

**COMMISSION ON STATE MANDATES**

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November 20, 2012

Mr. Keith Petersen  
SixTen and Associates  
P.O. Box 340430  
Sacramento, CA 95834-0430  
*And Interested Parties and Affected State Agencies (See Mailing List)*

Re: **Final Staff Analysis and Statement of Decision and Notice of Hearing**  
*Parental Involvement Programs, 03-TC-16*  
Education Code Sections 11500 et al.  
San Jose Unified School District, Claimant

Dear Mr. Petersen:

The final staff analysis and proposed statement of decision for the above-named matter is enclosed.

**Hearing**

This matter is set for hearing on **Friday, December 7, 2012**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM 3**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**  
**AND**  
**PROPOSED STATEMENT OF DECISION**

Education Code Sections 11500, 11501, 11502, 11503, 11504, 11506, 49091.10, 49091.14,  
51101, 51101.1

Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998, Chapter 1031;  
Statutes 2001, Chapter 749; and Statutes 2002, Chapter 1037

*Parental Involvement Programs*

03-TC-16

San Jose Unified School District, Claimant

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Attached is the proposed statement of decision for this matter. This Executive Summary and the proposed statement of decision also function as the final staff analysis, as required by section 1183.07 of the Commission's regulations.

**EXECUTIVE SUMMARY**

**Overview**

This test claim addresses activities associated with parent involvement and rights with regard to the education of their children pursuant to various Education Code sections. The reimbursable activities alleged by the claimant include the adoption of parent involvement policies, providing parents access to classrooms and class materials, and providing notice to parents of specific education related rights.

Before the enactment of the test claim statutes, existing state laws provided for the encouragement of parental involvement in the education of their children in the context of specific programs.<sup>1</sup> In addition, prior to the enactment of the test claim statutes, various code sections provided parents specific rights regarding parents' involvement in their children's education, including the provision of notice. In fact, some of these rights were the subject of prior test claims heard and decided by the Commission.

Additionally, existing federal law also requires parental involvement components as a condition of receiving federal funds. For example, programs funded under Chapter 1 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988

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<sup>1</sup> For example, the School Improvement Plans (SIP) program (former Ed. Code, § 52000 et seq.) and the High Priority Schools Grant program (Ed. Code, § 52055.600 et seq.). Funding for SIP activities is currently found in the "School and Library Improvement Block Grant" at Education Code section 41570 et seq.

(Pub. L. No. 100-297) were required to include parent involvement components in programs funded with Chapter 1 funds.

In the context of the existing patchwork of state and federal laws addressing parental involvement in education, the Legislature enacted the test claim statutes, which restate, supplement, and add to the rights afforded parents and guardians.

**Procedural History**

The *Parental Involvement Programs* (03-TC-16) test claim was filed on September 25, 2003. As a result, the reimbursement period for any reimbursable state-mandated new program or higher level of service found in this test claim begins on July 1, 2002.<sup>2</sup> On April 28, 2004, the Department of Finance (Finance) filed comments to the test claim. On May 25, 2004, the claimant filed comments in response to Finance’s comments. On October 23, 2012, the draft staff analysis and proposed statement of decision was issued with a comment period ending November 13, 2012. The claimant filed comments on the draft analysis on November 13, 2012. Finance filed late comments on the draft analysis on November 16, 2012.

**Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.<sup>3</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

<b>Subject</b>	<b>Description</b>	<b>Staff Recommendation</b>
Education Code sections 11500, 11501, 11502, 11503, 11504, 11506	These code sections address the importance of parent involvement in education and require the adoption of a parent involvement policy in education.	<i>Partially Approve:</i> (1) the plain language of most of the code sections do not impose any activities on schools; (2) the activity required under section 11503 is triggered by a school’s

<sup>2</sup> Government Code section 17557(e).

<sup>3</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

		underlying discretionary decision; (3) section 11504 imposes a reimbursable state-mandated new program or higher level of service for the one-time activity to adopt a parent involvement policy. School districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted parent involvement policies prior to the 2002-2003 fiscal year are eligible for reimbursement for this activity.
Education Code sections 49091.10 and 49091.14	These code sections address parental review of instructional materials, classrooms, school activities, and curriculum.	<i>Partial Approve:</i> Section 49091.10 imposes a reimbursable state-mandated new program or higher level of service on schools to make pupil assessments available to parents upon request and to arrange for parental observation of classes or school activities in accordance with procedures determined by the governing board of the school district. Section 49091.14, which requires compiling and producing the school curriculum at the request of a parent, does not impose a new program or higher level of service.
Education Code sections 51101 and 51101.1	These code sections set forth a list of parent education related rights, and restate these rights for parents of English learners. Also, the code sections require the adoption of a policy regarding parent involvement in education. Additionally, they require the notification of parents of English learners of specific rights.	<i>Partial Approve:</i> Section 51101(b) imposes a reimbursable state-mandated new program or higher level of service on school districts for the one-time activity to adopt of a policy regarding the involvement of parents in education. Section 51101.1 imposes a reimbursable state-mandated activity on school districts to notify parents of English learners, under

		specified conditions, of specific rights.
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**Analysis**

1. Programs to Encourage Parental Involvement (Ed. Code, §§ 11500, 11501, 11502, 11503, 11504, and 11506):

These code sections address the importance of parent involvement in education and require the adoption of a parent involvement policy in education. The plain language of sections 11500, 11501, 11502, and 11506 do not impose any requirements on school districts.

Section 11503 requires each school district to establish a parent involvement program for each school in the district that receives funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). Section 11503 requires the parent involvement program to contain, at a minimum, elements specified by the section. Chapter 1 of the ESEA provides voluntary grant funding to schools for the purpose of improving educational opportunities of educationally deprived children at the preschool, elementary, and secondary levels. However, because the receipt of Chapter 1 funding is voluntary, any requirement imposed by section 11503 is triggered by an underlying discretionary decision by a school district. Thus, staff finds that section 11503 does not impose a reimbursable state-mandated new program or higher level of service.

Section 11504 requires each school district to adopt a *policy* on parent involvement consistent with the purposes and goals set forth in section 11502 for each school that *does not* receive funds under Chapter 1 of the ESEA. Staff finds that section 11504 imposes a reimbursable state-mandated new program or higher level of service for the one-time activity to adopt a parent involvement policy. School districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted parent involvement policies prior to the 2002-2003 fiscal year are eligible for reimbursement for this activity.

2. Parental Review of Instructional Materials, School Activities, and Curriculum (Ed. Code, §§ 49091.10 and 49091.14)

These code sections require schools, upon request of a parent, to provide instructional materials, assessments and curriculum for review and to arrange for an opportunity to view classrooms and school activities in accordance with procedures determined by the governing board of the school district.

Staff finds that section 49091.10 imposes a reimbursable state-mandated new program or higher level of service on schools to make pupil assessments available to parents upon request and to arrange for parental observation of classes. However, staff finds that the requirement to provide the instructional materials for review is not new and so does not impose a reimbursable state-mandated new program or higher level of service.

Additionally, the requirement that schools compile and produce the school curriculum at the request of a parent under section 49091.14 was required prior to the enactment of the test claim statute pursuant to Education Code section 51040 and the California Public Records Act (CPRA). As a result, staff finds that section 49091.14 does not impose a reimbursable state-mandated new program or higher level of service.

3. Rights of Parents and Guardians (Ed. Code, §§ 51101 and 51101.1)

These code sections set forth a list of parental education related rights. Also, section 51101 requires the adoption of a policy for each school in a district regarding the involvement of parents and guardians in the education of their children. Section 51101.1 restates the rights of parents for parents of English learners and requires schools to notify such parents of their rights.

Staff finds that the plain language of section 51101(a) does not impose any state-mandated activities on school districts. Rather, the plain language of section 51101(a) is a declaration of rights and opportunities that parents “*should*” have in order to be informed and participate in the education of their children.

Staff further finds that section 51101(b) imposes a reimbursable state-mandated new program or higher level of service on school districts for the one-time activity to adopt a policy regarding the involvement of parents in education. Although, Education Code section 11504 also requires the adoption of a parent involvement policy, section 51101 includes specific components not required by Education Code section 11504. School districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted parent involvement policies prior to the 2002-2003 fiscal year are eligible for reimbursement for this activity.

Furthermore, staff finds that section 51101.1 imposes a reimbursable state-mandated activity on school districts to notify parents of English learners, under specified conditions, of only some of the rights listed in sections 51101(a) and 51101.1(b). Schools were already required to provide notice of some of the rights set forth in this statute.

### **Conclusion**

For the reasons discussed above, staff finds the plain language of some of the code sections does not impose any requirements on school districts. In addition, some of the activities associated with notifying parents of specific rights or providing specific information to parents are not new as compared to the requirements in effect immediately prior to the enactment of the code sections. As a result, the Commission concludes that some of the activities do not constitute state-mandated new programs or higher levels of service.

However, the Commission finds that Education Code sections 11504, 49091.10(b), 51101(b), and 51101.1(a), as added or amended by the test claim statutes, impose a partial reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 for the activities listed under section V of the analysis titled “Conclusion.”

**Staff Recommendation**

Therefore, staff recommends that the Commission adopt the proposed statement of decision to partially approve this test claim.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 11500, 11501, 11502, 11503, 11504, 11506, 49091.10, 49091.14, 51101, 51101.1

Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998, Chapter 1031; Statutes 2001, Chapter 749; and Statutes 2002, Chapter 1037

Filed on September 25, 2003

By San Jose Unified School District, Claimant.

Case No.: 03-TC-16

*Parental Involvement Programs*

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

*(Proposed for Adoption:  
December 7, 2012)*

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 7, 2012. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

**Summary of the Findings**

This test claim addresses activities associated with parent involvement and parent rights in the education of their children pursuant to various Education Code sections. The activities include the adoption of parent involvement policies, providing parents access to classrooms and class materials, and providing notice to parents of specific education related rights.

The Commission finds that the plain language of some of the code sections does not impose any requirements on school districts. In addition, some of the activities associated with notifying parents of specific rights or providing specific information to parents are not new as compared to the requirements in effect immediately prior to the enactment of the code sections. As a result,



the Commission concludes that some of the activities do not constitute state-mandated new programs or higher levels of service.

However, the Commission finds that Education Code sections 11504, 49091.10(b), 51101(b), and 51101.1(a), as added or amended by the test claim statutes, impose a partial reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 for the activities listed under section V of the analysis titled “Conclusion.”

## COMMISSION FINDINGS

### I. Chronology

09/25/2003	Claimant, San Jose Unified School District, filed test claim <i>Parental Involvement Programs</i> (03-TC-16) with the Commission on State Mandates (Commission). <sup>4</sup>
10/28/2003	The Department of Finance (Finance) filed request for extension of time for comments on test claim.
11/07/2003	Commission staff granted Finance’s extension of time for comments to February 7, 2004.
02/13/2004	Finance filed request for extension of time for comments on test claim.
02/18/2004	Commission staff granted Finance’s extension of time for comments to March 19, 2004.
04/28/2004	Finance filed comments on the test claim.
05/25/2004	Claimant filed response to Finance’s comments.
06/25/2008	Claimant filed for postponement of test claim <i>Parental Involvement Programs</i> (03-TC-16) until new representation is identified.
08/17/2012	Claimant representative submitted comments clarifying that representation for <i>Parental Involvement Programs</i> (03-TC-16) did not change.
10/23/2012	Commission staff issued the draft staff analysis and proposed statement of decision for comment.
11/13/2012	Claimant filed comments on the draft staff analysis and proposed statement of decision.
11/16/2012	Finance filed late comments on the draft staff analysis and proposed statement of decision. <sup>5</sup>

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<sup>4</sup> Potential period of reimbursement begins on July 1, 2002, the start of the 2002-2003 fiscal year. See Government Code section 17557(e).

<sup>5</sup> The late filing of comments has resulted in Commission staff rewriting the final staff analysis and proposed statement of decision and putting it through the full Commission review process two times, since the comments came in on the day final analyses were due to have been completed by staff. This has caused significant disruptions in work flow and has taken staff

## II. Introduction

This test claim addresses activities associated with parent involvement and parent rights with regard to the education of their children pursuant to various Education Code sections. The reimbursable activities alleged by the claimant include the adoption of parent involvement policies, providing parents access to classrooms and class materials, and providing notice to parents of specific education related rights.

Before the enactment of the test claim statutes, existing state laws provided for the encouragement of parental involvement in the education of their children in the context of specific programs.<sup>6</sup> In addition, prior to the enactment of the test claim statutes, various code sections provided parents specific rights regarding involvement in their children's education, including the provision of notice.<sup>7</sup> In fact, some of these rights were the subject of prior test claims heard and decided by the Commission.<sup>8</sup>

Additionally, existing federal law also requires parental involvement components as a condition of receiving federal funds. For example, programs funded under Chapter 1 of the Elementary

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away from working on matters for the January hearing. Several parties have taken to routinely filing late comments without requesting an extension of time to file comments for good cause, as is provided for under the Commission's regulations. The net result of this practice is to increase delays in the processing of matters pending before the Commission. Under the Commission's regulations, a three week comment period is provided and "all comments timely filed shall be reviewed by Commission staff and may be incorporated into the final written analysis." (Cal. Code Regs., tit. 2, 1183.07(c).) However, written testimony received at least 15 days in advance of the hearing [i.e. late filings], shall be included in the Commission's meeting binders. (Cal. Code Regs., tit. 2, § 1187.6.) Thus, there is no requirement for staff to review late comments or include an analysis of them in the final staff analysis and proposed decision.

<sup>6</sup> For example, the School Improvement Plans (SIP) program (former Ed. Code, § 52000 et seq.) and the High Priority Schools Grant program (Ed. Code, § 52055.600 et seq.). Funding for SIP activities is currently found in the "School and Library Improvement Block Grant" at Education Code section 41570 et seq.

<sup>7</sup> For example, Education Code section 48980 which provided for annual parental notification of specific school rules, and parent and student rights. Also, Education Code section 49063 which provides parents the ability to view and contest the contents of their child's pupil records.

<sup>8</sup> Education Code section 49063 was the subject of the *Annual Parent Notification – 1998-2000 Statutes* (99-TC-09/00-TC-12) test claim, on which the Commission has made a final decision. Statement of decision for *Annual Parent Notification – 1998-2000 Statutes* (99-TC-09/00-TC-12) test claim, adopted December 12, 2001, at <<http://www.csm.ca.gov/sodscan/139.pdf>> as of October 16, 2012. See also, the test claims surrounding the School Accountability Report Card (SARC) which requires notifying parents about specific information about the school. *School Accountability Report Cards* (97-TC-21), *Reconsideration of School Accountability Report Cards I* (04-RL-9721-11), *Reconsideration of School Accountability Report Cards II* (05-RL-9721-03), and *School Accountability Report Cards II and III* (00-TC-09, 00-TC-13, 02-TC-32) test claims and reconsiderations, <[http://www.csm.ca.gov/sod\\_scan.shtml#s2](http://www.csm.ca.gov/sod_scan.shtml#s2)> as of October 16, 2012.

and Secondary Education Act of 1965 (ESEA) as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297) were required to include parent involvement components in programs funded with Chapter 1 funds.<sup>9</sup>

In the context of the existing patchwork of state and federal laws addressing parental involvement in education, the Legislature enacted the test claim statutes, which restate, supplement, and add to, the rights afforded parents and guardians.

### **III. Positions of the Parties**

#### **A. Claimant's Position**

The claimant contends that the test claim statutes impose reimbursable state-mandated costs for school districts to provide state-mandated new programs or higher levels of service related to encouraging parental involvement in the education of children. The activities alleged to be reimbursable include developing policies to encourage parental involvement in education, adopting these policies, implementing these policies, informing parents that they can directly affect the success of their children's learning, training teachers and administrators to communicate effectively with parents, making primary supplemental instructional materials and assessments available for inspection by a parent in a reasonable timeframe upon request, and allowing parents to observe classes or activities in a reasonable timeframe, upon request.

On May 25, 2004, in response to Finance's comments, the claimant argues that legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate, and suggests that in the absence of legal compulsion it is Finance's burden to show that practical compulsion *does not* exist. In addition, the claimant notes that Finance's assertion regarding costs being minimal for some of the activities is not an exception to reimbursement set forth in Government Code section 17556.

On November 13, 2012, the claimant filed comments on the draft staff analysis. These comments are summarized in the analysis below.

#### **B. The Department of Finance's Position**

Finance generally argues that most of the Education Code sections pled by the claimant do not impose a state-mandated activity or a *new* program, and therefore, are not reimbursable. To the extent that some of the code sections impose state-mandated activities, Finance asserts that the costs of these activities should be minimal.

### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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

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<sup>9</sup> ESEA as reauthorized by the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297, § 1016) codified at former 20 United States Code section 2726. Currently, reauthorized by the NCLB ((Pub. L. No. 107-110, § 1118) (20 U.S.C. § 6318)).

funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 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.”<sup>10</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>11</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>12</sup>
2. The mandated activity either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>13</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>14</sup>
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>15</sup>

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<sup>10</sup> *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81.

<sup>11</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>12</sup> *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, at p. 874.

<sup>13</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>14</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835. In the claimant’s November 13, 2012 comments, the claimant asserts that the correct standard of review is to compare the statutes pled on the effective date of the test claim filing to the status of the law as of December 31, 1974, thus ignoring any intervening laws that were adopted. The claimant bases this argument on the definition of “costs mandated by the state” contained in Government Code section 17514.

However, the California Supreme Court has repeatedly defined “new program or higher level of service” to mean “new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of” statutes pled in the test claim. Thus, pursuant to the Supreme Court’s decision in *San Diego Unified School Dist.* and *Lucia Mar Unified School Dist.*, the Commission must compare the test claim statutes pled with the legal requirements in effect immediately before the enactment of the test claim statutes.

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>16</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>17</sup> 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.”<sup>18</sup>

**A. Some of the Test Claim Statutes Impose State-Mandated New Programs or Higher Levels of Service on School Districts within the Meaning of Article XIII B, Section 6.**

Although the Education Code sections pled by the claimant are related because they address parental rights and involvement in education, some of the code sections represent separate efforts to address these issues. As a result, this analysis will address the code sections as follows:

(1) Programs to Encourage Parental Involvement (Ed. Code, §§ 11500, 11501, 11502, 11503, 11504, and 11506); (2) Parental Right to Inspect Instructional Materials and School Curriculum, and to Observe School Activities (Ed. Code, §§ 49091.10 and 49091.14); (3) Rights of Parents and Guardians (Ed. Code, §§ 51101 and 51101.1); and (4) Summary of State-Mandated New Programs or Higher Levels of Service.

(1) Programs to Encourage Parental Involvement (Ed. Code, §§ 11500, 11501, 11502, 11503, 11504, and 11506)

Education Code sections 11500, 11501, 11502, 11503, 11504, and 11506 address the statewide framework for parental involvement programs in education.

a. Requirements imposed by Education Code Sections 11500, 11501, 11502, 11503, 11504, and 11506.

Education Code section 11500 sets forth legislative findings regarding parental involvement in education. The Legislature found that although there has been a “substantial increase in school funding [from 1985-1990], a significant percentage of the school-aged population ... is learning well below the statewide average and is making only marginal progress at best.”<sup>19</sup> The Legislature continued to find that parental involvement and support in the education of children is an integral part of improving academic achievement and that educational research has shown that properly constructed parent involvement programs can play a role in raising pupil achievement.<sup>20</sup> The Legislature noted that the critical role of parents in education has been

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<sup>15</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; Government Code sections 17514 and 17556.

<sup>16</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>17</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>18</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>19</sup> Education Code section 11500(a).

<sup>20</sup> Education Code section 11500(b).

recognized by the federal government, which mandates parental involvement programs as a condition of eligibility for funds under the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). Additionally, the Legislature notes the State Board of Education's policy urging the creation of parent involvement programs in all schools and the existence of parental involvement components in existing state educational programs.<sup>21</sup>

In this context, section 11501 provides that it is the Legislature's intent in enacting Education Code section 11500 et seq., to ensure that parent involvement programs are properly designed and implemented and to provide a focus and structure for these programs based on prior experience and research while maintaining sufficient local flexibility to design a program that best meets the needs of the local community.

Section 11502 provides that it is the purpose and goal of Education Code sections 11500-11506 to do all of the following: (1) to engage parents positively in their children's education by helping parents to develop skills to use at home that support their children's academic efforts at school and their children's development as responsible future members of society; (2) to inform parents that they can directly affect the success of their children's learning, by providing parents with techniques and strategies that they may utilize to improve their children's academic success and to assist their children in learning at home; (3) to build consistent and effective communication between the home and the school so that parents may know when and how to assist their children in support of classroom learning activities; (4) to train teachers and administrators to communicate effectively with parents; and (5) to integrate parent involvement programs, including compliance with Education Code sections 11500-11506, into the school's master plan for academic accountability.

Section 11503 requires each school district to establish a parent involvement program for each school in the district that receives funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). Section 11503 requires the parent involvement program to contain, at a minimum, elements specified by the section.<sup>22</sup> Chapter 1 of the ESEA provides voluntary grant funding to

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<sup>21</sup> Education Code section 11500(c)-(e).

<sup>22</sup> Education Code section 11503 requires parent involvement programs to contain, at minimum, the following: (a) procedures to ensure that parents are consulted and participate in the planning, design, implementation, and evaluation of the program; (b) regular and periodic programs throughout the school year that provide for training, instruction, and information on (1) parental ability to directly affect the success of their children's learning through the support they give their children at home and at school, (2) home activities, strategies, and materials that can be used to assist and enhance the learning of children both at home and at school, (3) parenting skills that assist parents in understanding the development needs of their children and in understanding how to provide positive discipline for, and build healthy relationships with, their children, and (4) parental ability to develop consistent and effective communications between the school and the parents concerning the progress of the children in school and concerning school programs; (c) an annual statement identifying specific objectives of the program; and (d) an annual review and assessment of the program's progress in meeting those objectives. Parents

schools for the purpose of improving educational opportunities of educationally deprived children at the preschool, elementary, and secondary levels.<sup>23</sup> This purpose is to be accomplished by various educational programs including the increased involvement of parents in their children's education, which is a required element of programs funded through the ESEA.<sup>24</sup>

Section 11504 requires each school district to adopt a *policy* on parent involvement consistent with the purposes and goals set forth in section 11502 for each school *not governed by section 11503*. Thus, school districts are only required to engage in the one-time activity of adopting a *policy* only for schools in the district that *do not* receive funds under Chapter 1 of the ESEA.

The claimant interprets sections 11502, 11503, and 11504, to require school districts to adopt parent involvement *programs* regardless of whether schools within the district receive funding under Chapter 1 of the ESEA. Specifically, the claimant asserts, "even if a school district should 'elect' not to receive these federal funds [as described in Ed. Code, § 11503], it would be required to establish a parental involvement program under Education Code sections 11502 and 11504 anyway."<sup>25</sup> However, this interpretation is inconsistent with the plain language of the code sections, which identify a legislative intent to treat schools in receipt of Chapter 1 federal funds differently than schools not receiving Chapter 1 funding.

As discussed above, section 11503 requires school districts to "establish ... parent involvement *program[s]*" only for schools receiving funding under Chapter 1 of the ESEA. In contrast, section 11504 requires a school district to "adopt a *policy* on parent involvement" for schools *not governed by Section 11503*. The establishment of a program is distinct from the adoption of a policy. If the terms of a statute are unambiguous, the plain meaning of the language governs, and an intent not found in the words of the statute cannot be found to exist.<sup>26</sup> In addition, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.<sup>27</sup> Thus, the Commission finds that section 11503 requires school districts to establish a parent involvement *program* only for schools that receive funding under Chapter 1 of the ESEA. In contrast, the Commission finds that section 11504 requires a school district to engage in the one-time activity of adopting a parent involvement *policy* consistent with the purposes and goals set forth in section 11502 for schools not receiving these federal funds.

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shall be made aware of the existence of this review and assessment through regular school communications mechanisms and shall be given a copy upon the parent's request.

<sup>23</sup> Public Law Number 100-297, section 1001 (former 20 U.S.C. §2701). The ESEA was reauthorized in 2002 as the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110 (20 U.S.C. § 6301)).

<sup>24</sup> Public Law Number 100-297, section 1016 (former 20 U.S.C. § 2726). Reauthorized by Public Law Number 107-110 (20 U.S.C. § 6318).

<sup>25</sup> Exhibit C, comments filed by the claimants in response to Finance comments, dated May 25, 2004, p. 3.

<sup>26</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>27</sup> *Campbell v. Zolin* (1995) 33 Cal.App.4<sup>th</sup> 489, 497.

Section 11506 provides that compliance with sections 11500-11506 is necessary for receipt of specified state grant funds, but does not in and of itself require school districts to engage in any activities.<sup>28</sup> The claimant does not allege that section 11506 imposes any state-mandated new program or higher level of service. Instead, the claimant has pled section 11506 to identify possible sources of offsetting revenue for the state-mandated new programs or higher levels of service alleged by the claimant. Thus, the Commission finds that section 11506 does not require school districts to engage in any activities. The extent to which the funds described in section 11506 can constitute offsetting revenue for any new programs or higher levels of service found in this test claim will be discussed below in section B of this analysis.

b. Section 11503 Does Not Impose a State-Mandated Program. Section 11504 Imposes a State-Mandated New Program or Higher Level of Service.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term “state mandate” as it appears in article XIII B, section 6 of the California Constitution.<sup>29</sup> The court held that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.<sup>30</sup> In addition, the court in *Kern High School Dist.* left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled.<sup>31</sup> The court in *Department of Finance v. Commission on State Mandates (POBRA)* explained further that a finding of “practical compulsion” requires a concrete showing in the record that a failure to engage in the activities at issue will result in certain and severe penalties.<sup>32</sup>

Section 11503 requires school districts to adopt a parent involvement program that contains specific elements only for schools that receive federal grant funding under Chapter 1 of the ESEA. As noted above, school districts voluntarily apply for grant funding under Chapter 1 of the ESEA. Thus, the activity of adopting a parent involvement program is triggered by a school districts underlying discretionary decision to apply for grant funding under Chapter 1 of the ESEA, and therefore, school districts are not legally compelled to adopt parent involvement programs.

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<sup>28</sup> Education Code section 11506 provides that schools may receive funds for school improvement plans pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code and economic impact aid pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29 of the Education Code only if they comply with sections 11500-11506.

<sup>29</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, (*Kern High School Dist.*).

<sup>30</sup> *Id.* at p. 743.

<sup>31</sup> *Id.* at p. 731.

<sup>32</sup> *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, at pgs. 1366-1369, (*POBRA*).



The claimant argues that legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate.<sup>33</sup> The claimant argues that “it is the magnitude of coercion created by the loss of federal funds and inability to continue the program, not proof of an actual penalty, that is the measure of the issue.”<sup>34</sup> However, absent legal compulsion the law is clear that claimant bears the burden of providing evidence to support the allegation that school districts face practical compulsion or no true choice but to engage in an activity that districts are not legally compelled to engage in. Absent any evidence of practical compulsion, the Commission cannot make a finding that practical compulsion exists.<sup>35</sup> The claimant has not provided evidence that school districts face certain and severe penalties for failing to apply for and receive federal grant funding under Chapter 1 of the ESEA such that they are practically compelled to receive those funds and establish a parent involvement program. In fact, as further discussed below, section 11504 provides for instances in which schools *do not* receive funding under Chapter 1 of the ESEA. Additionally, the claimant’s argument that schools face practical compulsion to receive federal grant funding leads to a conclusion that the conditions to receive the federal grant funding constitute federal mandates. These conditions include the adoption of parental involvement programs and policies.<sup>36</sup> Thus, even assuming the claimant’s interpretation is correct, the establishment of parental involvement programs would then constitute a federal mandate. Thus, the Commission finds that Education Code section 11503 does not impose a state-mandated program on school districts.

In contrast to section 11503, the requirement imposed by section 11504 is not triggered by a district’s underlying discretionary decision. Rather, in the absence of any discretionary action by a school district, section 11504 requires school districts to adopt a parent involvement policy consistent with the purposes and goals in section 11502 for schools in the district not in receipt of funding under Chapter 1 of the ESEA. Additionally, this activity imposes a unique activity on school districts to implement a state policy of promoting parental involvement in education.<sup>37</sup> Also, prior to the enactment of section 11504 in 1990,<sup>38</sup> school districts were not required to adopt a policy on parent involvement consistent with the purpose and goals set forth in section 11502. Thus, the activity constitutes a state-mandated new program or higher level of service.

It must be noted that the adoption of a policy is a one-time activity that was first operative January 1, 1991. As a result, the mandate to adopt a policy was imposed and the activity was

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<sup>33</sup> Exhibit C, claimant’s comments in response to Finance comments, *supra*, citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 (*Sacramento II*).

<sup>34</sup> Exhibit E, claimant’s comments on the draft staff analysis.

<sup>35</sup> *POBRA, supra*, 170 Cal.App.4th at pgs. 1366-1369.

<sup>36</sup> Public Law Number 100-297 section 1016, codified at former 20 U.S.C. section 2726; currently Public Law Number 107-110, codified at 20 U.S.C. section 6318.

<sup>37</sup> See Education Code sections 11500-11502, setting forth the importance of parent involvement in education.

<sup>38</sup> Statutes 1990, chapter 1400 (A.B. 322).

required to have occurred outside of the reimbursement period that starts on July 1, 2002.<sup>39</sup> Thus, for school districts and schools that existed before July 1, 2002, reimbursement is not required. However, new district or school formation may have occurred after July 1, 2002 and during the period of reimbursement, and thus, those newly formed districts or districts with newly formed schools are eligible for reimbursement for the activity of adopting policies.<sup>40</sup>

Based on the above discussion, the Commission finds that the following one-time activity imposed by section 11504 constitutes a state-mandated new program or higher level of service for school districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted parent involvement policies prior to the 2002-2003 fiscal year:<sup>41</sup>

Adopt a policy on parent involvement, consistent with the purposes and goals set forth in Education Code section 11502 (Stats. 1990, ch. 1400), for each school that does not receive funding under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). (Ed. Code, § 11504 (Stats. 1990, ch. 1400).)

(2) Parental Review of Instructional Materials, School Activities, and Curriculum (Ed. Code, §§ 49091.10 and 49091.14)

The plain language of Education Code sections 49091.10 and 49091.14 requires schools to engage in the following activities:

1. Promptly make all primary supplemental instructional materials and assessments available for inspection by a parent or guardian in a reasonable timeframe or in accordance with procedures determined by the governing board of the school district. Includes textbooks, teacher’s manuals, films, tapes, and software.<sup>42</sup> (Ed. Code, § 49091.10(a) (Stats. 1998, ch. 1031).)
2. Arrange for the parental observation of the requested class or classes or activities by a parent or guardian within a reasonable timeframe and in accordance with procedures determined by the governing board of the school district upon written request by the parent or guardian. (Ed. Code, § 49091.10(b) (Stats. 1998, ch. 1031).)
3. Compile the curriculum, including titles, descriptions, and instructional aims of every course offered by a public school, at least once annually in a prospectus. Each school site

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<sup>39</sup> Government Code section 17557(e).

<sup>40</sup> In comments filed on the draft staff analysis, the claimant argues that section 11504 also mandates school districts to implement the policies adopted. (Exhibit E, p. 3.) The Commission disagrees. The only activity mandated by the plain language of the statute is to adopt a policy on parent involvement, consistent with the purpose and goals outlined in section 11502.

<sup>41</sup> *San Diego Unified School Dist. v. Commission on State Mandates*, *supra*, 33 Cal.4th at p. 874.

<sup>42</sup> In 2009, the Legislature made a non-substantive amendment to section 49091.10 in order to modernize existing statutory references to audio or video recordings. Specifically, the Legislature replaced “tapes” with “audio video records.” (Stats. 2009, ch. 88.)

shall make its prospectus available for review upon request. When requested, the prospectus shall be reproduced and made available. A fee may be charged for the prospectus in an amount not to exceed to cost of duplication. (Ed. Code, § 49091.14 (Stats. 1998, ch. 1031).)

As described below, many of these activities were required prior to the enactment of sections 49091.10 and 49091.14 in 1998 and, thus, do not constitute state-mandated new programs or higher levels of service.

Immediately prior to the enactment of section 49091.14, the governing board of every school district was required to prepare and keep on file for public inspection the courses of study prescribed for the schools under its jurisdiction.<sup>43</sup> Although “curriculum” is not defined for purposes of section 49091.14, the plain meaning of “curriculum” is all of the courses of study offered in a school.<sup>44</sup> Thus, school districts were required to compile the curriculum for public inspection before the enactment of section 49091.14. As a result, the Commission finds that the requirement to compile the curriculum annually in a prospectus does not constitute a new program or higher level of service.

The Commission further finds that the activity required by Education Code sections 49091.10(a) and 49091.14 to promptly make all primary supplemental instructional materials (textbooks, teacher’s manuals, films, tapes, and software) and the prospectus of the school’s curriculum available for inspection by a parent or guardian is not new, but was previously required by the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.). The CPRA provides that public records maintained by a state or local agency are open to public inspection at all times during office hours of the agency.<sup>45</sup> Schools have been subject to the CPRA since 1968.<sup>46</sup> Additionally, the CPRA requires local agencies to provide a copy of public records upon request and gives local agencies fee authority covering the direct costs of duplication.<sup>47</sup>

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<sup>43</sup> Education Code section 51040 (Stats. 1976, ch. 1010), derived from former Education Code section 8001 (Stats. 1974, ch. 905).

<sup>44</sup> Webster’s 2d New College Dictionary. (1999) p. 277. See also, Education Code section 51013, which defines “curriculum” for purposes of Education Code sections 51000-54760. Section 51013 defines “curriculum” to mean the courses of study, subjects, classes, and organized group activities provided by a school. Se defines “curriculum” for the purposes of Education Code sections 51000-54760.

<sup>45</sup> Government Code section 6253(a), derived from former Government Code section 6253 (Stats. 1968, ch. 1473).

<sup>46</sup> Government Code section 6252(a), defining “local agency” to include a “school district ... [and] other local public agency.” (Added by Stats. 1968, ch. 1473.)

<sup>47</sup> Government Code section 6253(b), derived from former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

The CPRA defines “public records” for the purposes of the CPRA to include:

[A]ny writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.<sup>48</sup>

“Writing” is defined as:

[A]ny handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.<sup>49</sup>

However, the CPRA specifically exempts from disclosure:

Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code[, addressing the disclosure of standardized tests].

As relevant here, instructional materials, a school’s curriculum, and assessments that constitute standardized tests as defined by Education Code sections 99151, are writings containing information relating to the conduct of the public’s business. Specifically, these writings relate to the public’s business of the education of students.<sup>50</sup> These writings are prepared, owned, used or retained by the school and have been required to be open to inspection since 1968 under the CPRA. Additionally, schools have been required to provide a copy of its curriculum upon request since 1968 under the CPRA. As a result, the Commission finds that compiling the school’s curriculum; allowing public inspection of instructional materials, standardized tests as described in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, and the school’s curriculum; and providing copies of the school’s curriculum upon request do not constitute new programs or higher levels of service.

In contrast, assessments, which are mandated to be made available for inspection by Education Code section 49091.10, are specifically exempt from the disclosure requirement of the CPRA.<sup>51</sup> As noted above, this exemption excludes standardized tests as provided for in Chapter 3

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<sup>48</sup> Government Code section 6252(e) (Stats. 2004, ch. 937), derived from former section 6252(d) (Stats. 1968, ch. 1473).

<sup>49</sup> Government Code section 6252(g) (Stats. 2004, ch. 937), derived from former section 6252(d) (Stats. 1968, ch. 1473).

<sup>50</sup> *Long Beach Unified School Dist. v. State of California* (1990) 275 Cal.App.3d 155, 172, finding, “[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. .... Further, public education is administered by local agencies to provide service to the public.” (Citation omitted.)

<sup>51</sup> Government Code section 6254(g).

(commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code. The Commission interprets “assessments” as used in Education Code section 49091.10 to mean test questions, *not* the results of a test that contain information directly related to an identifiable pupil. In the context of education, this interpretation is consistent with the definition of an assessment which is an evaluation, or in other words, a test.<sup>52</sup> Under the rules of statutory construction, the Commission must construe “assessment” in context with the provisions in which it appears and strive to harmonize the provision internally.<sup>53</sup> In accordance with this principle, the Commission can adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make the item markedly dissimilar to the other items in the list.<sup>54</sup> “Assessments” must be read in context with “supplemental instructional materials” both of which are stated to include “textbooks, teacher’s manuals, films, tapes, and software.” All of these items refer to general educational materials not specific to any individual student.

In response to the draft, Finance argues that making student assessments available to parents or guardians is not a new requirement imposed on school districts since Education Code section 49069, a statute which dates back to 1975, already imposes the requirement. Education Code section 49069 provides the following:

Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children that are maintained by school districts or private schools. The editing or withholding of any of those records, except as provided for in this chapter, is prohibited.

Each school district shall adopt procedures for the granting of requests by parents for copies of all pupil records pursuant to Section 49065, or to inspect and review records during regular school hours, provided that the requested access shall be granted no later than five business days following the date of the request.

Procedures shall include the notification to the parent of the location of all official pupil records if not centrally located and the availability of qualified certificated personnel to interpret records if requested.<sup>55</sup>

“Pupil records” are defined by Education Code section 49061 to mean “any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, or other means.”<sup>56</sup>

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<sup>52</sup> Webster’s 2d New College Dictionary. (1999) p. 67.

<sup>53</sup> *English v. IKON Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 145.

<sup>54</sup> *Ibid.*

<sup>55</sup> Education Code section 49069 derives from former section 10940, added by Statutes 1975, chapter 816.

<sup>56</sup> The Commission previously analyzed code sections within Education Code sections 49060 et seq., which dealt with student records and access to those records in the *Student Records* (02-TC-34) test claim. Statement of Decision, *Student Records* (02-TC-34), decided May 29, 2009. (<http://www.csm.ca.gov/sodscan/doc36.pdf>).

Finance interprets “assessments” as the *results of a student assessment*, which contain information directly related to an identifiable pupil, and thus, making an “assessment” a pupil record to which parents have a right of access. However, this interpretation makes “assessments” as used in Education Code section 49091.10 markedly dissimilar to the other items listed, all of which are items that *are not* pupil records. Thus, the Commission disagrees with Finance’s interpretation of “assessment.”

Instead, the Commission interprets “assessments” as used in Education Code section 49091.10 as test questions, which would not be included in a student’s records. As a result, the mandate to make assessments available for inspection, excluding standardized tests described in Education Code sections 99150-99164, is a new requirement as compared to the law in effect immediately prior to the enactment of Education Code section 49091.10. Thus, the Commission finds the activity of making assessments (other than standardized tests) available for inspection constitutes a new program or higher level of service.

Finally, the Commission finds that Education Code section 49091.10(b), which requires schools to arrange for the parental observation of the requested class, classes, or school activities within a reasonable timeframe and in accordance with procedures determined by the governing board of the school district, is new and mandates a new program or higher level of service. The Department of Finance, however, disagrees that this activity is reimbursable, arguing that “the law does not prescribe when these meetings must take place and since any observation of a class or school activity would be within the normal working hours of the school, districts should be able to accommodate these requests without incurring additional costs.”<sup>57</sup> Finance’s interpretation of the statute is wrong. The statute does not require any school site or school district activity when the parent is actually on campus observing a class or activity during the school day. Rather, the statute requires schools to arrange for the observation in accordance with procedures determined by the governing board of the school district. These activities are new, and do not depend on any prior law that directs the timing of the school day. In this respect, the analysis of this activity is different than prior findings of the Commission that denied reimbursement for mandated activities required to be performed by teachers during existing minimum minutes per school day under state law.<sup>58</sup> Nor has Finance filed any evidence to support the notion that school districts will not incur additional costs. Thus, the activity mandated section 49091.10(b) constitutes a new program or higher level of service.

Based on the above discussion, the Commission finds that Education Code section 49091.10 mandates the following new programs or higher levels of service:

1. Promptly make all assessments, excluding standardized tests described in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, available for inspection by a parent or guardian in a reasonable timeframe or in

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<sup>57</sup> Exhibit F.

<sup>58</sup> See, for example, the statements of decision in *Physical Performance Tests* (96-365-01) and *STAR* (97-TC-23), which were upheld in by the Third District Court of Appeal in an unpublished decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004), Case No. C044162 (Exhibit G).

accordance with procedures determined by the governing board of the school district.<sup>59</sup> (Ed. Code, § 49091.10(a) (Stats. 1998, ch. 1031).)

2. Upon written request by a parent or guardian, arrange for the parental observation of the requested class or classes or activities by the parent or guardian within a reasonable timeframe and in accordance with procedures determined by the governing board of the school district. (Ed. Code, § 49091.10(b) (Stats. 1998, ch. 1031).)

(3) Rights of Parents and Guardians (Ed. Code, §§ 51101 and 51101.1)

Education Code sections 51101 and 51101.1 address a parent or guardian’s education related right and the adoption of a policy for parent involvement in education. Section 51101.1 focuses specifically on parents or guardians who lack English fluency.

a. Section 51101(b) Imposes a State-Mandated New Program or Higher Level of Service to Adopt a Parental Involvement Policy in Education

(i) Section 51101(a)

Section 51101(a) prefaces a list of parental education related rights with the following:

Except as provided in subdivision (d), the parents and guardians of pupils enrolled in public schools have the right and *should* have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, as follows . . . .<sup>60</sup>

Section 51101(a) then sets forth the following 16 ways to be informed by a school and participate in the education of their children:

- (1) to observe the classroom in which their child is enrolled;
- (2) to meet with their child’s teacher and principal;
- (3) to volunteer their time and resources;
- (4) to be notified if their child is absent from school without permission;
- (5) to receive the results of their child’s performance on standardized tests and statewide tests and information on the performance of the school that their child attends on such tests;
- (6) to request a particular school for their child and receive a response from the school district;
- (7) to have a school environment for their child that is safe and supportive of learning;
- (8) to examine the curriculum materials of the class or classes in which their child is enrolled;

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<sup>59</sup> In 2009, the Legislature made a non-substantive amendment to section 49091.10 in order to modernize existing statutory references to audio or video recordings. Specifically, the Legislature replaced “tapes” with “audio video records.” (Stats. 2009, ch. 88.)

<sup>60</sup> Emphasis added. Subdivision (d) of section 51101 provides that section 51101 may not be construed to authorize schools to inform, or allow participation by, a parent or guardian in the education of a child if it conflicts with a valid restraining order, protective order, or order for custody or visitation.

(9) to be informed of their child’s progress in school and of the appropriate school personnel whom they should contact if problems arise with their child;

(10) to have access to the school records of their child;

(11) to receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish;

(12) to be informed in advance about school rules, including disciplinary rules and procedures pursuant to Education Code section 35291, attendance, retention, and promotion policies pursuant to Education Code section 48070.5, dress codes, and procedures for visiting the school;

(13) to receive information about any psychological testing the school does involving their child and to deny permission to give the test;

(14) to participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team;

(15) to question anything in their child’s record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school; and,

(16) to be notified if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child pursuant to Education Code section 48070.5.

The claimant interprets the sentence preceding the list of parental rights as requiring schools to *inform* parents and to *allow* participation by parents and guardians as indicated by the list of rights.<sup>61</sup> The Commission disagrees with the claimant’s interpretation of section 51101(a). The Commission finds that the plain language of section 51101(a) does not impose any state-mandated activities on school districts. Rather, the plain language of section 51101(a) is a declaration of rights and opportunities that parents “*should*” have in order to be informed and participate in the education of their children.

Moreover, many of the rights granted in section 51101(a) are implemented elsewhere in the Education Code. For example, section 51101(a)(10) and (15) identifies the rights of parents to have access to school records of their children and to question anything in their child’s record that the parent feels is inaccurate. *Education Code sections 49063 and 49070*, statutes that have not been pled here, address a parent’s right to access pupil records. These statutes establish a process for the request of student records and require school districts to provide written notice to parents of their right to know of and to request the school records of their children.

Similarly, section 51101(a)(5) establishes the right of parents to receive the results of their child’s performance on standardized tests and statewide tests and information on performance of the school that their child attends on standardized statewide tests. The Legislature, however, has implemented these rights through the enactment of other Education Code sections establishing the provision of the various standardized tests provided in schools. For example, the Education Code sections and implementing regulations that establish the Standardized Testing and Reporting Program (STAR Program) and the California English Language Development Test (CELDT) require the reporting of individual results of the STAR Program and CELDT to the

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<sup>61</sup> See also pages 3 and 4 in Exhibit E, claimant’s comments on the draft staff analysis.



pupils' parents or guardians.<sup>62</sup> Also, school districts are required to include in the school accountability report card (SARC) required by Proposition 98 to provide data to parents by which parents can make a meaningful comparison between public schools, including pupil achievement by grade level, as measured by standardized testing and reporting programs pursuant to the STAR Program.<sup>63</sup>

Moreover, some of the code sections that implement the rights set forth in Education Code section 51101(a), have been specifically pled by the claimant in this test claim. For example, in regard to the right of parents to observe the classroom of their child as set forth in section 51101(a)(1), Education Code section 49091.10 imposes the requirement on schools to arrange for parental observation of the requested class within a reasonable timeframe. Similarly, section 51101(a)(8) establishes the rights of parents to examine the curriculum materials of the class or classes in which their child is enrolled. Although section 51101(a)(8) does not require school districts to perform any activities, Education Code section 49091.14, which was discussed in the section above, addresses the right to examine curriculum materials for their children and establishes a required process for school districts to implement this right.<sup>64</sup>

The Commission's interpretation is also supported by the fact that some of the rights delineated by Education Code section 51101(a) have been analyzed in prior Commission decisions on statutes that required school districts to implement those rights. For instance, the claimant alleges that section 55101(a)(16) requires schools to notify parents as early in the school year as practicable if their child is identified as being at risk of retention and of the opportunity to consult with the teacher responsible for the decision. As indicated, the plain language of section 51101(a)(16) establishes a right for parents, but does not impose any mandated activities on school districts. However, in the *Pupil Promotion and Retention* (98-TC-19) test claim, the Commission found that Education Code section 48070.5, which requires school districts to notify parents early in the school year if their child is identified as being at risk of retention and of the opportunity to consult with the teacher responsible for the decision, imposes a reimbursable state-mandated activity.<sup>65</sup> Similarly, section 51101(a)(4) establishes the rights of parents to be notified on a timely basis if their child is absent from school without permission. In the *Notification of Truancy* (CSM 4133) test claim, the Commission found that activities required by the plain language of Education Code section 48260 to implement this right are reimbursable state-mandated programs and school districts are eligible for reimbursement for those activities.<sup>66, 67</sup>

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<sup>62</sup> For STAR see Education Code section 60641 and California Code of Regulations, title 5, section 863. For CELDT see California Code of Regulations, title 5, sections 11511.5

<sup>63</sup> Education Code sections 33126 and 35256.

<sup>64</sup> As discussed above, the CPRA already provided access to the curriculum as a "public record."

<sup>65</sup> Statement of decision for *Pupil Promotion and Retention* (98-TC-19) test claim, adopted May 23, 2002, at <<http://www.csm.ca.gov/sodscan/98tc19sod.pdf>> as of September 17, 2012.

<sup>66</sup> Parameters and guidelines for *Notification of Truancy* (CSM) test claim, amended May 27, 2010, at <<http://www.csm.ca.gov/sodscan/282.pdf>> as of September 17, 2012.

Based on the above discussion, the Commission finds that the plain language of Education Code section 51101(a) does not require schools or school districts to engage in any activities.

(ii) Section 51101(b)

In contrast, section 51101(b) provides:

In addition to the rights described in subdivision (a), parents and guardians of pupils, including those parents and guardians whose primary language is not English, shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in schools. Each governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines the manner in which parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. This policy shall include, but is not necessarily limited to, the following:

- (1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.
- (2) A description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.
- (3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:
  - (A) Monitoring attendance of their children.
  - (B) Ensuring that homework is completed and turned in on a timely basis.
  - (C) Participation of the children in extracurricular activities.
  - (D) Monitoring and regulating the television viewed by their children.
  - (E) Working with their children at home in learning activities that extend learning in the classroom.
  - (F) Volunteering in their children's classrooms, or for other activities at the school.
  - (G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

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<sup>67</sup> The Commission notes the STAR Program, CELDT, and SARC were also the subject of multiple test claims on which the Commission has issued statement of decisions. See Commission decisions at <[http://www.csm.ca.gov/sod\\_scan.shtml#c2](http://www.csm.ca.gov/sod_scan.shtml#c2)> as of September 17, 2012.

The above language requires school districts to jointly develop with parents and guardians, and to adopt, a policy that outlines the manner in which parents or guardians or pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. In addition, the policy is required to include specific elements regarding a parent or guardian's participation in their child's education.

The claimant argues the following language requires school districts to work together with parents and guardians in a mutually supportive and respectful partnership to help their children succeed in school:<sup>68</sup>

In addition to the rights described in subdivision (a), parents and guardians of pupils, including those parents and guardians whose primary language is not English, shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in schools.<sup>69</sup>

The Commission disagrees with the claimant's interpretation. Like the language of subdivision (a), the language in subdivision (b) does not impose any activity on schools or school districts. Instead, the language describes a right of parents and guardians. As required by law, the Commission can only presume the lawmakers meant what they said, and cannot insert requirements into the language of a statute that is not plainly there.<sup>70</sup> This interpretation does not leave parents with a right absent meaning, as this right is effectuated by the language immediately following the language quoted above. Specifically, school districts are required to jointly develop with parents and guardians, and to adopt, a policy that outlines the manner in which parents or guardians or pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. Thus, section 51101(b) only requires the joint development and the adoption of a policy with specific content.

The activity required by section 51101(b) is not required by federal law or triggered by a voluntary decision on the part of a school district. As a result, the activity to jointly develop and adopt a policy with specific content constitutes a state-mandated activity. In addition, this activity carries out the governmental function of providing a service to the public by encouraging parental involvement in education, and thus, constitutes a "program."<sup>71</sup>

In addition, the activity mandated by section 51101(b) is new. Section 51101 was enacted in 1998.<sup>72</sup> Immediately prior to the enactment of section 51101(b), Education Code section 11504,

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<sup>68</sup> Exhibit A, test claim, dated September 25, 2003, p. 25.

<sup>69</sup> Education Code section 51101(b).

<sup>70</sup> *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911 and 917.

<sup>71</sup> *Long Beach Unified School Dist. v. State of California* (1990) 275 Cal.App.3d 155, 172, finding, "[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. .... Further, public education is administered by local agencies to provide service to the public." (Citation omitted.)

<sup>72</sup> Statutes 1998, chapter 864.

which was analyzed above, required school districts to adopt a parent involvement policy for schools in the district that *do not* receive funding under Chapter 1 of the ESEA.<sup>73</sup>

Section 51101(b) requires school districts to adopt a policy for schools in the district that must contain specific elements addressing parent involvement in the education and academic success of their children. Because of the similarity in the activities, it is necessary to compare the parent involvement policy required by section 11504 and the policy required by section 51101(b) in order to determine if the activity imposed by section 51101(b) is new.

Although the requirements imposed by section 11504 and 51101(b) are similar, the requirement to adopt a policy pursuant to section 51101(b) differs from the requirement imposed by section 11504 in the following two ways: (1) the requirement to adopt a policy under section 51101(b) is imposed for *all* schools in a district, including those receiving funding under Chapter 1 of the ESEA; and (2) section 51101(b) requires specific content to be included in the policy regarding parent involvement, which may meet the requirements of section 11504, but are not specifically required by section 11504. As further discussed below, due to these differences, the requirement to adopt a policy under section 51101(b) for *each* school in the district constitutes a new program or higher level of service on school districts, regardless of the receipt of funding under Chapter 1 of the ESEA.

Section 11504 requires school districts to adopt a parent involvement policy *only* for schools that receive funding under Chapter 1 of the ESEA. In contrast, section 51101(b) applies to all schools in school districts regardless of a school's receipt of Chapter 1 funding. In effect, section 51101(b) extends the requirement to adopt a parent involvement policy to schools receiving funding under Chapter 1 of the ESEA. Even though schools agree to adopt parent involvement policies as a condition for receipt of Chapter 1 funds, schools receive and accept the conditions for receiving Chapter 1 grant funding on a voluntary basis. Where a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state is required to reimburse the school district for those costs incurred after the operative date of the state mandate.<sup>74</sup> Thus, school districts with schools receiving funding under Chapter 1 of the ESEA were mandated to adopt a policy for those schools only *after* the enactment of section 51101(b) in 1998. As a result, section 51101(b) imposes a state-mandated new program or higher level of service on school districts to adopt a policy with content addressing parent involvement, specified by section 51101(b), for each school in the district receiving federal funding under Chapter 1 of the ESEA.

In addition, section 51101(b) imposes a new program or higher level of service on school districts for schools that *do not* receive funding under Chapter 1 of the ESEA. Under section 11504, schools that do not receive funding under Chapter 1 of the ESEA are mandated to adopt a parent involvement policy consistent with purposes and goals set forth in section 11502. The purpose and goals set forth in section 11502 include engaging parents in the education of their children, build communication between parents and schools, and to incorporate parent involvement programs in a school's master plan for academic accountability.<sup>75</sup> Although,

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<sup>73</sup> Statutes 1990, chapter 1400.

<sup>74</sup> Government Code section 17565.

<sup>75</sup> Emphasis added. Education Code section 11502 provides:

schools that do not receive funding under Chapter 1 of the ESEA were mandated to adopt a parent involvement policy under section 11504, this policy is only required to be “*consistent* with the purposes and goals set forth in section 11502.”<sup>76</sup> Section 11504 does not require school districts to include specific content that is consistent with the purposes and goals in these policies.

In contrast, section 51101(b) provides specifically what, at minimum, is required to be included in the policy adopted by a school district. Section 51101(b) provides:

The policy shall include, but is not necessarily limited to, the following:

- (1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.
- (2) A description of the school’s responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.
- (3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:
  - (A) Monitoring attendance of their children.
  - (B) Ensuring that homework is completed and turned in on a timely basis.
  - (C) Participation of the children in extracurricular activities.
  - (D) Monitoring and regulating the television viewed by their children.

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It is the purpose and goal of this chapter to do all of the following:

- (a) To engage parents positively in their children’s education by helping parents to develop skills to use at home that support their children’s academic efforts at school and their children’s development as responsible future members of society.
- (b) To inform parents that they can directly affect the success of their children’s learning, by providing parents with techniques and strategies that they may utilize to improve their children’s academic success and to assist their children in learning at home.
- (c) To build consistent and effective communication between the home and the school so that parents may know when and how to assist their children in support of classroom learning activities.
- (d) To train teachers and administrators to communicate effectively with parents.
- (e) To integrate parent involvement programs, including compliance with [Education Code sections 11500-11506], into the school’s master plan for academic accountability.

<sup>76</sup> Education Code section 11504.

(E) Working with their children at home in learning activities that extend learning in the classroom.

(F) Volunteering in their children's classrooms, or for other activities at school.

(G) Participating, as appropriate, in decisions relating to the education of their children or the total school program.

The above content may be consistent with the purposes and goals set forth in section 11502, and thus, the policy adopted under section 51101(b) may meet the requirement to adopt a parent involvement policy under section 11504. However, the specific content was not *required* in 1990 by section 11504. Thus, school districts which may, at their option, include this content in their parent involvement policies under section 11504, are now mandated to include this content in their policies under section 51101(b). Because section 51101(b) requires specific content, not required by section 11504, the Commission finds that the requirement to adopt a policy with the content specified by section 51101(b) for each school in a school district constitutes a new program for school districts that were required to adopt a parent involvement policy for schools under section 11504.

It must be noted that the policy mandated to be adopted by section 51101(b) is not specifically linked to the parent involvement policy mandated section 11504. Rather, the Legislature enacted section 51101 without reference to section 11504. Although school districts can comply with both code sections by adopting a single policy that includes the content required by section 51101(b) and is also consistent with the purposes and goals set forth in section 11502, school districts are not required to do so. Instead, sections 11504 and 51101(b) impose separate requirements to adopt policies.

In addition, the Commission notes that the adoption of a policy is a one-time activity that was first operative January 1, 1999.<sup>77</sup> Thus, the mandate to adopt a policy was imposed and the activity was required to have occurred outside of the reimbursement period that starts on July 1, 2002.<sup>78</sup> Thus, no reimbursement is required for school districts and schools that existed before July 1, 2002. However, new district or school formation may have occurred after July 1, 2002 and during the period of reimbursement. As a result, the Commission finds that the one-time activity imposed by section 51101(b) constitutes a state-mandated new program or higher level of service for school districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted a policy prior to the 2002-2003 fiscal year.

(iii) Section 51101(c) and (d)

Subdivision (c) of section 51101 provides that schools that participate in the High Priority Schools Grant Program established pursuant to Article 3.5 (commencing with Ed. Code, § 52055.600) of Chapter 6.1 of Part 28 and that maintain kindergarten or any of grades 1 to 5, inclusive, shall jointly develop with parents or guardians for all children enrolled at that

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<sup>77</sup> Education Code section 51101 as added by Statutes 1998, chapter 864. This section was not substantively amended by later amendments in 2003 and 2004 (Stats. 2003, ch. 91; and Stats 2004, ch. 89).

<sup>78</sup> Government Code section 17557(e).

schoolsite, a school-parent compact pursuant to Section 6319 of Title 20 of the United States Code. However, Education Code section 52055.600 expressly provides that participation in the High Priority Schools Grant Program is voluntary.<sup>79</sup> As a result, the Commission finds that the activity required by subdivision (c) of section 51101 is triggered by an underlying discretionary decision by school districts, and thus, is not mandated by the state under *Kern High School Dist.*<sup>80</sup>

Subdivision (d) of section 51101 provides that section 51101 may not be construed to authorize schools to inform, or allow participation by, a parent or guardian in the education of a child if it conflicts with a valid restraining order, protective order, or order for custody or visitation. The plain language of the subdivision does not impose any requirements on school districts.

(iv) Conclusion

Based on the discussion above, the Commission finds that Education Code section 51101(b) imposes the following state-mandated new program or higher level of service for school districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted a policy prior to the 2002-2003 fiscal year:

Develop jointly with parents and guardians, and adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite.

The policy must include the following: (1) the means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school; (2) a description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school; and (3) the manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to: (a) monitoring attendance of their children, (b) ensuring that homework is completed and turned in on a timely basis, (c) participation of the children in extracurricular activities, (d) monitoring and regulating the television viewed by their children, (e) working with their children at home in learning activities that extend learning in the classroom, (f) volunteering in their children's classrooms, or for other activities at the school, (g) participating, as appropriate, in decisions relating to education of their own child or the total school program. (Ed. Code, § 51101(b) (Stats. 1998, ch. 864).)

b. Section 51101.1(a) Imposes a Partial State-Mandated New Program or Higher Level of Service.

Section 51101.1 was enacted in 2002, four years after the enactment of section 51101. Like section 51101, section 51101.1 sets forth a list of parent's education related rights, most of which are stated in section 51101. However, section 51101.1 restates these rights for parents or

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<sup>79</sup> Education Code section 52055.600(a) provides, "The High Priority Schools Grant Program is hereby established. Participation in this program is voluntary."

<sup>80</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th at 743.

guardians of pupils who speak a language other than English. Additionally, section 51101.1 is distinguished from section 51101 in that section 51101.1 not only states a list of parent rights, but also requires school districts to take all reasonable steps to ensure that the parents or guardians of these pupils are notified of these rights. Section 51101.1 also encourages schools with a substantial number of English learners to establish parent centers with personnel who can communicate with the parents and guardians of English learners to encourage understanding of, and participation, in the educational programs in which their children are enrolled.

The claimant argues that section 51101.1(a) and (b) imposes the following two reimbursable activities: (1) take “all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language, pursuant to Section 48985, of the rights and opportunities available to them pursuant to [section 51101.1];” and (2) to ensure “participation of parents and guardians of English learners pursuant to Section 51101 ...” as specified by section 51101.1(b).<sup>81</sup> In addition, the claimant alleges that section 51101.1(c) requires schools with a substantial number of English learners to establish parent centers with personnel who can communicate with parents and guardians of English learners to encourage understanding of and participation in the educational programs in which their children are enrolled. The Commission disagrees with the claimant’s interpretation of the statute.

As further discussed below, section 51101.1(a) *only* requires the *notification* of the rights and opportunities set forth in section 51101.1(b) *and* this notification is subject to the limitations set forth in Education Code section 48985, as are all notices, reports, statements, or records sent to parents or guardians. In addition, schools were already required to provide parents and guardians of English learners notification of some of these rights prior to the enactment of section 51101.1. Also, the plain language of 51101.1(c) does not impose any requirements on schools. As a result, section 51101.1 imposes a much more limited state-mandated new program or higher level of service than that alleged by the claimant.

- (i) Section 51101.1(a) Requires the Notification of Parents and Guardians of Rights and Opportunities Set Forth in the Section 51101.1 Subject to the Limitations of Education Code section 48985.

Section 51101.1(a) provides in relevant part:

A school district shall take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and their home language, pursuant to [Education Code] Section 48985, of the rights and opportunities available to them pursuant to this section.<sup>82</sup>

Education Code section 48985 provides in relevant part:

If 15 percent or more of the pupils enrolled in a public school that provides instruction in kindergarten or any of grades 1 to 12, inclusive, speak a single primary language other than English, . . . , all notices, reports, statements, or records sent to the parent or guardian of any such pupil by the school or school

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<sup>81</sup> Exhibit A, test claim, dated September 25, 2003, p. 27-28.

<sup>82</sup> Education Code section 51101.1(a).



district shall, in addition to being written in English, be written in the primary language . . . .<sup>83</sup>

Subdivision (b) of section 51101.1 sets forth the rights and opportunities that school districts are to ensure that parents and guardians are notified about. Section 51101.1(b) provides:

Parents and guardians of English learners are entitled to participate in the education of their children pursuant to Section 51101 and as follows:

- (1) To receive, pursuant to paragraph (5) of subdivision (a) of Section 51101, the results of their child's performance on standardized tests, including the English language development test.
- (2) To be given any required written notification in English and the pupil's home language pursuant to Section 48985 and any other applicable law.
- (3) To participate in school and district advisory bodies in accordance with federal and state laws and regulations.
- (4) To support their children's advancement toward literacy. School personnel shall encourage parents and guardians of English learners to support their child's progress toward literacy both in English and, to the extent possible, in the child's home language. School districts are encouraged to make available, to the extent possible, surplus or undistributed instructional materials to parents and guardians, pursuant to subdivision (d) of Section 60510, in order to facilitate parental involvement in their children's education. (Cal. Code Regs., tit. 5, § 11303(c).)
- (5) To be informed, pursuant to Sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures, and school improvement efforts.

The claimant asserts that the requirement of section 51101.1 is not limited by the "15 percent floor [of Education Code section 48985] and goes far beyond just notices, reports, statements or records."<sup>84</sup> However, this interpretation is contrary to the plain language of section 51101.1(a). The plain language of section 51101.1 requires school districts to ensure that all parents and guardians of pupils who speak a language other than English "are *properly notified* in English and in their home language, *pursuant to Section 48985*," of the rights set forth in sections 51101 and 51101.1(b). Section 48985 limits the requirement to provide notification in English and a pupil's primary language to parents and guardians where that language is the primary language of 15 percent or more of pupils in the school. Read together, section 51101.1 requires school districts to provide *notice* to parents and guardians in English and a pupil's primary language of the rights set forth in this section *only* if 15 percent or more of the pupils in the school speak that primary language.

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<sup>83</sup> Education Code section 48985(a).

<sup>84</sup> Exhibit C, comments filed by the claimant in response to comments filed by the Department of Finance, dated May 25, 2004, p. 16.

The parental rights that school districts are required to provide notice of are set forth in section 51101.1(b), which incorporates by reference the rights set forth in section 51101. The claimant alleges that section 51101.1(b) requires schools to ensure the participation of parents and guardians of English learners pursuant to the rights listed in section 51101.1(b).<sup>85</sup> However, the plain language of section 51101.1(b) *does not* require school districts to ensure the participation of parents and guardians in education or to engage in any other activity. Rather, like section 51101(a), section 51101.1(b) only sets forth existing parent and guardian rights. Thus, the rights listed in section 51101.1(b) do not, in and of themselves, impose any requirements on schools.

Section 51101.1(c) provides:

A school with a substantial number of English learners is encouraged to establish parent centers with personnel who can communicate with the parents and guardians of these children to encourage understanding of and participation in the educational programs in which their children are enrolled.

The claimant argues that despite the plain language of subdivision (c) providing that schools are *encouraged* to establish parent centers, schools are *legally required* to do so.<sup>86</sup> The claimant reasons that in light of legislative findings and declarations regarding the importance of parent involvement in education and the requirement of parents and guardians to be notified of their rights pursuant to section 51101.1, that subdivision (c) requires the establishment of parent centers. The claimant is incorrect. If the terms of a statute are unambiguous, the plain meaning of the language governs, and an intent that cannot be found in the words of the statute cannot be found to exist.<sup>87</sup> Rather, the Legislature is presumed to have meant what it said.<sup>88</sup> Resort to legislative findings is unnecessary here as the language of subdivision (c) is clear. Specifically, the language of subdivision (c) unambiguously provides that schools are “encouraged” to establish parent centers.

The claimant also suggests that even if schools are not legally compelled to establish parent centers, schools face practical compulsion to do so.<sup>89</sup> However, there are no legal consequences or penalties to suggest that schools face certain and severe penalties for failing to establish parent centers. As a result, the Commission finds that section 51101.1(c) does not require schools to engage in any activities.

Based on the above discussion, section 51101.1(a) requires school districts to provide notice of the rights set forth in Education Code sections 51101(a) and 51101.1(b) to parents and guardians

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<sup>85</sup> Exhibit A, test claim, dated September 25, 2003, p. 27-28.

<sup>86</sup> Exhibit C, comments filed by the claimant in response to comments filed by the Department of Finance, dated May 25, 2004, pgs. 17-18.

<sup>87</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>88</sup> *Los Angeles County Dept. of Children and Family Services v. Superior Court* (2001) 87 Cal.App.4th 1161, 1165.

<sup>89</sup> Exhibit C, comments filed by the claimant in response to comments filed by the Department of Finance, dated May 25, 2004, p. 18.

in English and a single primary language other than English, if 15 percent or more of the pupils in the school speak that single primary language other than English.<sup>90</sup>

In order to determine whether the activity required by section 51101.1(a) constitutes a reimbursable activity, the Commission must determine whether the activity imposes a state-mandated new program or higher level of service. The follow discussion addresses this issue.

(ii) Section 51101.1(a) Imposes a State-Mandated New Program or Higher Level of Service to Provide Notice to Specific Parents of Some of the Rights Set Forth in Sections 51101(a) and 51101.1(b).

The activity required by section 51101.1(a) has two components that must be analyzed to determine whether the requirement imposed by section 51101.1(a) constitutes a state-mandated new program or higher level of service. The first component is the provision of a notice to parents and guardians in English *and* a pupil's primary language if 15 percent or more of the pupils in the school speak that primary language. The second component is the provision of notice to parents and guardians of the rights specified in Education Code sections 51101(a) and 51101.1(b).

In regard to the first element, since 1977, Education Code section 48985 has required *all* notices, reports, statements, or records sent to parents or guardians by a school or school district to be provided in English *and* a pupil's primary language if 15 percent or more of the pupils enrolled in the school speak that primary language.<sup>91</sup> Thus, immediately prior to the enactment of section 51101.1(a) in 2002,<sup>92</sup> school districts were already required to provide notices in English *and* a pupil's primary language subject to the conditions of section 48985. As a result, the Commission finds that the provision of a notice to parents and guardians in English *and* a pupil's primary language does not constitute a new program or higher level of service. What remains from the requirement imposed by section 51101.1(a) is as follows:

Provide notice of the rights set forth in Education Code sections 51101(a) and 51101.1(b) to the parents and guardians of pupils that speak a single primary language other than English if 15 percent or more of the pupils in the school speak that single primary language. (Ed. Code, § 51101.1(a) (Stats. 2002, ch. 1037).)

In regard to the second element, prior to the enactment of section 51101.1(a) in 2002, schools were required by state or federal law to provide notice of the some of the rights set forth in sections 51101(a) and 51101.1(b), but not all of the rights. The following discussion will first set forth the rights that schools are required to provide notice of pursuant to section 51101.1, and by incorporation, section 51101. Second, the discussion will analyze which specific rights schools were required by state or federal law to provide notice of prior to the 2002 enactment of section 51101.1, and thus, do not constitute state-mandated new programs or higher levels of service.

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<sup>90</sup> Education Code section 51101.1(a) (Stats. 2002, ch. 1037).

<sup>91</sup> Education Code section 48985 (Stats. 1977, ch. 36).

<sup>92</sup> Education Code section 51101.1(a) (Stats. 2002, ch. 1038).

(a) Rights that Schools are Required to Provide Notice of to Parents and Guardians.

Education Code section 51101.1(a) requires school districts to provide parents of English learners notice of the rights set forth in the section under the specific circumstances discussed above. Section 51101.1(b) provides, “Parents and guardians of English learners are entitled to participate in the education of their children pursuant to Section 51101 and as follows ... .” Subdivision (b) then sets forth five specific ways in which parents are entitled to participate in their child’s education. With this language, section 51101.1(b) incorporates the rights set forth in section 51101 into section 51101.1. The rights set forth in section 51101 are found in subdivision (a) of that section. Thus, based on the language of section 51101.1(a), schools are required to provide notice of the rights set forth in section 51101.1(b) *and* section 51101(a).

These sections, read together, provide that if 15 percent or more pupils enrolled in the school speak a single primary language other than English, the school is required to provide notice to parents and guardians of pupils that speak that primary language of the following parental rights:

1. To observe, within a reasonable time following a request, the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs. (Ed. Code, § 51101.1(a) read in conjunction with 51101(a)(1).)
2. To meet with their child’s teacher or teachers and the principal of the school in which their child is enrolled. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(2).)
3. To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(3).)
4. To be notified on a timely basis if their child is absent from school without permission. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(4).)
5. To receive the results of their child’s performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests. (Ed. Code, §§ 51101.1(a), read in conjunction with § 51101(a)(5), and 51101.1(b)(1).)
6. To request a particular school for their child, and to receive a response from the school district. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(6).)
7. To have a school environment for their child that is safe and supportive of learning. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(7).)
8. To examine the curriculum materials examine the curriculum materials of the class or classes in which their child is enrolled. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(8).)
9. To be informed their child’s progress in school and of the appropriate school personnel whom they should contact if problems arise with their child. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(9).)

10. To have access to the school records of their child. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(10).)
11. To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(11).)
12. To be informed in advance about school rules, including disciplinary rules and procedures pursuant to Education Code section 35291, attendance, retention, and promotion policies pursuant to Education Code section 48070.5, dress codes, and procedures for visiting the school. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(12).)
13. To receive information about any psychological testing the school does involving their child and to deny permission to give the test. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(13).)
14. To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. (Ed. Code, §§ 51101.1(a), read in conjunction with § 51101(a)(14), and 51101.1(b)(3).)
15. To question anything in their child's record that the parent feels is inaccurate or misleading or is an invitation of privacy and to receive a response from the school. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(15).)
16. To be notified, as early in the school year as practicable pursuant to Education Code section 48070.5, if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(16).)
17. To be given any required written notification in English and the pupil's home language pursuant to Education Code section 48985 and any other applicable law. (Ed. Code, § 51101.1(a) read in conjunction with § 51101.1(b)(2).)
18. To support their children's advancement toward literacy. (Ed. Code, § 51101.1(a) read in conjunction with § 51101.1(b)(4).)
19. To be informed, pursuant to Education Code sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures and school improvement efforts. (Ed. Code, § 51101.1(a) read in conjunction with § 51101.1(b)(5).)

(b) Notices of Parent and Guardian Rights that were Required by State and Federal Law Prior to the Enactment of Section 51101.1.

Prior to the enactment of section 51101.1 in 2002, various state and federal laws required school districts to provide notice to parents and guardians of some of the rights listed above. The following discussion will address these requirements prior to the enactment of section 51101.1. For ease of discussion, the analysis below groups together some of the above rights based on subject matter.

1) Right to Receive Pupil and School Results on Standardized and Statewide Tests and to be Informed about Statewide and Local Academic Standards, Testing, Accountability Measures, and School Improvement Efforts.

Section 51101.1(a), when read in conjunction with section 51101(a)(5), and section 51101.1(b)(1) requires schools to notify parents and guardians of the right to receive the results of their child’s performance on standardized tests, and statewide tests and information on the performance of the school that their child attends on standardized and statewide tests. In addition, section 51101.1(b)(5) requires schools to notify parents and guardians of their right to “be informed, pursuant to Sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures, and school improvement efforts.”

Education Code section 33126 sets forth information that is required to be included in a school’s School Accountability Report Card (SARC). This information includes a school’s performance on standardized tests, state and local academic standards, accountability measures, and school improvement efforts. As discussed above, Education Code section 48985 requires schools and school districts to provide any notice issued to parents and guardians in English and a pupil’s primary language, if that primary language is spoken by at least 15 percent of the pupils enrolled in the public school.

Since 1977 Education Code section 49063 required schools to keep and notify parents of the availability of their child’s records, which have been required to include the results of standardized tests of a pupil under California Code of Regulations, title 5, section 432(b)(2)(I).<sup>93</sup> In addition, Education Code section 35256 has required schools to notify parents of the right to receive the SARC since 1988. Thus, notifying parents and guardians of their right to receive the information discussed in this section is not new.

Based on the above discussion, the Commission finds the requirement imposed by section 51101.1(a) to notify parents and guardians of children that speak a single primary language other than English of the right to receive the information identified by sections 51101(a)(5) and 51101.1(b)(1) does not constitute a new program or higher level of service.

2) Right to Request a Particular School for Child

Section 51101.1(a), read in conjunction with section 51101(a)(6), requires schools to notify parents and guardians of their right to request a particular school for their child, and to receive a response from the school. However, prior to 2002 schools were already required to notify parents and guardians of this right under Education Code section 48980(h). That section requires schools to advise parents or guardians of all existing statutory attendance options and local

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<sup>93</sup> Education Code section 49063 (Added by Stats. 1976, ch. 1010; last amended by Stats. 1998, ch. 1031); and California Code of Regulations, title 5, section 432(b)(2)(I) (Register 77, No. 39). The Commission notes that Education Code section 49063 was the subject of the *Annual Parent Notification – 1998-2000 Statutes* (99-TC-09/00-TC-12) test claim, on which the Commission has made a final decision. Statement of decision for *Annual Parent Notification – 1998-2000 Statutes* (99-TC-09/00-TC-12) test claim, adopted December 12, 2001, at <<http://www.csm.ca.gov/sodscan/139.pdf>> as of October 16, 2012.

attendance options available in the school district.<sup>94</sup> Thus, the Commission finds that the requirement imposed by section 51101.1(a), when read in conjunction with section 51101(a)(6), does not constitute a new program or higher level of service.

3) Right to School Environment that is Safe and Supportive of Learning

Section 51101.1(a), read in conjunction with section 51101(a)(7), requires schools to notify parents and guardians of the right to have a school environment for their child that is safe and supportive of learning. However, since 1997, schools have been required to adopt a comprehensive school safety plan due to the enactment of former Education Code section 35294.6.<sup>95</sup> This plan has been required to include specific components, including, a safe and orderly environment conducive to learning at school.<sup>96</sup> In addition, since 2000, schools have been required to include a description of the key elements of the comprehensive school safety plan in the annual SARC.<sup>97</sup> As discussed above, schools are required to notify parents of their right to receive the SARC since 1988. Thus, the Commission finds that the requirement imposed by section 51101.1(a), when read in conjunction with section 51101(a)(7), does not constitute a new program or higher level of service.

4) Right to View Curriculum Materials, Pupil Progress, and Records and to Dispute the Content of Pupil Records

Section 51101.1(a), read in conjunction with section 51101(a)(8), (9), (10), and (15), requires schools to notify parents and guardians of their right to: (1) examine curriculum materials of the class or classes in which their child is enrolled; (2) be informed of their child's progress in school and of the appropriate personnel whom they should contact if problems arise with their child; (3) have access to the school records of their child; and (4) question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school. Prior to 2002, schools were already required to provide parents notice of these rights. Specifically, Education Code section 49063(k) has required schools to provide parents notice of their right to view curriculum materials since 1998.<sup>98</sup> Also, Education Code section 49063 has required schools to keep and notify parents of the availability of their child's records and the position of the official responsible for the maintenance of each type of record, which have been required to include pupil progress slips and notices under

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<sup>94</sup> Education Code section 48980(h), formerly section 48980(g), as amended by Statutes 1993, chapter 1296. This code section was the subject of the *Annual Parent Notification* (CSM 4461) test claim, on which the Commission has made a final decision. Statement of decision for *Annual Parent Notification* (CSM 4461) test claim, adopted December 12, 2001, at <<http://www.csm.ca.gov/sodscan/139.pdf>> as of October 16, 2012.

<sup>95</sup> Former Education Code section 35294.6, as added by Statutes 1997, chapter 736. Renumbered to Education Code section 32286 by Statutes 2003, chapter 828.

<sup>96</sup> Former Education Code section 35294.2(a)(2)(H) (Stats. 1997, ch. 736). Renumbered to Education Code section 32282(a)(2)(H) (Stats. 2003, ch. 828).

<sup>97</sup> Former Education Code section 35294.6 (as amended by Stats. 1999, ch. 996).

<sup>98</sup> Education Code section 49063(k), as amended by Statutes 1998, chapter 1031.

California Code of Regulations, title 5, section 432(b)(2)(E).<sup>99</sup> Additionally, prior to 2002 Education Code section 49063 required schools to provide parents with notice of their right to have access pupil records and the procedures for challenging the content of pupil records. Thus, the Commission finds that the requirement imposed by section 51101.1(a), when read in conjunction with section 51101(a)(8), (9), (10), and (15), does not constitute a new program or higher level of service.

#### 5) Right to be Notified of School Rules

Section 51101.1(a), read in conjunction with section 51101(a)(12), requires schools to notify parents and guardians of their right to be informed in advance about school rules, including disciplinary rules and procedures pursuant to Education Code section 35291, attendance, retention and promotion policies pursuant to Education Code section 48070.5, dress codes, and procedures for visiting the school. However, as discussed below, schools have been required to notify parents and guardians of their right to be informed about all of these rules in advance *except* the retention and promotion policies pursuant to Education Code section 48070.5.

Immediately prior to the enactment of section 51101.1 in 2002, Education Code section 48980 provided in relevant part:

At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under [Education Code section] 35291 ... .<sup>100</sup>

Thus, immediately before the enactment of section 51101.1, section 48980 required schools to provide parents or guardians notice of school disciplinary rules pursuant to section 35291. This is further indicated by the fact the Legislature made a subsequent non-substantive amendment to section 51101(a)(12) in 2004 to replace the reference to Education Code section 35291 to section 48980.<sup>101</sup> Courts have held that an amended statute may be looked to in construing a prior statute.<sup>102</sup> In 2004, the Legislature amended Education Code section 51101 as part of an omnibus clean-up bill that made “a number of non-controversial, conforming, and technical changes to various education statutes and Budget items.”<sup>103</sup> The Legislature made this technical, non-substantive, amendment to section 51101(a)(12) to clarify that the right to be informed of school disciplinary rules is done in accordance with the pre-existing requirement of section 48980. As a result, the Commission finds that notifying parents and guardians of their right to be informed of a school’s disciplinary rules is not new as compared to pre-existing law.

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<sup>99</sup> Education Code section 49063 (Added by Stats. 1976, ch. 1010; last amended by Stats. 1998, ch. 1031); and California Code of Regulations, title 5, section 432(b)(2)(E) (Register 77, No. 39).

<sup>100</sup> Education Code section 48980 as amended by Statutes 2000, chapter 73.

<sup>101</sup> Education Code section 51101 as amended by Statutes 2004, chapter 896.

<sup>102</sup> *Fahey v. City Council of City of Sunnyvale* (1962) 208 Cal.App.2d 667, 675-676.

<sup>103</sup> Assembly Floor Analyses, Assembly Bill 2525 (2003-2004 Reg. Sess.) as amended August 27, 2004.



In regard to providing notice to parents and guardians of their right to be informed of a school's disciplinary rules and procedures, dress code, and procedures for visiting the school, since 1997 schools have been required to adopt a comprehensive school safety plan due to the enactment of former Education Code section 35294.6.<sup>104</sup> This plan has been required to include specific components, including, the schools dress code and procedures for safe ingress and egress of pupils, parents, and school employees to and from school.<sup>105</sup> In addition, since 2000 schools have been required to include a description of the key elements of the comprehensive school safety plan in the annual SARC.<sup>106</sup> As discussed above, schools are required to notify parents of their right to receive the SARC since 1988. Thus, the Commission finds that providing notice to parents and guardians of their right to be informed of school dress codes and procedures for visiting the school does not constitute a new program or higher level of service.

In contrast, prior to 2002, schools were not required to provide notice to parents and guardians regarding retention and promotion policies pursuant to Education Code section 48070.5. Although Education Code section 48070.5 requires schools to provide notice to parents of specific pupils identified as being at risk of retention, schools were not required to provide notice to parents and guardians of *all* pupils regarding retention and promotion policies. Thus, the Commission finds that providing notice to parents and guardians of pupils that speak a single primary language other than English, when at least 15 percent of the pupils at the school speak that language, of their right to be informed of a school's retention and promotion policies is new as compared to the law in effect immediately prior to the enactment of section 51101.1(a).

6) Right to Receive Information about Psychological Testing and to Deny Permission

Section 51101.1(a), read in conjunction with section 51101(a)(13), requires schools to notify parents and guardians of their right to receive information about psychological testing the school does involving their child and the right to deny permission to give the test to their child.

However, as discussed below, schools are mandated by federal law to provide parents notice of this information, and thus, this requirement does not constitute a state-mandated new program or higher level of service.

The federal Protection of Pupil Rights Amendment (PPRA)<sup>107</sup> was enacted as part of the General Education Provisions Act (GEPA), which set forth general conditions which schools and school districts must comply with to receive federal education funds under programs administered by the Secretary of Education or the U.S. Department of Education.<sup>108</sup> However, because the requirements of the PPRA are conditions for the receipt of federal funds, school districts are not obligated to accept the conditions, and may choose not to receive federal funds and thus avoid

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<sup>104</sup> Former Education Code section 35294.6, as added by Statutes 1997, chapter 736. Renumbered to Education Code section 32286 by Statutes 2003, chapter 828.

<sup>105</sup> Former Education Code section 35294.2(a)(2)(F) and (G) (Stats. 1997, ch. 736). Renumbered to Education Code section 32282(a)(2)(F) and (G) (Stats. 2003, ch. 828).

<sup>106</sup> Former Education Code section 35294.6 (as amended by Stats. 1999, ch. 996).

<sup>107</sup> 20 United States Code section 1232h.

<sup>108</sup> 20 United States Code section 1221-1234i.

the conditions imposed by PPRA. Thus, school districts are not *legally* compelled to comply with the provisions of PPRA. Therefore, it is necessary to determine whether K-12 school districts are *practically* compelled to comply with the provisions of PPRA.

The court in *Hayes v. Commission on State Mandates* discussed this type of “cooperative federalism” scheme employed by FERPA noting that:

[T]he vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. ... However, “certain regulatory standards imposed by the federal government under ‘cooperative federalism’ schemes are coercive on the states and localities in every practical sense.”<sup>109</sup>

The court went on to say that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice.’”<sup>110</sup> To make this determination the court set out various factors, including: (1) the nature and purpose of the federal program, (2) whether its design suggests an intent to coerce, and (3) when state and/or local participation began.<sup>111</sup>

Here, the nature and purpose of the PPRA is to provide pupil and parental privacy rights by limiting what information a school can gather about a student absent meeting specific notice requirements to parents and providing an opportunity to opt the student out of participating in the information gathering.<sup>112</sup> The Sixth Circuit Court of Appeals noted Congress’ high regard for the privacy rights of students when discussing the Family Educational and Privacy Rights Act (FERPA) in *United States v. Miami University*.<sup>113</sup> The FERPA, like the PPRA, was enacted as part of the GEPA, and protects parent and student rights to privacy by limiting the transferability of their records without their consent. Citing to 20 U.S.C. section 1232i, which sets forth limitations on withholding federal education funds for failing to meet the requirements of the FERPA and PPRA, the court stated:

Because Congress holds student privacy interests in such high regard[, “[t]he refusal of a[n] ... educational agency or institution ... to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance.[”] In other words, Congress places the privacy

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<sup>109</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4<sup>th</sup> 1564, 1581-1582, citing to *Sacramento II, supra*, 50 Cal.3d at p. 73-74.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> 20 U.S.C. section 1232h(c)(2)(A).

<sup>113</sup> *United States v. Miami University* (6<sup>th</sup> Cir. 2002) 294 F.3d 797.

interests of students and parents above the federal government's interest in obtaining necessary data and records.<sup>114</sup>

With regard to whether the design of the federal program suggests an intent to coerce, as noted above, the receipt of all federal education funds by schools is conditioned on compliance with the provisions of the PPRA. Failure to comply with the provisions of PPRA would jeopardize funds which have been made available under programs administered by the Secretary of State.<sup>115</sup> As noted by the court in *Hayes v. Commission on State Mandates*, federal funding to education is pervasive.<sup>116</sup>

In addition, schools have received federal education funds for a significant period of time. This is evidenced by Education Code section 49060. Section 49060 sets forth the legislative intent of Education Code sections 49060 – 49085, which addresses parental access to, and the confidentiality of, pupil records. As enacted in 1976, Education Code section 49060 provided in relevant part:

It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 [FERPA] regarding parental access to, and the confidentiality of, pupil records in order to insure the *continuance of federal education funds* to public educational institutions within the state ... .<sup>117</sup>  
(Italics added.)

The language of section 49060, as enacted in 1976, was made operative on April 30, 1977. Thus, section 49060 indicates the reliance on federal education funds for at least 30 years. As discussed above, failure to comply with the provisions of the PPRA would result in a loss of all federal education funding received by schools.

In sum, because of the purpose of the PPRA to protect the privacy rights of parents and students and Congress' high regard for these rights, and the loss of all federal funds by schools, and the extent to which these funds are relied upon, the requirements of the PPRA (20 U.S.C. § 1232h) constitute federal mandates on schools. Under the PPRA schools are required to provide notice to parents regarding psychological testing and to offer an opportunity for the parent to opt the student out of participation of such testing.<sup>118</sup> Thus, the Commission finds that the requirement imposed by section 51101.1(a), when read in conjunction with section 51101(a)(13), does not constitute a new program or higher level of service.

7) Right to Participate in Parent Advisory Committees, Schoolsite Councils, or Site-Based Management Leadership Teams

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<sup>114</sup> *Id* at 807.

<sup>115</sup> 20 U.S.C. sections 1234-1234i and 34 Code of Federal Regulations part 76.901.

<sup>116</sup> *Hayes v. Commission on State Mandates*, supra, 11 Cal.App.4th 1564, 1584.

<sup>117</sup> Education Code section 49060 (Stats. 1976, ch. 1010).

<sup>118</sup> PPRA as amended by NCLB (Pub. L. No. 107-110, § 1061), codified at 20 United States Code section 1232h(c)(2)(A), January 8, 2002. PPRA as amended by Goals 2000: Educate America Act (Pub. L. No. 103-227, § 1017), codified at Former 20 United States Code section 1232g(b)(2) and (c), March 31, 1994.

Section 51101.1(a), when read in conjunction with sections 51101(a)(14) and 51101.1(b)(3), requires schools to notify parents and guardians of their right to participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations.

The rules and regulations governing membership in these organizations, however, already require schools to notify parents and guardians of their right to participate in these organizations. For example, schools that participate in school-based program coordination are required to establish a schoolsite council under Education Code section 52852. Under Education Code section 52852.5, school districts are required to provide parents information regarding the School-Based Coordination Program, including the right to participate in a schoolsite council created in a school that participates in school-based program coordination. Similarly, former Education Code sections 52011 and 54725, which addressed the provision of information about the School Improvement Program and Motivation and Maintenance Program, require schools to provide parents information about these programs, including the right of parents to participate in a schoolsite council created in schools that participate in these programs.<sup>119, 120</sup>

Based on the above discussion, the Commission finds that the requirement imposed by section 51101.1(a), when read in conjunction with sections 51101(a)(14) and 51101.1(b)(3), does not constitute a new program or higher level of service.

(c) