controlled substance (as specified) an alcoholic beverage, or an intoxicant of any kind ... ; (e) committed or attempted to commit robbery or extortion. (f) caused or attempted to cause damage to school or private property; (g) stolen or attempted to steal school or private property; (h) possessed or used tobacco products, as specified, except prescription products; (i) committed an obscene act or engaged in habitual profanity or vulgarity; (j) unlawfully possessed or offered, arranged or negotiated to sell drug paraphernalia, as defined; (k) disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties; (l) knowingly

The offenses added to section 49079 by the test claim statute are:

- sexual harassment (§ 48900.2);¹⁰
- hate violence (§ 48900.3);¹¹
- harassment, threats or intimidation (§ 48900.4);¹²
- terroristic threats (as defined) against school officials or school property, or both (§ 48900.7.)¹³

received stolen school or private property; (m) possessed an imitation firearm, as defined; (n) committed or attempted to commit a sexual assault, as defined, or committed a sexual battery, as defined; (o) harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both; (p) unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma; (q) engaged in, or attempted to engage in, hazing as defined in Section 32050. ... (s) a pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion...

Offenses added after the test claim statute include subdivision (s), added by Statutes 2001, chapter 484, subdivision (p), added by Statutes 2002, chapter 643, and subdivision (q), added by Statutes 2003, chapter 21. Staff makes no findings on section 48900 or any of its amendments because they were not pled in this test claim.

¹⁰ Section 48900.2 states that sexual harassment is defined in section 212.5, which states: “‘Sexual harassment’ means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under [specified] ... conditions.” Section 48900.2 also states: “For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.”

¹¹ Section 48900.3 states that hate violence is defined in subdivision (e) of section 233, which states: “‘[H]ate violence’ means any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.”

¹² Section 48900.4 defines the conduct to be “sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.”

¹³ Section 48900.7 defines terroristic threats to “include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000) , with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually

Preexisting subdivision (d) of section 49079 states that the pupil offense information provided shall be from the previous three school years.

Preexisting law on pupil recordkeeping and discipline

The California Code of Regulations divides pupil records into three categories. First are “Mandatory Permanent Pupil Records,” defined as:

[T]hose records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each school district shall maintain indefinitely all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within said district.¹⁴

The regulation specifies the data that the mandatory permanent record must include, such as the pupil’s legal name, birth date, sex, birth place, name and address of parent (with annual verification), subjects taken, marks or credit toward graduation, verification of or exemption from required immunizations, and date of high school graduation or equivalent.¹⁵

The second category of pupil records are “Mandatory Interim Pupil Records,” defined as: “[T]hose records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation.”¹⁶ The specified data included in this category are a log or record identifying persons or organizations requesting or receiving information from the record, health information, participation in special education programs, language training records, progress slips and/or notices, parental restrictions regarding access to directory information, parent or adult pupil rejoinders to challenged records and to disciplinary action, parental authorizations or prohibitions of pupil participation in specific programs, and results of standardized tests administered within the preceding three years.¹⁷

The third category, “Permitted Records” are defined as “those pupil records which districts may maintain for appropriate educational purposes” and include objective counselor and/or teacher ratings, standardized test results older than three years, routine discipline data, verified reports of

carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.”

¹⁴ California Code of Regulations, title 5, section 432, subdivision (b)(1).

¹⁵ California Code of Regulations, title 5, section 432, subdivision (b)(1)(A) through (K).

¹⁶ California Code of Regulations, title 5, section 432, subdivision (b)(2).

¹⁷ California Code of Regulations, title 5, section 432, subdivision (b)(2)(A) through (I).

relevant behavioral patterns, all disciplinary notices, and attendance records not covered in section 400.¹⁸

Discussion of pupil discipline in this test claim is limited to suspensions and expulsions. Expulsion means “removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in section 46300.”¹⁹ A suspension means “removal of a pupil from ongoing instruction for adjustment purposes.”²⁰

Prior Commission decisions on pupil recordkeeping

Pupil Expulsions: Education Code section 48918 requires maintaining a record of each pupil expulsion in the pupil’s “mandatory interim record” and requires forwarding it upon receipt of a request from the admitting school for the pupil’s school records. Based on this provision, the amended consolidated parameters and guidelines for the *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM 4456, 4455 & 4463) test claim require reimbursement for the following activities:

If the expulsion hearing is for possession of a firearm, then the following activities are reimbursable: [¶]...[¶] 2. Maintaining a record of the expulsion, including the cause of the expulsion. 3. Recording the expulsion order and the cause of the expulsion in the pupil’s mandatory interim record. 4. Forwarding the student’s mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school.

Notification to Teachers: Pupils Subject to Suspension or Expulsion: In January 1995, the Commission adjudicated the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* (CSM 4452) test claim. The Commission found that Education Code section 49079, as added by Statutes 1989, chapter 1306, and amended by Statutes 1993, chapter 1257, imposes a reimbursable state mandate on school districts and county offices of education to:

- (1) Identify pupils who have, during the previous three years, engaged in, or are reasonably suspected to have engaged in, any of the acts described in any of the subdivisions of Education Code section 48900, except subdivision (h),^[21] from records maintained in the ordinary course of business or received from law enforcement agencies.
- (2) Provide this information to teachers on a routine and timely basis.

¹⁸ California Code of Regulations, title 5, section 432, subdivision (b)(3)(A) through (F).

¹⁹ Section 48925, subdivision. (b). Expelled pupils are, however, to be provided an educational program for the period of expulsion (§§ 48916.1, 48915 subds. (d) & (f), 48916 subd. (d), 48918 subd. (j), & 48926.)

²⁰ Section 48925, subdivision (d). The definition also clarifies what suspension does not mean.

²¹ This subdivision reads: “Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.”

- (3) Maintain the information regarding the identified pupils for a period of three years, and adopt a cost effective method to assemble, maintain and disseminate the information to teachers.

The parameters and guidelines specify the following reimbursable costs:

1. Identifying pupils. For identifying pupils from records received from law enforcement agencies or otherwise maintained in the ordinary course of business, who have during the previous three years engaged in or are reasonably suspected to have engaged in any of the acts described in any of the subdivisions, except (h), of section 48900.
2. Information Maintenance. For maintaining the information regarding the identified pupils for a period of three years, and a one-time cost for adopting a cost effective method of assembling, maintaining and disseminating the information to teachers.
3. Notifying teachers. For notifying teachers on a regular and timely basis of the pupils whose behavior makes them subject to suspension and expulsion and such notification shall be made in a manner designed to maintain confidentiality of this information.

Co-claimant Positions

In the *Pupil Discipline Records* test claim (00-TC-10), the Sweetwater Union High School District (SUHSD) alleges that the requirements of section 48900.8 include:

- Developing policy and procedures for determining which official pupil records are the appropriate records for recording specific pupil offenses that resulted in pupil suspensions and/or expulsions.
- Recording each specific offense committed by a pupil in all appropriate official pupil records.

SUHSD also alleges that the requirements of sections 48201 and 49079 include:

- Developing policy and procedures for a transfer student received, for requesting from the sending district any records maintained or received from law enforcement agencies regarding acts committed by the transferring student that resulted in the student's suspension from school or expulsion from the school district, and determining which official pupil records are the appropriate records for recording specific pupil offenses that resulted in pupil suspensions and/or expulsions to be sent to a requesting district for data regarding a student transferring into the receiving district.
- Recording each specific offense committed by a pupil in all appropriate official pupil records.
- Making a request to the sending school district for each incoming transfer student for any records maintained in the ordinary course of business or records received from law enforcement agencies regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school and/or expulsion from the school district.
- Responding to requests from all receiving school districts for any records maintained in the ordinary course of business or records received from law enforcement agencies

regarding acts committed by the transferring pupil that resulted in the pupil's suspension from the sending school and/or expulsion from the sending school district.

- Notifying any teacher of the transferring pupil regarding acts committed by the pupil that resulted in suspension from the sending school and/or expulsion from the sending school district.²²

In the *Notification to Teachers: Pupils Subject to Suspension or Expulsion II* (00-TC-11) test claim, the Carpinteria Unified School District and the Grant Joint Union High School District allege that the following activities represent reimbursable state-mandated activities imposed by the test claim statutes upon school districts within the meaning of article XIII B, section 6 of the California Constitution.

- School districts into which a pupil is transferring request from the school district in which the pupil was last enrolled to provide any records regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. (Ed. Code, § 48201, subd. (b)(1).)
- School districts into which a pupil is transferring must inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district in which the pupil was last enrolled and the act which resulted in that action. (Ed. Code, § 48201, subd. (b)(1).)
- School districts must inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in the activities outlined in Education Code sections 48900.2, 48900.3, 48900.4, or 48900.7. (Ed. Code, § 49079, subd. (a).)
- Training district staff regarding the test claim activities.
- Drafting or modifying policies and procedures to reflect the test claim activities.
- Any additional activities identified as reimbursable during the parameters and guidelines phase.²³

Co-claimant comments submitted in March 2007 are discussed below.

Interested Party Position

San Diego Unified School District submitted comments in March 2007 that agree with the co-claimants' and are discussed below.

State Agency Position

In its August 2001 comments, the Department of Finance acknowledges that the statutes in question may result in reimbursable state-mandated local program costs for some of these duties. Finance notes that three of the activities alleged by the Carpinteria Unified School District are

²² *Pupil Discipline Records* (00-TC-10) test claim, pages 7-8.

²³ *Notification to Teachers: Pupils Subject to Suspension or Expulsion II* (00-TC-11) test claim, pages 4 and 18.

not identified with the specificity required for adequate review and judgment under the test claim and are overly broad in scope. The activities that Finance says fall into this category are: (1) training district staff regarding the test claim activities; (2) drafting or modifying policies and procedures to reflect the test claim activities; and (3) any additional activities identified as reimbursable during the parameters and guidelines phase. Finance suggests that the "nature and extent" of the specific activities required under the legislation be addressed in the parameters and guidelines.

In its January 2007 comments on the draft staff analysis and March 2007 comments on the final staff analysis, Finance agrees with the analysis of the reimbursable activities except for one. Finance argues that a former school district responding to a school district's request by providing suspension and expulsion records is not a reimbursable activity. This is discussed below.

No other state agencies submitted comments on the claim.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁵ "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."²⁶ 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.²⁷

²⁴ 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.

²⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁶ *County of San Diego, supra*, 15 Cal.4th 68, 81.

²⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

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.²⁸

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.²⁹ To determine if the program is new or imposes a higher level of service, the test claim statutes must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.³⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”³¹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³²

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 6.³³ 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.”³⁴

²⁸ *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*).

²⁹ *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).

³⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

³² *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.

³³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³⁴ *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.

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

A. Do the test claim statutes impose state-mandated activities?

As stated above, a test claim statute 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.³⁵ Thus, the first issue is whether the test claim statutes require an activity of school districts. Each statute is discussed separately.

Requesting and providing pupil records (§ 48201, subd, (b).): Statutes 2000, chapter 345 added a new subdivision (b) to section 48201, which requires the school district into which a pupil is transferring to request the pupil's records regarding acts committed by the transferring pupil that resulted in the pupil's suspension or expulsion from school. Subdivision (b) also requires informing any of the pupil's teacher(s) that the pupil was suspended or expelled, and of the offense that resulted in that action.

Subdivision (b)'s use of the word 'shall' indicates that its activities are mandatory.³⁶ Based on the plain meaning of this section, it requires the school district into which a pupil is transferring (receiving district) to request from the school district in which the pupil was last enrolled, any records maintained in the ordinary course of business or received from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension or expulsion from school.

Subdivision (b) also requires the receiving district, on receipt of this information, to inform any teacher of the pupil that the pupil was suspended or expelled from school, and to inform the teacher of the act that resulted in that action. Thus, staff finds that Education Code section 48201, subdivision (b), imposes these state-mandated activities.

Subdivision (b)(2) and (b)(3) were not alleged by the claimants, nor do they require a school district to perform any activities.

In addition to requesting pupil records, claimant SUHSD requests reimbursement for responding to requests from all receiving school districts for any records maintained in the ordinary course of business or records received from law enforcement agencies regarding acts committed by the transferring pupil that resulted in the pupil's suspension from the sending school and/or expulsion from the sending school district. Subdivision (b)(1) states:

Upon a pupil's transfer from one school district to another, *the school district* into which the pupil is transferring *shall request* that the school district in which the pupil was last enrolled *provide* any records that the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. [Emphasis added.]

³⁵ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155, 174.

³⁶ Education Code section 75.

The legislative history of Statutes 2001, chapter 345 states that its purpose is “to address the need for accurate information to be available to schools and teachers relative to the pattern of potentially harmful behavior on the part of the pupil.”³⁷ Moreover, subdivision (b)(2), which was added in the same test claim statute as subdivision (b)(1), absolves the school district or its employees from civil or criminal liability “for providing information under this subdivision unless it is proven that the information was false and that the district or district officer or employee knew or should have known that the information was false or the information was provided with a reckless disregard for its truth or falsity.”

In its January 2, 2007 comments on the draft staff analysis, Finance disagrees that providing pupil records is a mandate, arguing that the statute is silent as to whether the school district is required to respond to a district’s request for the suspension/expulsion records. According to Finance, the statute requires the ‘request’ for information, leaving the pupil’s former district discretion as to whether it will respond. Finance also disagrees for the need to look to the legislative history of the statute, stating that it is unnecessary because the statute is unambiguous.

Staff changed the draft staff analysis, issued November 2006. The final staff analysis states that this activity is not expressly mandated by the test claim statute, but that the Commission could determine whether the activity was a reasonable method of complying with the mandate during the parameters and guidelines phase, should the Commission approve this analysis.

In comments submitted March 2007, claimant states that Finance’s position is “contrary to the clear intent of the Legislature that school districts must inform personnel of pupil behavior problems and that they would be shielded from liability absent a reckless disregard for the truth of the information provided.” Claimant also comments:

Since the sending district is the only repository of the specific record of the behavior for which the pupil was disciplined, the particular behavior that the statute requires to be noticed to the personnel of the receiving district, there is no other way for the mandate to be accomplished except for the sending district to provide the information. To reduce the statute otherwise is to make absurd the action of the Legislature. ... [T]he [court] cases require that the plain meaning be read to further the work of the Legislature.

The San Diego Unified School District’s March 2007 comments state:

Since the rationale of this legislation is to ‘address the need for accurate information to be available to schools and teachers relative to the pattern of potentially harmful behavior on the part of the pupil,’ it is unlikely the legislature intended to give the ‘sending’ district an option to disregard the request. Staff’s argument in the original [draft staff] analysis furthers this position by pointing out that Education Code section 49079 (e) ‘states that it is a misdemeanor for an officer or employee of the school district to knowingly fail to provide

³⁷ Senate Committee on Education, Analysis of Senate Bill No. 29 (1999-2000 Reg. Sess.) as amended June 20, 2000, page 2.

information.” This part of the law reinforces the seriousness of the legislature’s intent to provide notification to teachers.

The determination whether a statute creates a reimbursable state-mandated program is a question of law based on the plain language of the statute.³⁸ Although providing the pupil’s records is reciprocal to requesting them, subdivision (b)(1), does not expressly require the school district to provide “any records that the district maintains in the ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil” that resulted in suspension or expulsion. Therefore, staff finds it is not state mandated.

The Commission may determine at the parameters and guidelines phase whether providing the records is the most reasonable method to comply with the mandate to request the records, based on the authority in Government Code section 17557 and California Code of Regulations, title 2, section 1183.1, subdivision (a)(4). Finance disagrees that this activity should be determined at the parameters and guidelines phase. This is discussed below under issue 4.

