J:/mandates/2000/00-TC-19, 02-TC-06/FSA
Hearing Date: July 29, 2004

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1;
POST Administrative Manual, Procedure D-13

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

(00-TC-19, 02-TC-06)

County of Los Angeles and Santa Monica Community College District, Claimants

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EXECUTIVE SUMMARY

Background

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13 establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties.

As indicated in the staff analysis, staff finds that POST's field training program is required only if the local agency or school district employer elects to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Conclusion

Staff concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

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

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis and deny this consolidated test claim.

STAFF ANALYSIS

Claimants

County of Los Angeles and Santa Monica Community College District

Chronology

06/29/01	County of Los Angeles files test claim, *Mandatory On-The-Job Training for Peace Officers Working Alone* (00-TC-19)
07/09/01	Test claim (00-TC-19) deemed complete
07/16/01	Commission on Peace Officer Standards and Training (POST) files comments on test claim (00-TC-19)
08/08/01	Department of Finance files comments on test claim (00-TC-19)
08/31/01	Claimant requests an extension of time to file rebuttal
09/04/01	Claimant's request for an extension of time is granted
10/23/01	Claimant files rebuttal to state agency comments
07/19/02	Request from SixTen and Associates to include school districts in test claim (00-TC-19)
09/13/02	Santa Monica Community College District files test claim, *Peace Officers Working Alone (K-14)* (02-TC-06)
09/19/02	Test claim (02-TC-06) deemed complete
10/21/02	POST files comments on test claim (02-TC-06)
10/22/02	Department of Finance files comments on test claim (02-TC-06)
05/12/04	Test claims, 00-TC-19 and 02-TC-06, are consolidated
06/03/04	Draft staff analysis on consolidated test claim is issued
06/18/04	County of Los Angeles files comments on draft staff analysis
06/21/04	Department of Finance requests an extension of time, until July 23, 2004, to file comments on the draft staff analysis
06/23/04	Santa Monica Community College District files comments on draft staff analysis

Background

This test claim has been filed on documents issued by the Commission on Peace Officer Standards and Training (POST). POST Bulletin 98-1 and the POST Administrative Manual (PAM) procedure D-13, establish field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties. The claimants contend that the POST bulletin and manual constitute an executive order that requires reimbursement pursuant to article XIII B, section 6 of the California Constitution.

The POST bulletin, which was issued on January 9, 1998, states in pertinent part the following:

> Following a public hearing on November 6, 1997, the Commission on Peace Officer Standards and Training (POST) approved amendments to Commission

Regulation 1005 and Procedure D-13 relating to establishing a mandatory POST-approved Field Training Program for peace officers assigned to general law enforcement patrol duties. This Commission action implements one of the objectives in its strategic plan (to increase standards and competencies of officers by integrating a mandatory field training program as part of the basic training requirement). POST's regulations and procedures have incorporated most of the important elements of successful field training programs already in existence in California law enforcement agencies. Significant changes in regulation include:

- All regular officers, appointed after January 1, 1999 and after completing the Regular Basic Course are required to complete a POST-approved Field Training Program (described in PAM section D-13) prior to working alone in general law enforcement patrol assignments. Trainees in a Field Training Program shall be under the direct and immediate supervision (physical presence) of a qualified field training officer.

- The field training program, which shall be delivered over a minimum of 10 weeks, shall be based upon structured learning content as recommended in the *POST Field Training Program Guide* or upon a locally developed field training guide which includes the minimum POST specified topics.

- Officers are exempt from this requirement: 1) while the officer's assignment remains custodial, 2) if the employing agency does not provide general law enforcement patrol services, 3) if the officer is a lateral entry officer possessing a POST Regular Basic Certificate whose previous employment included general law enforcement patrol duties, or 4) if the employing authority has obtained a waiver as provided in PAM section D-13 as described below.

- A waiver provision has been established to accommodate any agency that may be unable to comply with the program's requirements due to either financial hardship or lack of availability of personnel who qualify as field training officers.

- Agencies are encouraged to apply for a POST-Approved Field Training Program prior to January 1, 1999, and as soon as all POST program requirements are in place (e.g., agency policies reviewed for conformance and sufficient numbers of qualified field training officers have been selected and trained) to ensure availability of a POST-approved program for new hires after that date.

- Requirements for the POST Regular Basic Certificate are not affected by the field training requirement.

