

**ITEM 3**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Education Code Section 32282, Subdivision (a)(2)(B)  
Statutes 2004, Chapter 895 (AB 2855)

*Comprehensive School Safety Plans II (Amendment)*

07-TC-11 (02-TC-33)

Bakersfield City School District  
Sweetwater Union High School District  
San Diego Unified School District  
Co-Claimants

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**EXECUTIVE SUMMARY**

The subject of this test claim is the comprehensive school safety plans program. This program was initially established in 1989 in recognition of the California constitutional principle that all students and staff of K-12 public schools have the inalienable right to attend campuses which are safe, secure, and peaceful. The stated purpose for the plans was to ensure that all K-12 schools, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators and other interested persons, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.

This item is an amendment to the test claim filed in *Comprehensive School Safety Plans II* (02-TC-33). The amendment was filed the day before the hearing on *Comprehensive School Safety Plans II* in June 2008, and alleges that Education Code section 32282, subdivision (a)(2)(B), as amended by Statutes 2004, chapter 895 (Assembly Bill No (AB 2855)), constitutes a reimbursable state-mandated program. The test claim statute amended the *Comprehensive School Safety Plan* program requirements in Education Code section 32282, subdivision (a)(2)(B), to specify that the previously required disaster procedures included in the plan shall also include: (1) establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom; and (2) establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters.

**Conclusion**

Staff concludes that Education Code section 32282, subdivision (a)(2)(B), constitutes a reimbursable state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs of performing the following one-time activities:

- For new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, develop and establish an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:
  - (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
  - (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
  - (III) Protective measures to be taken before, during, and following an earthquake.
  - (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, § 32282, subd. (a)(2)(B)(i).)

This activity does *not* impose a reimbursable state-mandated program for schools that were established before January 1, 2005.
- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The procedures shall include a provision that the district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community. (Ed. Code, § 32282, subd. (a)(2)(B)(ii).)
- Include the earthquake emergency procedure system (Ed. Code, § 32282, subd. (a)(2)(B)(i)) and the procedure for the use of school buildings for mass care and welfare shelters during disasters or other emergencies (Ed. Code, § 32282, subd. (a)(2)(B)(ii)) within the existing disaster procedures of the comprehensive school safety plan. (Ed. Code, § 32282, subd. (a)(2)(B).)

To the extent school districts have already been reimbursed for the one-time activity of including the earthquake emergency procedure system in the existing disaster procedures of the comprehensive school safety plan, there are no costs mandated by the state within the meaning of Government Code section 17514 and the activity is not eligible for reimbursement.

Furthermore, implementation of the comprehensive school safety plan, including the drop procedure practice, training on the earthquake emergency procedure system, and the

procedure to allow use of school facilities for mass care and welfare shelters, is not mandated by the state and, therefore, not reimbursable.

Staff further concludes that any allegations made by the claimant that are not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

The reimbursement period for this claim begins January 1, 2005. Any grant funds received by a school district, or funds received through an appropriation for this program by the Legislature shall be identified as offsetting revenue in the parameters and guidelines.

Finally, staff recommends that the parameters and guidelines for *Comprehensive School Safety Plans II* (02-TC-33) and any activities approved by the Commission in this test claim amendment (07-TC-11) be consolidated with the original program, *Comprehensive School Safety Plans* (98-TC-01/99-TC-10), for future reimbursement claims.

### **Recommendation**

Staff recommends the Commission adopt this analysis to partially approve the test claim.

## STAFF ANALYSIS

### Co-Claimants

Bakersfield City School District  
Sweetwater Union High School District  
San Diego Unified School District

### Chronology

06/23/03 Bakersfield City School District and Sweetwater Union High School Districts (“Co-Claimants”) filed test claim with the Commission on State Mandates (“Commission”) (02-TC-33)

07/03/03 Commission staff found the test claim incomplete

07/28/03 Claimants filed corrections to the test claim

08/06/03 Commission staff deemed the test claim complete

09/30/03 The Department of Finance filed comments on the test claim

05/07/08 Commission staff issued draft staff analysis

06/23/08 San Diego Unified School District was added as a co-claimant

06/25/08 San Diego Unified School District filed amendment to the test claim (07-TC-11)

06/25/08 Commission staff severed the amendment from the original test claim

06/26/08 Commission heard and decided *Comprehensive School Safety Plans II* test claim (02-TC-33)

07/07/08 Commission staff found the test claim amendment complete (07-TC-11)

08/26/08 The Department of Finance filed comments on the test claim amendment (07-TC-11)

08/06/09 Draft staff analysis issued

08/27/09 Claimant, San Diego Unified School District, files comments on the draft staff analysis

### Background

This item is an amendment to the test claim filed in *Comprehensive School Safety Plans II* (02-TC-33). The amendment was filed the day before the hearing on *Comprehensive School Safety Plans II* in June 2008, and alleges that Education Code section 32282, subdivision (a)(2)(B), as amended by Statutes 2004, chapter 895 (AB 2855), constitutes a reimbursable state-mandated program. The test claim statute amended the *Comprehensive School Safety Plan* program requirements in Education Code section 32282, subdivision (a)(2)(B), to specify that the previously required disaster procedures included in the plan shall also include: (1) establishing an earthquake emergency procedure system in every public school building having an occupant capacity

of 50 or more pupils or more than one classroom; and (2) establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters.

The amendment was severed from *Comprehensive School Safety Plans II* (02-TC-33). The Statement of Decision in 02-TC-33 was issued on July 7, 2008, and the parameters and guidelines will be set for hearing after this test claim amendment is heard and determined. The reimbursement period for *Comprehensive School Safety Plans II* begins July 1, 2001.

If this test claim amendment is approved by the Commission, the period of reimbursement begins January 1, 2005, the effective date of the test claim statute, Statutes 2004, chapter 895 (AB 2855).

### **History of the Program**

#### ***Emergency Procedures, Earthquakes and Disasters (CSM 4241)***

The Emergency Procedures, Earthquake Procedures and Disasters program was enacted by Statutes 1984, chapter 1659, in recognition of the fact that California will experience moderate to severe earthquakes in the foreseeable future and the necessity for all public and private schools to develop school disaster plans and an earthquake emergency procedure system. (Ed. Code, § 35295.) To that end, the governing board of each private school and school district and the superintendent of schools for each county was required to establish an earthquake emergency procedure system in every public or private school building under its jurisdiction having an occupant capacity of 50 or more students or more than one classroom. (Ed. Code, § 35296.)

Education Code section 35297 stated that the earthquake emergency procedure system shall include, but not be limited to, all of the following:

- (a) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs.
- (b) A drop procedure. As used in this article, “drop procedure” means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once a semester in secondary schools.
- (c) Protective measures to be taken before, during, and following an earthquake.
- (d) A program to ensure that the students and staff are aware of, and properly trained in, the earthquake emergency procedure system.

The 1984 legislation also amended the Education Code to require the governing board of any school district to: a) grant the use of school facilities for mass care and welfare shelters to public agencies such as the American Red Cross in the event of a disaster or other emergency affecting the public health and welfare; and b) cooperate with such public agencies in furnishing and maintaining those services as the governing board may deem necessary to meet the needs of the community. (Ed. Code, § 40041.5.) In 1996,

section 40041.5 was repealed and section 38132 was added to the Education Code, which set forth the same requirements. (Stats. 1996, ch. 277 (SB 1562).)

On December 1, 1986, the Los Angeles Unified School District filed a test claim with the Commission, alleging a reimbursable state-mandated program was imposed on school districts by statutes that require schools to develop earthquake emergency procedures and allow use of schools for mass care and welfare shelters. (Ed. Code, §§ 35295, 35296, 35297, 40041, 40041.5, and 40042.) The test claim was approved by the Commission on August 27, 1987. The Commission adopted parameters and guidelines for the test claim on March 23, 1989, and authorized reimbursement for: a) employee preparation and implementation of district emergency and disaster plans and procedures, including costs of training employees and providing instruction to students; and b) employee supervision, security and custodial activities, as well as utility costs, related to use of the facility for mass care and welfare shelters. On February 28, 1991, the Commission amended the parameters and guidelines to delete reimbursement for in-classroom teacher time while allowing reimbursement for other non-teacher costs resulting from the instruction of students in emergency procedures.

On September 19, 2002, the State Controller's Office requested the Commission amend the parameters and guidelines to clarify that reimbursement for the emergency and disaster procedures is limited to establishing an emergency procedure system that addresses *earthquake* emergencies only. On May 29, 2003, the Commission amended the parameters and guidelines to clarify the reimbursable activities and track the statutory language, as follows:

A. Earthquake Emergency Procedure System

1. One-Time Activities

- a. Developing and establishing a district earthquake emergency procedure system that shall include all of the following:
  - A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs.
  - A drop procedure.<sup>1</sup>
  - Protective measures to be taken before, during, and following an earthquake.
  - A program to ensure that the students and that both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, §35297.)

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<sup>1</sup> As used in this article, "drop procedure" means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools. (Ed. Code, § 35297.)

2. On-Going Activities

- a. Updating the district earthquake emergency procedure system as to those activities identified in 1.a. above, including the training program.
- b. Employees reviewing the requirements of the Earthquake Emergency Procedure System program and attending training meetings to receive instruction.
- c. Employees preparing to conduct training sessions. However, in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system is not reimbursable.

B. Mass Care And Welfare Shelters – Earthquake and Other Disasters

1. On Going Activities

- a. Secure and supervise facilities for the purpose of opening and closing the facility or portions of the facilities and to provide security at the facility during the period of the emergency.
- b. Maintain and clean-up district facilities during the emergency or after for the purpose of making the facility ready for normal operation.
- c. Utility cost incurred by the district directly related to the usage of district facilities for Mass Care and Welfare Shelters.

***Comprehensive School Safety Plans (98-TC-01/99-TC-10)***

The *Comprehensive School Safety Plans* program was initially established in 1989<sup>2</sup> in recognition of the California constitutional principle that 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.<sup>3</sup> In enacting the original comprehensive school safety plans legislation, the Legislature stated:

It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a

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<sup>2</sup> Article 10.3 (commencing with section 35294) added to Chapter 2 of Part 21 of the Education Code by Statutes 1989, chapter 1253; subsequently renumbered to Article 5 (commencing with section 32280) of Chapter 2.5 of Part 19 of the Education Code and amended by Statutes 2003, chapter 828. Statutes 2003, chapter 828, were not pled in the test claim amendment, however, and the Commission makes no findings with regard to those statutes.

<sup>3</sup> California Constitution, article I, section 28, subdivision (c), part of the “Victim’s Bill of Rights.”

comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.<sup>4</sup>

The original statutes encouraged schools to assess the current status of school crime committed on school campuses, identify appropriate strategies and programs to provide a high level of school safety and develop an action plan, using existing resources with the help of grant funding from the state.<sup>5</sup> These activities were not required, however.

In 1997, the Legislature changed the program to require each school district and county office of education to be responsible for the overall development of comprehensive school safety plans for their K-12 schools, and to require that any schoolsite council established pursuant to Education Code sections 52012 or 52852, in consultation with local law enforcement, shall write and develop the plan.<sup>6</sup> A schoolsite council may delegate this responsibility to a school safety planning committee, consisting of the principal, one teacher who is representative of the certificated employee organization, one parent whose child attends the school, one classified employee who is representative of the classified employee organization, and other members if desired.<sup>7</sup> And in the absence of a schoolsite council, those specified members shall serve as the school safety planning committee which shall write and develop the safety plan.<sup>8</sup> In the case of small school districts, as defined, the district may develop a districtwide safety plan applicable to each schoolsite.<sup>9</sup>

The 1997 statutes also added a requirement that the comprehensive school safety plan be adopted by September 1, 1998.<sup>10</sup> That provision was amended in 1999 to require the plan

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<sup>4</sup> Education Code section 35294, as enacted in Statutes 1989, chapter 1253, subsequently renumbered to Education Code section 32280 and amended by Statutes 2003, chapter 828.

<sup>5</sup> Former Education Code section 35294.1, subsequently renumbered to section 35294.2 and amended by Statutes 1997, chapter 736, and subsequently renumbered to section 32282 and amended by Statutes 2003, chapter 828.

<sup>6</sup> Former Education Code section 35294.1, subdivisions (a) and (b), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivisions (a) and (b), and amended by Statutes 2003, chapter 828.

<sup>7</sup> Former Education Code section 35294.1, subdivision (b)(2), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (b)(2), and amended by Statutes 2003, chapter 828.

<sup>8</sup> Former Education Code section 35294.1, subdivision (b)(4), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (b)(4), and amended by Statutes 2003, chapter 828.

<sup>9</sup> Former Education Code section 35294.1, subdivision (d), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (d), and amended by Statutes 2003, chapter 828.

<sup>10</sup> Former Education Code section 35294.6, subdivision (a), subsequently renumbered to section 32286, subdivision (a), and amended by Statutes 2003, chapter 828.



be adopted by March 1, 2000, and to require that the plan be reviewed and updated by March 1 every year thereafter.<sup>11</sup>

Education Code section 35294.8, subdivision (b), was added in 1997 to require the schoolsite council or school safety planning committee, before adopting the comprehensive school safety plan, to hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the plan.<sup>12</sup>

In 1998, a test claim was filed on the *Comprehensive School Safety Plans* statutes, as amended in 1997 and 1999 (98-TC-01/99-TC-10). The Commission concluded that the test claim statutes imposed a reimbursable state-mandated program on school districts for the increased costs of performing the activities listed below. The Commission further determined that school districts may claim reimbursement for the activity of developing routine and emergency disaster procedures and include them in the comprehensive school safety plan, but only to the extent that these costs have not been claimed under *Emergency Procedures, Earthquakes and Disasters* (CSM 4241). The reimbursable activities are as follows:

- Review the safety plan in existence on December 31, 1997, to determine if it satisfies the requirements of Education Code section 35294.9.
- Write and develop a safety plan relevant to the needs of the particular school. (Ed. Code, § 35294.1, subd. (a) & (b).) A school satisfying Education Code section 35294.9 or Education Code section 35294.1, subdivision (d), is exempt from this activity.
- Consult with a law enforcement representative in writing and developing their safety plan. (Ed. Code, § 35294.1, subd. (b)(3).) A school satisfying Education Code section 35294.9, or Education Code section 35294.1, subdivision (d), is exempt from this activity.
- Consult, cooperate and coordinate with other school sites, *if practical*, in developing and updating their safety plan. (Ed. Code, § 35294.2, subdivision (d).) A school satisfying Education Code section 35294.9, is exempt from this activity for the initial development of the safety plan.
- Assess the current status of school crime committed on school campuses and at school-related functions. (Ed. Code, § 35294.2, subd. (a)(1).) A school satisfying Education Code section 35294.9, is exempt from this activity. And to the extent that this activity is already reimbursed under *School Crimes Reporting II* (97-TC-03), there are no costs mandated by the state.
- Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety. A school satisfying Education Code section 35294.9, is exempt from this activity. (Ed. Code, § 35294.2, subd. (a)(2).)

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<sup>11</sup> Statutes 1999, chapter 996.

<sup>12</sup> Subsequently renumbered to section 32288, subdivision (b), and amended by Statutes 2003, chapter 828.

- Develop the following procedures to include in the comprehensive school safety plan:
  - Child abuse reporting procedures consistent with Article 2.5 (commencing with section 11164) of Title 1 of Part 4 of the Penal Code.
  - Routine and emergency disaster procedures. School sites and districts may claim costs to develop this activity, but only to the extent that these costs have not been claimed under *Emergency Procedures, Earthquakes and Disasters* (CSM 4241).
  - Policies pursuant to subdivision (d) of section 48915 for pupils who committed an act listed in subdivision (c) of section 48915 and other school-designated serious acts which could lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with section 48900) of Chapter 6 of Part 27. School sites and districts may claim costs for this activity, but only to the extent that these costs have not been claimed under *Suspensions, Expulsions, and Expulsion Appeals* (CSM 4455, 4456, 4463).
  - If a school has adopted a dress code, define gang-related apparel in the comprehensive school safety plan.
  - Procedures for safe ingress and egress of pupils, parents and school employees to and from school.
  - A safe and orderly environment conducive to learning at the school. (Ed. Code, § 35294.2, subd. (a)(2).)

A school satisfying Education Code section 35294.9, is exempt from this activity.

- Integrate existing policies and procedures on sexual harassment, emergency disasters, dress code, notification to teachers of dangerous pupils, and school discipline into the comprehensive school safety plan. (Ed. Code, § 35294.2, subd. (a).)
- Adopt a safety plan by March 1, 2000, and annually review and update the safety plan by March 1 to ensure proper implementation. (Ed. Code, §§ 35294.2, subd. (e), 35294.6, subd. (a).)
- Hold a public meeting at the school site in order to allow members of the public the opportunity to express an opinion about the safety plan. (Ed. Code, § 35294.8, subd. (b).)
- Submit the safety plan to the school district or County Office of Education for approval. (Ed. Code, §§ 35294.2, subd. (f), 35294.8, subd. (a).)
- Annually notify the State Department of Education by October 15 of any schools that have not complied with writing and developing a safety plan in accordance with section 35294.1. (Ed. Code, § 35294.8, subd. (c).) This activity specifically applies to school districts and County Offices of Education.

- Commencing in July 2000, and every July thereafter, report on the status of the safety plan, including a description of its key elements in the annual school accountability report card prepared pursuant to sections 33126 and 35256. (Ed. Code, § 35294.6, subd. (b).) To the extent that this activity is already reimbursed under *School Accountability Report Cards* (97-TC-21), there are no costs mandated by the state.
- Make available an updated file of all safety-related plans and materials for public inspection. (Ed. Code, § 35294.2, subd. (e).)

The Commission further found that the plain language of the test claim statutes did not require school sites or school districts to *implement* their safety plans, since the legislative intent language stated that the purpose of the test claim statutes was to “develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process” and did not identify implementation as a purpose.

On May 29, 2003, the Commission adopted parameters and guidelines for the activities listed above, and specifically found that training is not a reimbursable state-mandated activity.

***Consolidation of Parameters and Guidelines for Emergency Procedures, Earthquakes and Disasters and Comprehensive School Safety Plans***

On July 31, 2003, at the request of the State Controller’s Office, the Commission consolidated the two programs for costs incurred beginning in the 2003-2004 fiscal year. The consolidated parameters and guidelines continued to track the two programs separately, however, because the activities were not the same.

***Comprehensive School Safety Plans II (02-TC-33)***

In 2003, the *Comprehensive School Safety Plans II* test claim was filed (02-TC-33) on the 2001 and 2002 amendments to the program. The Statement of Decision, adopted on June 26, 2008, approved reimbursement for the following activities:

- The following activities, for incorporating a discrimination and harassment policy as required by Education Code section 32282, subdivision (a)(2)(E) (except to the extent a policy was previously required to address sexual harassment), and hate crime reporting procedures as required by Education Code section 32282, subdivision (a)(2)(J) (but only for the period of January 1, 2002, through October 6, 2005):
  - Write and develop a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan that is relevant to the needs and resources of that particular school. (Ed. Code § 32281, subd. (b)(1).)
  - Consult with a representative from a law enforcement agency in writing and developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32281, subd. (b)(3).)

- Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school’s procedures for complying with existing laws related to school safety with regard to a discrimination and harassment policy and hate crime reporting procedures. (Ed. Code, § 32282, subd. (a)(2).)
- Consult, cooperate and coordinate with other school sites, where practical, in developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32282, subd. (d).)
- Hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the discrimination and harassment policy and hate crime reporting procedures to be included in the school safety plan. (Ed. Code, § 32288, subd. (b).)
- Submit the safety plan with the new discrimination and harassment policy and hate crime reporting procedures, as written and updated, to the school district or county office of education for approval, in order to ensure compliance with the school safety plan requirements. (Ed. Code, §§ 32282, subd. (f), 32288, subd. (a).)
- Review and update the discrimination and harassment policy and hate crime reporting procedures by March 1 every year. (Ed. Code, § 32286, subd. (a).)
- For any comprehensive school safety plan being adopted, notify the following persons in writing of the public meeting held prior to adoption of the plan, pursuant to Education Code section 32288, subdivision (b)(2), but only when the school safety planning committee established pursuant to Education Code section 32281, subdivisions (b)(2) or (b)(4), is providing such notice:
  - the local mayor;
  - a representative of the local school employee organization;
  - a representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs;
  - a representative of each teacher organization at the schoolsite;
  - a representative of the student body government; and
  - all persons that have indicated they want to be notified.

***2006 Amendment to Consolidated Parameters and Guidelines to End Reimbursement for the Emergency Procedures, Earthquakes and Disasters***

In Statutes 2004, chapter 895 (AB 2855), Education Code sections 35295, 35296 and 35297 — the statutes that were claimed in the *Emergency Procedures* test claim — were amended to remove any reference to public school districts. Sections 35295, 35296 and 35297 are now applicable only to private schools. The 2004 legislation also repealed Education Code section 38132, relating to mass care and welfare shelters. In addition, Statutes 2004, chapter 895, added the procedures for emergency, earthquake and

disasters, and mass care shelters to the *Comprehensive School Safety Plan* statutes, and those amendments are the subject of this test claim.

On November 1, 2005, the State Controller's Office requested the Commission to amend the consolidated parameters and guidelines for *Comprehensive School Safety Plans* and *Emergency Procedures, Earthquake Procedures and Disasters* programs due to the removal of public school districts from the original program.

The amendment to the consolidated parameters and guidelines was heard on March 29, 2006. The Commission amended the parameters and guidelines to delete all references to the *Emergency Procedures, Earthquake Procedures and Disasters* program as of January 1, 2005, the effective date of Statutes 2004, chapter 895; and to provide no further reimbursement for the activities of preparing, implementing, and providing training on district emergency and disaster plans and procedures, and costs related to use of school facilities for mass care and welfare shelters.

San Diego Unified School District challenged the Commission's decision to end reimbursement for the *Emergency Procedures, Earthquake Procedures, and Disasters* program by filing a petition for writ of mandate. (*San Diego Unified School Dist. v. Commission on State Mandates, et al.*, San Diego Superior Court, Case No. 37-2007-00064077-CU-PT-CTL.) The court denied the petition for writ of mandate and upheld the Commission's actions. In its ruling, the court held that:

Further, there is no dispute that the earthquake emergency procedures under Education Code §§ 35295, 35296 and 35297 were made inapplicable to public school districts effective January 1, 2005. Where a section or part of a statute is amended, the omitted portions are to be considered as having been repealed at the time of the amendment. (Gov. Code § 9605) As for petitioner's argument that the amendments were merely moving language from one statute to another so the mandate of the old statutes should continued [sic] lacks merit because the omitted portions of an amendment are deemed to be repealed. (Gov. Code § 9605) While everyone agrees that language from the original statutory scheme was added to Education Code § 32282 [the test claim statute, as explained below], it is now contained in a much broader statutory scheme, is not identical and is not simply a restatement of the old statute. There is nothing in the legislative history provided by petitioner that the amendments were a simple renumbering or moving of the mandates in the original statutory scheme.

Therefore, the Commission's determination that the statutory basis for reimbursement under Education Code §§ 35295, 35296 and 35297 ended on December 31, 2004 is correct.<sup>13</sup>

#### ***Test Claim Statute (Statutes 2004, chapter 895)***

The test claim statute, Statutes 2004, chapter 895 (AB 2855), amended the *Comprehensive School Safety Plan* program requirements in Education Code

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<sup>13</sup> See Exhibit E.

section 32282, subdivision (a)(2)(B), to specify that the previously required disaster procedures included in the plan shall also include the following:

(a) The comprehensive school safety plan shall include, but not be limited to, both of the following:

[¶]

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

[¶]

(B) Disaster procedures, routine and emergency, including adaptations for pupils with disabilities in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.). The disaster procedures shall also include, but not be limited to, both of the following:

(i) Establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. A district or county office may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure system. The system shall include, but not be limited to, all of the following:

- (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
- (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
- (III) Protective measures to be taken before, during, and following an earthquake.
- (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system.

(ii) Establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community.

## **Claimant's Position**

Claimant asserts the test claim statutes impose a reimbursable state-mandated program for the following new activities:

1. Developing and establishing earthquake emergency procedure system that shall include, but not be limited to:
  - (a) A school building disaster plan, ready for implementation at any time, for maintaining the safety a care of pupils and staff.
  - (b) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his/her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
  - (c) Protective measures to be taken before, during, and following an earthquake.
  - (d) A program to ensure pupils and both the certificated and classified staff are aware of, and are properly trained in, the earthquake emergency procedure system.
2. Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom.
  - (a) Updating the district earthquake emergency procedure system as to those activities identified in 1.(a), above, including the training program.
  - (b) Employees reviewing the requirements of the Earthquake Emergency Procedure System program and attending training meetings to receive instruction.
  - (c) Employees preparing to conduct training sessions.
  - (d) Secure and supervise facilities for the purpose of opening and closing the facility or portions of the facilities and provide security at the facility during the period of the emergency.
  - (e) Maintain and clean up district facilities during the emergency or after for the purpose of making the facility ready for normal operation.
  - (f) Utility cost incurred by the district directly related to the usage of district facilities for Mass Care and Welfare Shelters.

Claimant estimates increased costs of \$300,000 annually, and a statewide cost estimate for all local agencies or school districts of \$10,000,000. Claimant further asserts that school districts are not required to use Title I funds to offset the activities.