Teacher notification (§ 49079): Statutes 2000, chapter 345 amended section 49079, subdivision (a), by adding four new offenses to the pre-existing requirement for teacher notification: (1) sexual harassment (§ 48900.2); (2) hate violence (§ 48900.3); (3) harassment, threats or intimidation (§ 48900.4); and (4) terroristic threats (as defined) against school officials or school property, or both (§ 48900.7).

The 2000 amendment to section 49079 added the following underlined text:

(a) A school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of Section 48900 or in Section 48900.2, 48900.3, 48900.4, or 48900.7 that the pupil engaged in, or is reasonably suspected to have engaged in, those acts. The district shall provide the information to the teacher based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency, regarding a pupil described in this section. [¶]...[¶]

(d) For the 1994-95 school year, the information provided shall be from the previous two school years. For the 1996-97 school year and each school year thereafter, the information provided shall be from the previous three school years.

Subdivision (a)’s use of the word ‘shall’ indicates that the teacher notification is mandatory.³⁹ Moreover, subdivision (e) of section 49079 states that it is a misdemeanor for an officer or employee of the school district to knowingly fail “to provide information about a pupil who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in subdivision (a).” Therefore, the plain meaning of the statute, as well as the criminal result for failure to comply, requires the district to inform the teacher when any pupil engages in the specified acts amended into the statute. Consequently, staff finds that section 49079, subdivision (a), as

³⁸ *County of San Diego, supra*, 15 Cal.4th 68, 89.

³⁹ Education Code section 75.

amended by Statutes 2000, chapter 345, imposes a state-mandated activity by requiring a school district to inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, the acts described in sections 48900.2, 48900.3, 48900.4, or 48900.7, based on any records maintained by the district in its ordinary course of business, or received from a law enforcement agency.

B. Do the test claim statutes constitute a program?

In order for the test claim statutes to be subject to article XIII B, section 6 of the California Constitution, the statutes must also 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.⁴⁰ Only one of these findings is necessary to trigger article XIII B, section 6.⁴¹

The test claim statutes address transferring public school pupil expulsion and suspension records, and informing teachers of pupil conduct resulting in suspension or expulsion. These activities concern public education, which the courts have held is a peculiarly governmental function administered by school districts as a service to the public.⁴²

Moreover, the activities are solely applicable to school districts or county offices of education that function as school districts. Therefore, the test claim statutes impose unique requirements on them that do not apply generally to all residents or entities of the state. Accordingly, staff finds that the test claim statutes constitute a “program” that is subject to article XIII B, section 6 of the California Constitution.

Issue 2: Do the test claim statutes impose a new program or higher level of service 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 statutes are compared to the legal requirements in effect immediately before enacting the test claim legislation.⁴³ And the test claim legislation must increase the level of governmental service provided to the public.⁴⁴ Each activity is discussed separately.

Requesting pupil records (§ 48201, subd. (b).): As discussed above, this provision requires the school district into which a pupil is transferring to request from the school district in which the

⁴⁰ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁴¹ *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

⁴² *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at 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.”

⁴³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

⁴⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

pupil was last enrolled, any records maintained in the ordinary course of business or received from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension or expulsion from school.

Preexisting law requires school districts to maintain records of all expulsions, including the cause, in the pupil's mandatory interim record.⁴⁵ As discussed above, the following is currently reimbursable based on section 48918, as stated in the Amended Consolidated Parameters and Guidelines for *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM 4456, 4455 & 4463):

If the expulsion hearing is for possession of a firearm, then the following activities are reimbursable: [¶]...[¶] 2. Maintaining a record of the expulsion, including the cause of the expulsion. 3. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. 4. Forwarding the student's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school.

As to suspensions, preexisting law requires that they be reported to the school district governing board,⁴⁶ and "routine discipline data" and "disciplinary notices" may be included in the school district's permitted records.⁴⁷ Under preexisting law, suspension records did not have to be sent to the school to which the pupil transfers.

The current parameters and guidelines only reimburse transferring expulsion records if the expulsion hearing is for possession of a firearm because the Commission determined, in test claim CSM 4455, that expulsions for other offenses are discretionary. Section 48918, however, requires maintaining all expulsion records in the pupil's mandatory interim record and forwarding them to any school in which the pupil subsequently enrolls. Preexisting law did not, however, require *requesting* expulsion records on a transfer pupil. Nor did preexisting law require requesting a pupil's record of suspensions.

Therefore, staff finds that it is a new program or higher level of service, upon a pupil's transfer from one school district to another, for the district into which the pupil is transferring to request of the school district in which the pupil was last enrolled any records the district maintains in its ordinary course of business or received from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district.

Teacher notification (§§ 49079 & 48201 (b)(1)): Section 49079 requires a school district to inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of section 48900 (tobacco use). As stated above, Statutes 2000, chapter 345 amended section 49079, subdivision (a), by adding four new pupil offenses to this teacher notification requirement: (1) sexual

⁴⁵ Former section 48918, subdivision (j), currently in subdivision (k).

⁴⁶ Section 48911, subdivision (e).

⁴⁷ California Code of Regulations, title 5, section 432, subdivision (b)(3)(C) & (E).

harassment (§ 48900.2); (2) hate violence (§ 48900.3); (3) harassment, threats or intimidation (§ 48900.4); and (4) terroristic threats (as defined) against school officials or school property, or both (§ 48900.7). Preexisting subdivision (d) of section 49079 requires providing this information from the previous three school years.

Additionally, the last sentence of section 48201, subdivision (b)(1), as added by Statutes 2000, chapter 345 requires, upon the school district's receipt of a pupil's transfer record, informing any teacher of the pupil "that the pupil was suspended from school or expelled from the school district and shall inform the teacher of the act that resulted in that action." Section 48201 applies to transfer pupils, whereas section 49079 applies to all other pupils.

Preexisting law, in section 49079, requires informing the teacher "of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), [tobacco use] of section 48900." As noted above, this activity is currently reimbursable based on the Commission's decision in test claim CSM 4452.

Prior law did not require informing teachers of the following pupil offenses: (1) sexual harassment (§ 48900.2); (2) hate violence (§ 48900.3); (3) harassment, threats or intimidation (§ 48900.4); and (4) terroristic threats (as defined) against school officials or school property, or both (§ 48900.7). Nor did it require informing a teacher that a transfer "pupil was suspended from school or expelled from the school district ... [or informing] the teacher of the act that resulted in that action." (§ 48201, subd. (b)).

Therefore, staff finds that it is a new program or higher level of service for a school district, upon receipt of a transfer pupil's record, to inform a teacher that the transfer pupil was suspended from school or expelled from the school district, and to inform the teacher of the act that resulted in that action.

It is also a new program or higher level of service for a school district to inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in any of the acts described in sections 48900.2, 48900.3, 48900.4, or 48900.7, based on any records maintained by the district in its ordinary course of business, or received from a law enforcement agency. In accordance with preexisting subdivision (d) of section 49079, the information provided to the teacher is from the previous three school years.

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.⁴⁸ 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,

⁴⁸ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

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 claims include declarations signed by school officials from the Sweetwater Union High School District, Carpinteria Unified School District, and the Grant Joint Union High School District. Sweetwater and Carpinteria allege that their district “has or will incur costs of \$200 per fiscal year” to perform the alleged reimbursable activities for which they have not been reimbursed.⁴⁹

Because no exceptions to reimbursement in Government Code section 17556 apply, staff finds that the test claim statutes impose costs mandated by the state” within the meaning of Government Code sections 17514 and 17556.

Issue 4: Does the Commission have authority to determine the activity of ‘providing pupil records’ in the parameters and guidelines phase of the test claim?

Finance commented, in March 2007, that the activity of providing the pupil discipline records (§ 48201, subd. (b)) should be denied in the Statement of Decision, and not addressed in the parameters and guidelines phase of the test claim. Finance argues that an activity cannot be found reimbursable in the parameters and guidelines if it is not state mandated. Finance cites California Code of Regulations, title 2, section 1183.12, subdivision (b)(2), which states that the parameters and guidelines include “additional descriptions of the most reasonable methods of complying with the mandate [which are] not specific in the statute or executive order that are necessary to carry out the mandated program. For each additional method proposed, the test claimant shall provide an explanation of why it is reasonably necessary.” Finance states:

The regulation clearly refers to methods of performing an activity that the Commission determined to be a reimbursable state-mandate, which in this case would be requesting information, not the responding to a request. Therefore, we believe the Commission’s analysis misplaces the emphasis on the “response” to the request rather than the “request” itself. Furthermore, we do not believe it would be appropriate to develop parameters and guidelines that would create a state reimbursable cost for an activity that the Commission concludes in the same analysis is not a state-mandated activity.

Finance interprets the regulation to mean the parameters and guidelines include the most reasonable methods of performing an activity that the Commission determined to be a reimbursable state mandate. Actually broader, the regulation requires “a description of the most reasonable methods of complying with the mandate” defined as “**those methods not specified in statute** ... that are necessary to carry out the mandated program.”⁵⁰ [Emphasis added.]

The determination whether a statute creates a reimbursable state-mandated program is a question of law based on the plain language of the statute.⁵¹ Government Code section 17557,

⁴⁹ The current requirement is \$1000 in costs (Gov. Code, § 17564, Stats. 2004, ch. 890).

⁵⁰ See California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

⁵¹ *County of San Diego, supra*, 15 Cal.4th 68, 89.

subdivision (a), requires adoption of parameters and guidelines “for reimbursement of any claims relating to the statute or executive order” if the Commission determines there are costs mandated by the state.

As stated above, although providing the pupil’s records is reciprocal to requesting them, section 48201, subdivision (b)(1), does not expressly require the school district to provide “any records that the district maintains in the ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil” that resulted in suspension or expulsion. Staff finds, therefore, that providing the records is not mandated by the state. The Commission has the authority, however, to determine at the parameters and guidelines phase whether providing the records is the most reasonable method to comply with the mandate to request the records, based on the authority in Government Code section 17557 and California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

CONCLUSION

Based on the foregoing analysis, staff finds that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 and 17556, for the following activities:

- For a school district⁵² into which a pupil is transferring, to request from the school district in which the pupil was last enrolled, any records the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. (Ed. Code, § 48201, subd. (b)(1), as amended by Stats. 2000, ch. 345.)
- For a school district, upon receipt of a pupil’s transfer record, to inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district, and to inform the teacher of the act that resulted in that action (Ed. Code, § 48201, subd. (b)(1), as amended by Stats. 2000, ch. 345).
- For a school district to “inform the teacher of each pupil who has engaged in or is reasonably suspected to have engaged in, any of the acts described ... in Section 48900.2,^[53] 48900.3,^[54] 48900.4,^[55] and 48900.7^[56] that the pupil has engaged in, or is reasonably suspected to have engaged in, those acts.” This information is based on any records maintained by the district in its ordinary course of business, or received from a law enforcement agency. (Ed. Code, § 49079, subd. (a), as amended by Stats. 2000, ch.

⁵² These activities also apply to a county office of education that acts as a school district.

⁵³ Education Code section 48900.2 refers to sexual harassment, as specified.

⁵⁴ Education Code section 48900.3 refers to hate violence, as specified.

⁵⁵ Education Code section 48900.4 refers to harassment, threats or intimidation, as specified.

⁵⁶ Education Code section 48900.7 refers to terroristic threats against school officials or school property, or both, as specified.

345.) According to preexisting subdivision (d) of section 49079, this information provided to the teacher regarding pupil offenses is from the previous three school years.

Staff also finds that providing the pupil's records is not mandated by the state (Ed. Code, § 48201, subd., (b)(1)), but the Commission has the authority to determine at the parameters and guidelines phase whether providing the records is the most reasonable method to comply with the mandate to request the records, based on the authority in Government Code section 17557 and California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

Staff Recommendation

Staff recommends the Commission adopt the staff analysis to partially approve the test claim for the activities listed above.