Only those agencies affected by the new requirements (Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies in the POST program) will receive additional documents attached to this bulletin as follows:

1. Description of the program approval process
2. Copies of the Commission Regulations which are effective January 1, 1999
3. Copy of the Application for POST-Approved Field Training Program (POST 2-229, Rev 12/97)
4. Copy of the POST Field Training Guide 1997

Effective January 1, 1999, section 1005 of the POST regulations was amended to provide for the field training program.[1] As amended, section 1005, subdivision (a)(2), stated in relevant part that "[e]very regular officer, following completion of the Regular Basic Course and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM [POST Administrative Manual] section D-13."

On July 1, 2004, further amendments to POST's regulations and administrative manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." In addition, some of the required activities for the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual were placed in section 1004 of the POST regulations.[2]

The field training activities provided in the POST Administrative Manual and in POST regulations include the following:

- Any department that employs peace officers and/or Level I Reserve peace officers shall have a POST-approved field training program. Requests for approval of the program shall be submitted on form 2-229, signed by the department head.
- The field training program shall be delivered over a minimum of 10 weeks and based upon the structured learning content specified in the POST Administrative Manual section D-13 and the POST Field Training Program Guide.[3]
- The trainee shall have successfully completed the Regular Basic Course before participating in the field training program.
- The field training program shall have a training supervisor/administrator/coordinator that has been awarded or is eligible for the award of a POST Supervisory Certificate, and meets specified POST requirements, including completion of a POST-certified Field Training Supervisor/Administrator/Coordinator Course.
- The field training program shall have field training officers that meet specified POST requirements, including completion of a POST-certified Field Training Officer Course.

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[1] California Code of Regulations, title 11, section 1005.

[2] See exhibit I, Bates pages 481 et seq., for POST's notice of rulemaking. In addition, on July 1, 2004, the field training program content and course curricula was updated to include specific components of leadership, ethics, and community oriented policing.

[3] The POST Field Training Program Guide is attached as Exhibit I, Bates pages 374 et seq.

- A trainee assigned to general law enforcement patrol duties shall be under the direct and immediate supervision (physical presence) of a qualified field training officer. A trainee assigned to non-peace officer, specialized functions for the purpose of specialized training or orientation (i.e., complaint/dispatcher, records, jail, investigations) is not required to be in the immediate presence of a qualified field training officer.
- Each trainee shall be evaluated daily with written summaries of performance prepared and reviewed with the trainee by the field training officer. Each trainee's progress shall be monitored by a field training administrator/supervisor by review and signing of daily evaluations and/or completing weekly written summaries of performance that are reviewed by the trainee.
- Each field training officer shall be evaluated by the trainee and supervisor/administrator at the end of the program.[4]

Claimants' Positions

Both claimants contend that POST Bulletin 98-1 and Administrative Manual Procedure D-13 constitute a reimbursable state-mandated program. The County of Los Angeles is requesting reimbursement for the following activities:

- One-time cost to design and develop a ten-week on-the-job training program, including course content and evaluation procedures to comply with the subject law.[5]
- One-time cost to meet and confer with training experts on curriculum development.[6]
- One-time cost to design training materials including, but not limited to, training videos and audio visual aids.[7]
- One-time cost to comply with POST application process for POST approval of county field training program.[8]
- Continuing cost for instructor time to prepare and teach ten-week training classes.[9]

  This includes the following instructor and administrator training:

  - 40-hour POST field training officer course in accordance with POST procedure, D-13-5;[10]

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[4] Exhibit A (Bates pp. 169-175) and Exhibit I (Bates p. 481), POST Administrative Manual, Procedure D-13, and section 1004 of the POST regulations, effective July 1, 2004.

[5] Declaration of Lieutenant Bruce Fogarty, Los Angeles County Sheriff's Department, dated June 21, 2001. Staff notes that the County of Los Angeles' field training program is 28 weeks of training. (See Exhibit A, Bates p. 194, for the County of Los Angeles Field Training Program Manual.)

[6] *Ibid.*

[7] *Ibid.*

[8] Exhibit A, Test Claim, Bates pages 113-115.

[9] Declaration of Lt. Bruce Fogarty.

- 24-hour POST field training administrator course, POST procedure D-13-6;[11] and
- 24- hour field training officer's update, POST procedure D-13-7.[12]

- Continuing cost for trainee time to attend the ten-week training class.[13]
- Continuing cost to review and evaluate trainees to ensure that each phase is successfully completed.[14]

Santa Monica Community College District requests reimbursement for the following activities:

- Develop and implement policies and procedures, with periodic updates.
- Develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates in the field training program.
- Pay the unreimbursed costs for travel, subsistence, meals, training fees and substitute salaries of field training officers and law enforcement officers attending the training.
- Plan, develop and implement a field training program and submit an application for approval of the field training program.
- Apply for a waiver of the field training requirements when unable to comply due to either financial hardship or lack of availability of personnel who qualify as field training officers.[15]

Position of the Department of Finance

The Department of Finance filed comments on both test claims arguing that the test claim should be denied for the following reasons:

- Local law enforcement agency participation in POST programs is optional. Local entities agree to participate in POST programs and comply with POST regulations by adopting a local ordinance or resolution pursuant to Penal Code sections 13522 and 13510. Therefore, any costs associated with participation in an optional program are not reimbursable state-mandated local costs.
- Local agency participation in the training is optional because local entities can request a waiver exempting them from the training.[16]

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[10] Exhibit A, Test Claim, pages 116 and 121.

[11] *Id.* at page 122.

[12] *Ibid.*

[13] Declaration of Lt. Bruce Fogarty.

[14] *Ibid.*

[15] See declaration of Eileen Miller, Chief of Police of the Santa Monica Community College District, and declaration from Greg Bass, Director of Child Welfare and Attendance, Clovis Unified School District (Exhibit B).

[16] Exhibit C.

Position of POST

POST filed comments on the County of Los Angeles test claim as follows:

> The Commission on Peace Officer Standards and Training did enact new regulations, effective January 1, 1999, requiring that certain peace officers complete a minimum ten-week Field Training Program. This new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers employed by participating agencies. There was no statutory enactment by the Legislature compelling adoption of Field Training program regulations.
>
> Local entities, such as the County of Los Angeles, participate in the POST program on a voluntary basis. The County has passed an ordinance under the terms of which it agrees to abide by current and future employment and training standards enacted by the POST Commission.
>
> The Commission's regulations include a waiver provision for participating agencies unable to comply due to significant financial constraints.[17]

POST also filed comments on the Santa Monica Community College test claim, which further alleges that agencies choosing to participate in the POST program should budget annually for anticipated costs. POST also states that participants in the POST program are reimbursed for travel, per diem, and tuition associated with attendance at field training officer courses.[18]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "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."[21] 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

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[17] Exhibit D.

[18] *Ibid.*

[19] Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[20] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

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

task.[22] 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.[23]

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.[24] 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.[25] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[26]

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.[27] 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."[28]

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[22] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id*., at p. 754.)

[23] *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

[24] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[25] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[26] *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; Government Code sections 17514 and 17556.

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

[28] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280.

Issue I: Are the documents issued by POST, Bulletin 98-1 and POST Administrative Manual Procedure D-13, subject to article XIII B, section 6 of the California Constitution?

A. State law does not require school districts and community college districts to employ peace officers and, thus, the field training requirements do not impose a state mandate on school districts and community college districts.

Santa Monica Community College District contends that the documents issued by POST constitute executive orders that impose a mandate on school districts and community college districts to provide the required field training to their officers. Staff disagrees. For the reasons described below, staff finds that the documents issued by POST are not subject to article XIII B, section 6 of the California Constitution because they do not impose a mandate on school districts and community college districts. School districts and community college districts are not required by state law to employ peace officers.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[29] Although the Legislature is permitted to authorize school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[30] the Constitution does not require school districts to operate police departments or employ school security officers as part of their essential educational function. Article I, section 28, subdivision (c), of the California Constitution does require K-12 school districts to maintain safe schools. However, there is no constitutional requirement to maintain safe schools through school security or a school district police department independent of the public safety services provided by the cities and counties a school district serves. [31]

In *Leger v. Stockton Unified School District*, the court interpreted the safe schools provision of the California Constitution as declaring only a general right *without* specifying any rules for its enforcement.[32] The claimant argues that the Commission should ignore the portion of the court's ruling that the safe schools provision does not specify any rules because the *Leger* case is a tort case where the plaintiff was seeking monetary damages for the alleged negligent actions of the school district. The claimant further argues that the Commission should follow the *Leger* court's statements that "all branches of government are required to comply with constitutional directives," such as providing a safe school through police services.[33]

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

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

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

[32] *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1455. (Exhibit K, Bates p. 643.)

[33] Exhibit K, Bates pages 598-601.

But, the claimant is mischaracterizing the court's holding. When interpreting the safe schools provision of the Constitution, the court was applying rules of constitutional interpretation. The court stated the following:

> The following rule has been consistently applied in California to determine whether a constitutional provision is self-executing in the sense of providing a specific method for its enforcement: " 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and *it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law*.'" [Citations omitted.] (Emphasis added.)[34]

The court further held that the safe schools provision of the Constitution is not self-executing because it does not lay down rules that are given the force of law.

> [H]owever, section 28(c) declares a general right without specifying *any* rules for its enforcement. It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred. Rather, "it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." [Citation omitted.][35]

Furthermore, the court reviewed the ballot materials for the safe schools provision and found that the provision was intended to be implemented through reforms in criminal laws.[36] For example, the court noted in footnote 3 of the decision that the Legislature implemented the safe schools provision by establishing procedures in the Penal Code by which non-students can gain access to school grounds and providing punishments for violations. The Legislature also enacted the "Interagency School Safety Demonstration Act of 1985" to encourage school districts, county offices of education, and law enforcement to develop and implement interagency strategies, programs, and activities to improve school attendance and reduce the rates of school crime and vandalism.[37] But, as shown below, the Legislature has not implemented the safe schools provision by requiring school districts to employ peace officers.

Accordingly, the California Constitution does not require or mandate school districts, through the safe schools provision, to employ peace officers.

Finally, although the Legislature authorizes school districts and community college districts to employ peace officers, the Legislature does not require school districts and community college

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[34] *Leger v. Stockton Unified School District, supra,* 202 Cal.App.3d at page 1455.

[35] *Ibid*.

[36] *Id.* at page 1456.

[37] *Id.* at page 1456, footnote 3.

districts to employ peace officers. Pursuant to Education Code section 38000:[38]

> [t]he governing board of any school district may establish a security department … or a police department …[and] may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

Education Code section 72330, derived from the same 1959 Education Code section, provides the law for community colleges. "The governing board of a community college district may establish a community college police department … [and] may employ personnel as necessary to enforce the law on or near the campus. … This subdivision shall not be construed to require the employment by a community college district of any additional personnel."

In 2003, the California Supreme Court decided *Department of Finance v. Commission on State Mandates* and found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."[39] The court further stated, on page 731 of the decision, that:

> [*W]e reject claimants' assertion that they have been legally compelled to incur* notice and agenda *costs*, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

The decision of the California Supreme Court interpreting the state-mandate issue is relevant to this test claim. The Commission is not free to disregard clear statements of the California Supreme Court. Pursuant to state law, school districts and community college districts are not required by the state to have a police department and employ peace officers. That decision is a local decision.[40] Thus, the field training duties imposed by the POST documents that follow

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

[39] *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 743. (Emphasis added.)

[40] Santa Monica Community College District admits that the decision to have a police department and employ peace officers is a local decision. On page 25 of its comments to the draft staff analysis (Exhibit K, Bates p. 621), the claimant states the following:

> The people and the legislature has [sic] not directly specified how the constitutional duty to provide safe schools is to be accomplished. They left this decision to local agencies who [sic] have first hand knowledge of what is necessary for their respective communities. It is a local decision.

from the discretionary decision to employ peace officers do not impose a reimbursable state mandate.

In response to the draft staff analysis, Santa Monica Community College District contends that staff has misconstrued the *Department of Finance* case. The claimant alleges that the controlling authority on the subject of legal compulsion of a state statute is *City of Sacramento v. State of California*.[41, 42] The claimant, however, is mischaracterizing the Supreme Court's holding in *Department of Finance*.

In *Department of Finance*, the school districts argued that the definition of a state mandate should not be limited to circumstances of strict legal compulsion, but, instead, should be controlled by the court's broader definition of a federal mandate in the *City of Sacramento* case.[43] In *City of Sacramento*, the court analyzed the definition of a federal mandate and determined that because the financial consequences to the state and its residents for failing to participate in the federal plan were so onerous and punitive, and the consequences amounted to "certain and severe federal penalties" including "double taxation" and other "draconian" measures, the state was mandated by federal law to participate in the plan, even the federal legislation did not legally compel the participation.[44]

The Supreme Court in *Department of Finance*, however, found it "unnecessary to resolve whether [its] reasoning in *City of Sacramento* [citation omitted] applies with regard to the proper interpretation of the term 'state mandate' in section 6 of article XIII B."[45] Although the school districts argued that they had no true choice but to participate in the school site council programs, the court stated that, assuming for purposes of analysis only, the *City of Sacramento* case applies to the definition of a state mandate, the school districts did not face "certain and severe penalties" such as "double taxation" and other "draconian" consequences."[46]

Here, even assuming that the *City of Sacramento* case applies, there is no evidence in the law or in the record that school districts would face "certain and severe" penalties" such as "double taxation" or other "draconian" consequences if they don't employ peace officers.

Finally, the claimant argues that the staff analysis is arbitrary and unreasonable since it is not consistent with the Commission's prior decisions approving school district peace officer cases, such as the *Peace Officer Procedural Bill of Rights* (CSM 4499).[47] The claimant acknowledges the California Supreme Court's decision in *Weiss v. State Board of Education*, which held that the failure of a quasi-judicial agency to consider prior decisions is not a violation of due process as long as the action is not arbitrary or unreasonable.[48] But, the claimant states that "staff has

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[41] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

[42] Exhibit K, Bates pages 626-630.

[43] *Department of Finance, supra*, 30 Cal.4th at pp. 749-751.

[44] *City of Sacramento, supra*, 50 Cal.3d at pages 73-76.

[45] *Id*. at page 751.

[46] *Id*. at pages 751-752.

[47] Exhibit K, Bates pages 623-626.

[48] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 777.

offered no compelling reason … why mandated activities of district peace officers were reimbursable in previous rulings and now activities of district peace officers are not reimbursable, other than what appears to be a whim or current fancy."[49]

As explained above, the compelling reason is the California Supreme Court's decision in *Department of Finance*, which affirmed the 1984 decision of *City of Merced*, and requires the Commission to determine whether the claimant's participation in the underlying program is voluntary or compelled. All of the previous Commission decisions cited by the claimant were decided before the Supreme Court issued the *Department of Finance* decision.[50]

Therefore, the POST documents are not subject to article XIII B, section 6 of the California Constitution with respect to school districts because they do not impose a mandate on school districts and community college districts.

B. State law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Assuming for the sake of argument only that school districts are required to employ peace officers, staff finds that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a state-mandated program on either school districts or local agencies. Thus, the POST documents are not subject to article XIII B, section 6 of the California Constitution. As more fully described below, participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state. Furthermore, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants.

Participation in POST is voluntary

As described by POST in their comments to the test claims, the ten-week field training program was enacted by POST under their authority to set standards for employment and training of peace officers employed by agencies that participate in the POST program.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers …" (Pen. Code, § 13510.) To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and to the training of peace officers. But, these rules apply only to those cities, counties, and school districts that participate in the POST program and receive state aid. Penal Code section 13510, subdivision (a), expressly states that "[t]hese rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter …"[51]

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[49] Exhibit K, Bates page 626.

[50] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 was a case brought by the city seeking reimbursement for eminent domain statutes under the former Senate Bill 90, Revenue and Taxation Code, provisions. The claim was not brought pursuant to article XIII B, section 6 of the California Constitution.

[51] Penal Code section 13507, subdivision (e) and (f), defines "district" to include school districts and community college districts.

The state aid is provided in Penal Code section 13520, which states the following: "There is hereby created in the State Treasury a Peace Officers' Training Fund, which is hereby appropriated, without regard to fiscal years, exclusively for costs of administration and for grants to local governments and districts pursuant to this chapter."

Penal Code section 13552 further provides that any local agency or school district may apply for the state aid by filing an application with POST, accompanied by an ordinance or resolution from the governing body stating that the agency will adhere to the standards for recruitment and training established by POST. Penal Code section 13552 states the following:

> Any city, city and county, or district which desires to receive state aid pursuant to this chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an ordinance, or … a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, or district will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

Penal Code section 13523 provides that "[i]n no event shall any allocation be made to any city, county, or district which is not adhering to the standards established by the commission as applicable to such city, county, or district."