## Position of the Department of Finance

The Department of Finance states that the test claim should be denied on two grounds:

1. The elements to be included when developing disaster procedures required pursuant to Education Code section 32282, subdivision (a)(2)(B)(I)-(IV), do not impose a new program or higher level of service on schools because developing routine and emergency disaster procedures was already determined to be a mandated activity under the previous test claim, *Comprehensive School Safety Plans* (98-TC-01, 99-TC-10).
2. The test claim does not demonstrate reimbursable state-mandated costs because there is sufficient funding appropriated for these activities in the annual Budget Act via Item 6110-228-0001, the School Safety Block Grant. The Department cites the following Budget Act language, beginning in 2004-05: “The funds appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for comprehensive school safety plans. Local education agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.” Item 6110-228-0001 in the annual Budget Act has provided sufficient funding to cover the \$10,000,000 in statewide annual costs asserted by the claimant. Specifically, the Budget Act provided \$17,788,000 in 2004-05, \$52,537,000 in 2005-06, \$57,939,000 in 2006-07, and \$61,833,000 in 2007-08. Moreover, Statutes 2004 (ch. 216), Statutes 2005 (ch. 73), Statutes 2006 (ch. 79), and Statutes 2007 (ch. 174) provided \$36,894,000, \$38,720,000, \$38,720,000, and \$38,720,000, respectively, from 2004-05 to 2007-08 consistent with the requirements of the School Safety Block Grant. The costs reported by the claimant in this claim do not exceed the amounts appropriated in the annual Budget Act. Therefore, the Commission is prohibited from finding costs mandated by the state under subdivision (e) of Government Code section 17556.

## Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>14</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>15</sup> “Its purpose is to preclude the state from shifting financial responsibility for

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<sup>14</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

<sup>15</sup> *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735.



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.”<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> To determine if the program is new or imposes a higher level of service, the test claim requirements must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes.<sup>20</sup> A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”<sup>21</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>22</sup>

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.<sup>23</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6

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

<sup>17</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>18</sup> *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*).

<sup>19</sup> *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 (*County of Los Angeles*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>20</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>21</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

<sup>22</sup> *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.

<sup>23</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>24</sup>

The analysis addresses the following issues:

- Does the test claim statute impose a state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution?
- Do the activities mandated by the test claim statute impose a new program or higher level of service?
- Does the test claim statute impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?

**Issue 1: Does the test claim statute impose a state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution?**

Comprehensive school safety plan contents are set forth in Education Code section 32282. The test claim statute, Statutes 2004, chapter 895, amended Education Code section 32282, by requiring that the existing disaster procedures within the comprehensive school safety plan include an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom, as specified, and a procedure to allow a public agency, including the American Red Cross, to use school buildings for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. Education Code section 32282, as amended by the test claim statute, provides in relevant part the following:

(a) The comprehensive school safety plan shall include, but not be limited to, both of the following:

[¶]

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school’s procedures for complying with existing laws related to school safety, *which shall include the development of all of the following*:

...

(B) Disaster procedures, routine and emergency, including adaptations for pupils with disabilities in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.). *The disaster procedures shall also include, but not be limited to, both of the following*:

(i) Establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils

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<sup>24</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (*City of San Jose*).

or more than one classroom. A district or county office may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure system. The system shall include, but not be limited to, all of the following:

- (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
- (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
- (III) Protective measures to be taken before, during, and following an earthquake.
- (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system.

(ii) Establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community. (Emphasis added.)

Thus, the plain language of the test claim statute mandates school districts to perform the following one-time activities:

- Develop and establish an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:
  - (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
  - (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
  - (III) Protective measures to be taken before, during, and following an earthquake.

(IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system.

- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community.
- Include these procedures within the existing disaster procedures of the comprehensive school safety plans.

In addition to the mandated activities described above, claimant alleges that the test claim statute mandates schools to *implement* the comprehensive school safety plan with regard to emergency procedures, including the provision of an ongoing drop procedure practice; training on the earthquake emergency procedure system and maintenance; and clean up of facilities when they are used for mass care and welfare shelters during an emergency (i.e., section 32282, subd. (a)(2)(B)(ii) states that “[t]he district or county office of shall cooperate with the public agency in furnishing and maintaining the services as the district or county office deems necessary to meet the needs of the community.”) These activities were reimbursable under the former *Emergency Procedures, Earthquakes and Disasters* program (CSM 4241) and claimant argues that they remain reimbursable today. In response to the draft staff analysis, claimant argues the following:

Activity II above requires: A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools. Claimant contends the statute requires a drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools. This activity is not a one-time event, but rather takes place annually in the schools and should be reimbursed upon performing the practice procedure.

The previous Emergency Procedures Earthquakes Disasters duties for public schools were intentionally removed from Sections 35296 and 35297 and moved by the test claim statute to CSSP [Comprehensive School Safety Plan]. Claimant contends the courts have ruled that simultaneous “repealers” and replacements are not to be considered as a break in the continuity of the law. The Commission has complied with that position before, even when the “simultaneous” event was several months apart, ...

Therefore, claimants should not be prohibited from claiming activities that occurred from May 29, 2003, the date of the amended parameters and guidelines until January 1, 2005.<sup>25</sup>

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<sup>25</sup> Exhibit D.

Claimant's interpretation of the statutes, however, conflicts with the court's ruling on these issues in *San Diego Unified School Dist. v. Commission on State Mandates*, San Diego Superior Court Case No. 37-2007-00064077-CU-PT-CTL. In its ruling, the court held that San Diego's argument that the amendments made by the test claim statute resulted in a simple restatement of the old statutes with no substantive change in the law, has no merit. The court stated the following:

Further, there is no dispute that the earthquake emergency procedures under Education Code §§ 35295, 35296 and 35297 were made inapplicable to public school districts effective January 1, 2005. Where a section or part of a statute is amended, the omitted portions are to be considered as having been repealed at the time of the amendment. (Gov. Code § 9605) As for petitioner's argument that the amendments were merely moving language from one statute to another so the mandate of the old statutes should continued [sic] lacks merit because the omitted portions of an amendment are deemed to be repealed. (Gov. Code § 9605) *While everyone agrees that language from the original statutory scheme was added to Education Code § 32282, it is now contained in a much broader statutory scheme, is not identical and is not simply a restatement of the old statute. There is nothing in the legislative history provided by petitioner that the amendments were a simple renumbering or moving of the mandates in the original statutory scheme.*<sup>26</sup> (Emphasis added.)