In the *Department of Finance* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.[52] As the court stated,

> [T]he core point … is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.][53]

Here, participation in the underlying POST program is voluntary. The plain language of Penal Code section 13522 authorizes the governing body of local agencies and school districts to decide whether to apply for state aid through POST. If the local entity decides to file an application, the entity must adopt an ordinance or regulation agreeing to abide by POST rules and regulations as a condition of applying for state aid. Not all local agencies and school districts have applied for POST membership.[54]

In response to the draft staff analysis, the County of Los Angeles filed documents from the websites of cities that are listed by POST as non-participating agencies. These documents show

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[52] *Department of Finance, supra,* 30 Cal.4th at page 731.

[53] *Department of Finance, supra,* 30 Cal.4th at page 742.

[54] See Exhibit I, Bates pages 469-480, for POST's list of law enforcement agencies, with several agencies, as of March 11, 2004, noted as not a POST participating agency.

that the nonparticipating cities contract their police services with agencies that do participate in the POST program.[55] But, the fact remains that there is no state statute, or other state law, that requires local agencies and school districts to participate in the POST program. The decision to participate is a local decision.

Thus, like the school districts in the *Department of Finance* case, local agencies and school districts here are free to decide whether to 1) continue to participate and receive POST funding, even though they must also incur program-related costs associated with the field training program, or 2) decline to participate in the POST program.[56] Therefore, local agencies and school districts are not mandated by the state to provide field training to their officers.

Finally, the field training program at issue in this case is not like other legislatively-mandated training programs imposed on law enforcement agencies, as asserted by the County of Los Angeles. The County argues that the Commission's analysis of this claim should be the same as its analysis and findings of state-mandated programs in *Sexual Harassment Training in the Law Enforcement Workplace* (CSM 97-TC-07, adopted September 28, 2000) and *Domestic Violence Training* (CSM 96-362-01, adopted February 26, 1998).[57] But, the test claims on the Sexual Harassment and Domestic Violence Training involved Penal Code statutes (Pen. Code, §§ 13519.7 and 13519) that required POST to develop the training courses and required local law enforcement agencies to provide the POST-developed training courses to their officers.[58] Here, the Legislature has not enacted a statute compelling POST to develop a field training course and has not compelled local agencies and school districts to provide a field training program for their officers. Thus, the same rationale does not apply. Instead, local agencies and school districts are not mandated by the state, as described above, to provide field training to their officers.

Accordingly, staff finds that participation in POST and compliance with POST's field training program are voluntary, and not mandated by the state.

<u>POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status</u>

The claimants allege that the field training program for officers working alone is part of the basic training requirement imposed by the state on all officers to obtain peace officer status. Thus, the claimants argue that field training is not voluntary. Staff disagrees.

It is true, as argued by the claimants, that officers are required to complete a basic course of training prescribed by POST before they can exercise the powers of a peace officer, and must obtain the basic certificate issued by POST within 18 months of employment in order to continue to exercise the powers of a peace officer.[59] If the officer fails to complete the POST basic

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[55] Exhibit J.

[56] *Department of Finance, supra,* 30 Cal.4th at page 753.

[57] Exhibit A, County of Los Angeles test claim, Bates pages 149-151.

[58] The Commission ultimately denied the test claim on Domestic Violence Training because there was no evidence that the state mandated local agencies to incur increased costs mandated by the state. The Second District Court of Appeal upheld the Commission's decision. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.)

[59] Penal Code sections 832, 832.3, subdivision (a), and 832.4.

training or obtain the basic certificate, the officer may exercise only non-peace officer powers; for example, the officer may not exercise the powers of arrest, serve warrants, or carry a concealed weapon without a permit.[60] The basic training and certificate is mandated by statute, and applies to all officers, whether or not their employers are POST members.[61]

But, based on the plain language of Bulletin 98-1, POST Regulations, the POST Administrative Manual, and the comments filed by POST on these test claims, the field training program is not part of the legislatively-mandated basic training requirement imposed on all officers. Field training is required only if the local agency or school district employer has elected to become a member of POST and, for those officers employed by a POST participating agency, only after the officer has completed the basic training course.

Page two of the POST Bulletin 98:1 expressly states that the "requirements for the POST regular Basic Certificate are *not* affected by the field training requirement." (Emphasis added.) Page two of the bulletin also describes those agencies affected by the new requirements as "Police Departments, Sheriff's Departments, School/Campus Police Departments, and selected other agencies *in the POST program*…" (Emphasis added.) Thus, agencies that decide not to participate in the POST program are not affected by the field training requirement.

In addition, section 1005, subdivision (a)(1), of the POST regulations, as amended in January 1999, provided that "[a]n officer as described in Penal Code section 832.2 (a) [a peace officer, first employed after January 1, 1975, that successfully completes the basic training course prescribed by POST] *is authorized to exercise peace officer powers while engaged in a field training program* …" (Emphasis added.) Section 1005, subdivision (a)(2), further provided that "[e]very regular officer, *following completion of the Regular Basic Course* and before being assigned to perform general law enforcement patrol duties without direct and immediate supervision, shall complete a POST-approved Field Training Program as set forth in PAM section D-13." (Emphasis added.)[62] Thus, unlike the statutory requirement to successfully complete the basic training course before exercising the powers of a peace officer, an officer is not required to complete the field training program before he or she has the powers of a peace officer to make arrests, serve warrants, and carry a concealed weapon. Therefore, the field training program is not part of the basic training program.

Moreover, on July 1, 2004, further amendments to POST's regulations and the POST Administrative Manual on the field training program went into effect. According to the regulatory notice issued by POST, section 1005 of the POST regulations was amended to "eliminate possible confusion with other courses in the POST Administrative Manual listed as 'Basic' courses." The plain language of section 1005, as amended, indicates that the field training program is not part of the basic training program. Section 1005, as amended, provides as follows:

(a) Minimum Entry-Level Training Standards (Required).

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[60] 80 Opinions of the California Attorney General 293, 297 (1997).

[61] 55 Opinions of the California Attorney General 373, 375 (1972).

[62] See also, POST Administrative Manual Procedure D-13-3.

(1) Basic Course Requirement: Every peace officer, except Reserve Levels II and III, those peace officers listed in Regulation 1005(a)(3) …, and 1005(a)(4) …, *shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers.* Requirements for the Regular Basic Course are set forth in PAM, section D-1-3.

(A) Field Training Program Requirement: Every peace officer, except Reserve Levels II and III and those officers described in sections (B)1-5(below), *following completion of the Regular Basic Course and before being assigned to perform general law enforcement uniformed patrol duties without direct and immediate supervision,* shall complete a POST-approved Field Training Program as set forth in PAM section D-13. (Emphasis added.)

The statutory authority and reference listed for section 1005 of the POST regulations includes Penal Code section 832 and 832.3, the statutes that require the successful completion of a basic course of training prescribed by POST before a person can exercise the powers of a peace officer. [63]

In addition, the activities required to be performed by POST participating agencies under the field training program that were originally listed in Procedure D-13 of the POST Administrative Manual was placed in section 1004 of the POST regulations on July 1, 2004. The statutory authority and reference for section 1004 of the POST regulations are Penal Code 13503, 13506, 13510, and 13510.5, the statutes that authorize POST to set standards for employment and training of peace officers employed by agencies that participate in POST.[64]

In addition to the plain language of the regulations and the POST Administrative Manual, the comments filed by POST on these test claims indicate that the field training program adopted by POST was meant only for POST participating agencies. POST states that the "new requirement was enacted by the Commission on POST under its authority to set standards for employment and training of peace officers *employed by participating agencies*."[65] POST's interpretation of their regulations and Administrative Manual, is entitled to great weight and the courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.[66, 67]

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[63] See exhibit I, POST's notice of rulemaking; California Code of Regulations, title 11, sections 1004 and 1005 (eff. 7/1/04).

[64] *Ibid.*

[65] Exhibit D, emphasis added.

[66] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11. (Exhibit I, Bates p. 549.)

[67] In response to the draft staff analysis, Santa Monica Community College District contends that the *Yamaha* case supports the conclusion that POST's interpretation of its own regulations and rules is not entitled to deference by the Commission because POST's interpretation is a quasi-judicial interpretation of a statute. (Exhibit K, Bates pp. 634-635.) Staff disagrees. As indicated in the analysis, the state has *not* enacted a statute compelling POST to develop a field training

Accordingly, POST's field training program is *not* part of the basic training requirement imposed by the state on all officers to obtain peace officer status, as suggested by the claimants. Rather, the field training program is imposed only on POST participating agencies.

Conclusion

Staff concludes that POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

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

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis and deny this consolidated test claim.

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course. Thus, POST was not exercising a quasi-judicial function to interpret a state statute. Rather, POST's field training course was adopted as a quasi-legislative action and, thus, under *Yamaha*, POST's interpretation of its own regulations and rules is entitled to great weight. (*Yamaha, supra*, 19 Cal.4th at pp. 10-11.)