The court's ruling in the *San Diego Unified School Dist.* case is binding on the claimant and on the Commission in this test claim under principles of collateral estoppel.<sup>27</sup>

Moreover, a plain language reading of section 32282 does not require implementation of the emergency procedures. Instead, the statutes require only that the school or school district develop and establish specified *procedures* for inclusion in the comprehensive

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<sup>26</sup> See Exhibit E. Government Code section 9605, which is referenced in the court's holding, provides in relevant part the following: "Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; *and the omitted portions are to be considered as having been repealed at the time of the amendment.*" (Emphasis added.)

<sup>27</sup> *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880. Collateral estoppel precludes a party from re-litigating the matters previously litigated and determined in a prior proceeding and makes the decision on the matter in the prior proceeding binding in the subsequent matter. In order for collateral estoppel to apply, the following elements must be satisfied: (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.

school safety plan; it does not otherwise require the district to *implement* the comprehensive school safety plan.

Statutory language must be construed “in the context of the entire statute ... and the statutory scheme of which it is a part.”<sup>28</sup> Thus, the plain meaning rule of statutory construction does not allow courts to read a single sentence of a statutory provision in isolation.<sup>29</sup> “Words in a statute ‘must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.’”<sup>30</sup>

Here, the language of section 32282, subdivision (a)(2)(B)(i)(II) and (IV) regarding the drop procedure practice and other emergency training, and subdivision (a)(2)(B)(ii) regarding maintenance of facilities, must be read in the context of the comprehensive school safety plan statutory scheme. The Legislature’s intent for this program was that public schools, in cooperation with various entities and parties, develop a comprehensive school safety plan addressing safety concerns identified through a systematic planning process. The Legislature set forth its intent in Education Code section 32280 when it originally required the comprehensive school safety plan as follows:

It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process. For the purposes of this section, law enforcement agencies include local police departments, county sheriff’s offices, school district police or security departments, probation departments, and district attorneys’ offices. For purposes of this section a “safety plan” means a plan to develop strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus.

The plain language of the statute requires the plan to include identification of “appropriate strategies and programs” to provide a high level of school safety, which shall include the development of disaster procedures. The plain language does not otherwise require implementation of the procedures. Moreover, the statutes upon which the implementation activities were based (former Education Code sections 35296, 35297, and 38132) have been made inapplicable to public school districts or have been repealed by the Legislature in AB 2855, as of January 1, 2005.<sup>31, 32</sup>

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<sup>28</sup> *Phelps v. Stostad* (1997) 16 Cal.4<sup>th</sup> 23, 32.

<sup>29</sup> *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4<sup>th</sup> 1381, 1387.

<sup>30</sup> *Ibid.*, citing *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.

<sup>31</sup> See, *San Diego Unified School Dist. v. Commission on State Mandates*, Exhibit E, where the court held that “there is no dispute that the earthquake emergency procedures under Education Code §§ 35295, 35296 and 35297 were made inapplicable to public

Therefore, staff finds that implementation of the comprehensive school safety plan, including the drop procedure practice, training on the earthquake emergency procedure system, and the procedure to allow use of school facilities for mass care and welfare shelters, is not mandated by the state.

**Issue 2: Do the activities mandated by the test claim statute impose a new program or higher level of service?**

A “new program or higher level of service” exists when the mandated activities are new in comparison with the pre-existing scheme and result in an increase in the actual level or quality of governmental services provided by the district.<sup>33</sup> To make this determination, the mandated activities must be compared with the legal requirements in effect immediately before enactment of the test claim statutes.<sup>34</sup>

As indicated above, the test claim statute mandates the one-time activities of developing the procedures listed below and including the procedures in the existing disaster procedures of the comprehensive school safety plans:

- Develop and establish an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:
  - (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
  - (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her

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school districts effective January 1, 2005. Where a section or part of a statute is amended, the omitted portions are to be considered as having been repealed at the time of the amendment. (Gov. Code § 9605).”

<sup>32</sup> In this regard, the claimant’s argument that it is entitled to claim reimbursement for implementation activities from May 29, 2003 (when the *Emergency Procedures* parameters and guidelines were amended to limit reimbursement to establishing an emergency procedure system that addresses *earthquake* emergencies only) until January 1, 2005, does not make sense. The argument ignores the Commission’s March 29, 2006 amendment to the consolidated parameters and guidelines in *Comprehensive School Safety Plans* and *Emergency Procedures* programs that ended reimbursement for the *Emergency Procedures* activities on January 1, 2005 based on AB 2855. Reimbursement for the *Emergency Procedures* activities is allowed under the consolidated parameters and guidelines until December 31, 2004. (See Exhibit E, page 181.) The Commission’s amendment was upheld by the court in the *San Diego Unified School Dist.* case.

<sup>33</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>34</sup> *Lucia Mar Unified School District*, *supra*, 44 Cal.3d 830, 835-836.

knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.

- (III) Protective measures to be taken before, during, and following an earthquake.
  - (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, § 32282, subd. (a)(2)(B)(i).)
- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The procedures shall include a provision that the district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community. (Ed. Code, § 32282, subd. (a)(2)(B)(ii).)
  - Include these procedures within the existing disaster procedures of the comprehensive school safety plans. (Ed. Code, § 32282, subd. (a)(2)(B).)

Staff finds that the activity to develop and establish an earthquake emergency procedure system, as specified, does not impose a new program or higher level of service for schools that were established before January 1, 2005, the effective date of the test claim statute. Immediately before the enactment of the test claim statute, school districts were required by former Education Code sections 35296 and 35297 to perform the same activity for existing schools as follows:

35296. The governing board of each school district and the county superintendent of schools of each county shall establish an earthquake emergency procedure system in every public school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. The governing board of each private school shall establish an earthquake emergency procedure system in every private school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. Governing boards and county superintendents may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure systems.<sup>35</sup>

35297. The earthquake emergency procedure system shall include, but not be limited to, all of the following:

- (a) A school building disaster plan, ready for implementation at any time, for maintaining the safety and are of students and staffs.
- (b) A drop procedure. As used in this article, “drop procedure” means an

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<sup>35</sup> As enacted in Statutes 1990, chapter 1263.



activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.

(c) Protective measures to be taken before, during, and following an earthquake.

(d) A program to ensure that the students and that both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system.<sup>36</sup>

However, for new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, the activity of developing a comprehensive school safety plan, including the activity to develop and establish an earthquake emergency procedure system, is new. Under these circumstances, the new school, through its schoolsite council or school safety planning committee, is required to develop the plan in consultation with local law enforcement.<sup>37</sup> Thus, for new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, the activity of developing and establishing the earthquake emergency procedure system constitutes a new program or higher level of service.

In response to the draft staff analysis, the claimant disagrees with these findings as follows:

Staff also recommends since the effective date of this legislative bill is January 1, 2005 [sic] the legislation only applies to new schools established after January 1, 2005. Claimant requests the date be deleted since the plain language reading of the statute does not state or infer such a limitation. Furthermore, the legislation did not intend that safety at schools be limited to only the students who attend schools established after January 1, 2005. Claimant recommends language be inserted prohibiting the claiming of activities prior to January 1, 2005.<sup>38</sup>

The claimant's analysis is wrong. The fact that the January 1, 2005 date is not included in the plain language of the statute is not relevant to the legal analysis required for a new program or higher level of service, as suggested by the claimant. As indicated above, the proper analysis to determine whether there is a new program or higher level of service focuses on the comparison of the legal requirements immediately before and after the effective and operative date of the test claim statute imposing the mandated activity. The claimant has not disputed that immediately before the enactment of the test claim statute on January 1, 2005, school districts were required by former Education Code sections 35296 and 35297 to develop and establish an earthquake emergency procedure system. By law, that activity does not impose a new program or higher level of service for schools that were established before January 1, 2005. However, for new schools

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<sup>36</sup> As enacted in Statutes 1988, chapter 448.

<sup>37</sup> Education Code section 32281, subdivisions (a) and (b).

<sup>38</sup> Exhibit D.

established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, the activity of developing and establishing the earthquake emergency procedure system constitutes a new program or higher level of service.

Moreover, including the earthquake emergency procedures within the existing disaster procedures of the comprehensive school safety plan was not required by prior law. Thus, staff finds that this activity constitutes a new program or higher level of service.

In addition, the activity of developing, establishing, and including within the existing disaster procedures of the comprehensive school safety plan a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare, is new. Under prior law, school districts were required by former Education Code section 38132 to grant the use of school buildings to public agencies, such as the American Red Cross, for mass care and shelter during disasters and to cooperate with the agencies in maintaining services. However, the school districts were not required to develop and establish a policy to do so, or to include that policy in the comprehensive school safety plan. Former Education Code section 38132<sup>39</sup> stated the following:

Notwithstanding Section 38134, the governing board of any school district shall grant the use of school buildings, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The governing board shall cooperate with these agencies in furnishing and maintaining such services as the governing board may deem necessary to meet the needs of the community.<sup>40</sup>

Moreover, these activities provide a service to the public by developing policies to ensure the protection of school employees, students, and the community in the event of a disaster or emergency.

Therefore, staff finds the following one-time activities constitute a new program or higher level of service within the meaning of article XIII B, section 6.

- For new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, develop and establish an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:
  - (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.

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<sup>39</sup> Formerly Education Code section 40041.5.

<sup>40</sup> As renumbered and enacted in Statutes 1996, chapter 277.

- (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
- (III) Protective measures to be taken before, during, and following an earthquake.
- (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, § 32282, subd. (a)(2)(B)(i).)

This activity does *not* impose a new program or higher level of service for schools that were established before January 1, 2005.

- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The procedures shall include a provision that the district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community. (Ed. Code, § 32282, subd. (a)(2)(B)(ii).)
- Include the earthquake emergency procedure system and the procedure for the use of school buildings for mass care and welfare shelters during disasters or other emergencies within the existing disaster procedures of the comprehensive school safety plan. (Ed. Code, § 32282, subd. (a)(2)(B).)

**Issue 3: Does the test claim statute impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?**

For the test claim statute to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the statute must impose “costs mandated by the state” pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant states that the actual and estimated costs to school districts resulting from the test claim statutes exceeds \$1,000. Thus there is evidence in the record, signed under penalty of perjury, that the claimant has or will incur “costs mandated by the state.”

As indicated above, the following activities mandate a new program or higher level of service:

- For new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, develop and establish an

earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:

- (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
- (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
- (III) Protective measures to be taken before, during, and following an earthquake.
- (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, § 32282, subd. (a)(2)(B)(i).)

This activity is *not* impose a new program or higher level of service for schools that were established before January 1, 2005.

- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The procedures shall include a provision that the district or county office shall cooperate with the public agency in furnishing and maintaining the services as the district or county office may deem necessary to meet the needs of the community. (Ed. Code, § 32282, subd. (a)(2)(B)(ii).)
- Include the earthquake emergency procedure system and the procedure for the use of school buildings for mass care and welfare shelters during disasters or other emergencies within the existing disaster procedures of the comprehensive school safety plan. (Ed. Code, § 32282, subd. (a)(2)(B).)

School districts were eligible to claim reimbursement for the activity of including the earthquake emergency procedure system in the existing disaster procedures of the comprehensive school safety plan, under *Comprehensive School Safety Plans* (98-TC-01/99-TC-10). The Commission, under its regulatory authority to approve reimbursement for activities that are found to be reasonable methods of complying with a mandated activity, authorized reimbursement in *Comprehensive School Safety Plans* (98-TC-01/99-TC-10) parameters and guidelines “to integrate existing policies and procedures on emergency disasters” into the comprehensive school safety plan. Thus, to the extent school districts have already claimed costs for the one-time activity of including the earthquake emergency procedure system in the existing disaster procedures of the plan under the consolidated parameters and guidelines for *Emergency Procedures*,

*Earthquakes and Disasters* and *Comprehensive School Safety Plans*, there are no costs mandated by the state within the meaning of Government Code section 17514 and the activity would not be eligible for reimbursement here. The other activities, however, are new additions to the comprehensive school safety plans and may be eligible for reimbursement if the provisions of Government Code section 17556 do not apply.

The Department of Finance contends that the test claim should be denied because sufficient funds have been appropriated to cover the cost of the mandate pursuant to Government Code section 17556, subdivision (e). Government Code section 17556, subdivision (e), states in relevant part that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

In the *Comprehensive School Safety Plans* test claim (98-TC-01/99-TC-10), the Commission found that, among several grants available for school safety, only the Safe School Plans for New Schools Grant Program provided funding directly for *development* of comprehensive school safety plans. In that program, funds were available for new school sites to develop their safety plans when the following criteria were met: 1) newly constructed schools in their first year of operation or new schools that share sites but have separate administrative hierarchies; 2) school sites that have not yet developed a safety plan; and 3) school sites that have a new County District School code for calendar year 2000. The Commission found the grants did not completely fund all school sites or provide funding to all school districts, but did note that the Safe School Plans for New Schools Grant Program should be identified as possible offsetting revenues in the parameters and guidelines. This grant program should also be identified as possible offsetting revenues in the parameters and guidelines for this test claim beginning January 1, 2005, and until the grant program remains in effect.

In Statutes 2004, chapter 871 (AB 825), the Legislature consolidated several grant programs, including the Safety Plans for New Schools grant, into the School Safety Consolidated Competitive Grant program to commence in the 2005-06 fiscal year.<sup>41,42</sup> Allocations in the budget for this grant were \$16,381,000 for 2005-06, \$17,351,000 for 2006-07, and \$18,050,000 for 2007-08.<sup>43</sup>

Further, as the Department of Finance notes, Item 6110-228-0001 in the Budget Act provided \$17,788,000 in 2004-05, \$52,537,000 in 2005-06, \$57,939,000 in 2006-07, and \$61,833,000 in 2007-08, \$63,428,000 in 2008-09, and \$60,990,000 in 2009-10 for

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<sup>41</sup> Education Code sections 41510 et seq.

<sup>42</sup> School Safety Consolidated Competitive Grant FAQs, last modified February 22, 2008, <http://www.cde.ca.gov/fg/aa/ce/faqssccg05.asp>.

<sup>43</sup> Line item **6110-248-001**.

comprehensive school safety plans. Provision 4 of the associated language of the Budget Act states the following:

The funds appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for comprehensive school safety plans. Local education agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.<sup>44</sup>

Moreover, the Department states that Statutes 2004 (ch. 216), Statutes 2005 (ch. 73), Statutes 2006 (ch. 79), and Statutes 2007 (ch. 174) provided \$36,894,000, \$38,720,000, \$38,720,000, and \$38,720,000, respectively, from 2004-05 to 2007-08 consistent with the requirements of the School Safety Block Grant.<sup>45</sup> The Department then concludes that Item 6110-228-0001 in the annual Budget Act has provided sufficient funding to cover the \$10,000,000 in statewide annual costs asserted by the claimant, and, therefore, the Commission is prohibited from finding costs mandated by the state under subdivision (e) of Government Code section 17556.<sup>46</sup>

Staff disagrees with the Department's conclusion. Although the school or school district is required to use the grant funding to offset any reimbursable costs claimed for the comprehensive school safety plans program, nothing in the record demonstrates that these funds are available to *completely* fund all school sites or provide funding to all districts for the new elements of the comprehensive school safety plan. Nevertheless, this grant program should also be identified as offsetting revenues for this test claim beginning January 1, 2005.

Additional funding is available from the state for schoolsite councils. As noted in the Background, the statutory scheme for comprehensive school safety plans provides that schoolsite councils established pursuant to Education Code sections 52012 or 52852 shall write and develop the school safety plan,<sup>47</sup> and in the absence of a schoolsite council the school safety planning committee assumes that responsibility.<sup>48</sup>

Education Code section 52012 established schoolsite councils for schools that participate in the school improvement program. That program was enacted as the Improvement of Elementary and Secondary Education by Statutes 1977, chapter 894. It became inoperative July 1, 2005, but was combined with the school library program into the categorical funding of the School and Library Improvement Block Grant, effective with the 2005/06 fiscal year, which continues to be funded.<sup>49</sup>

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<sup>44</sup> See also, Letter from Jeannie Oropeza, Program Budget Manager, Department of Finance, August 21, 2008, page 2.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Education Code section 32281, subdivision (b)(1).

<sup>48</sup> Education Code section 32281, subdivision (b)(4).

<sup>49</sup> Statutes 2004, chapter 871; Education Code sections 41570 et seq.

Education Code section 52852 established schoolsite councils for schools that participate in school-based coordinated categorical programs. Under this program, the schoolsite council is required to develop a school plan addressing various education-related issues, and establish an annual budget. The schoolsite council may apply for funds from various school funding sources to support the program.

Thus, any grant funds or funds available to school districts for the newly mandated activities in this test claim shall be identified in the parameters and guidelines as offsetting revenues.

### **Conclusion**

Staff concludes that Education Code section 32282, subdivision (a)(2)(B), constitutes a reimbursable state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs of performing the following one-time activities:

- For new schools established on or after January 1, 2005, that have 50 or more pupils or more than one classroom, develop and establish an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom. The system shall include, but not be limited to, all of the following:
  - (I) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of pupils and staff.
  - (II) A drop procedure whereby each pupil and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
  - (III) Protective measures to be taken before, during, and following an earthquake.
  - (IV) A program to ensure that pupils and both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, § 32282, subd. (a)(2)(B)(i).)

This activity does *not* impose a reimbursable state-mandated program for schools that were established before January 1, 2005.
- Develop and establish a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The procedures shall include a provision that the district or county office shall cooperate with the public agency in furnishing and maintaining

the services as the district or county office may deem necessary to meet the needs of the community. (Ed. Code, § 32282, subd. (a)(2)(B)(ii).)

- Include the earthquake emergency procedure system (Ed. Code, § 32282, subd. (a)(2)(B)(i)) and the procedure for the use of school buildings for mass care and welfare shelters during disasters or other emergencies (Ed. Code, § 32282, subd. (a)(2)(B)(ii)) within the existing disaster procedures of the comprehensive school safety plan. (Ed. Code, § 32282, subd. (a)(2)(B).)

To the extent school districts have already been reimbursed for the one-time activity of including the earthquake emergency procedure system in the existing disaster procedures of the comprehensive school safety plan, there are no costs mandated by the state within the meaning of Government Code section 17514 and the activity is not eligible for reimbursement.

Furthermore, implementation of the comprehensive school safety plan, including the drop procedure practice, training on the earthquake emergency procedure system, and the procedure to allow use of school facilities for mass care and welfare shelters, is not mandated by the state and, therefore, not reimbursable.

Staff further concludes that any allegations made by the claimant that are not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

The reimbursement period for this claim begins January 1, 2005. Any grant funds received by a school district, or funds received through an appropriation for this program by the Legislature shall be identified as offsetting revenue in the parameters and guidelines.

Finally, staff recommends that the parameters and guidelines for *Comprehensive School Safety Plans II* (02-TC-33) and any activities approved by the Commission in this test claim amendment (07-TC-11) be consolidated with the original program, *Comprehensive School Safety Plans* (98-TC-01/99-TC-10), for future reimbursement claims.

### **Recommendation**

Staff recommends the Commission adopt this analysis to partially approve the test claim.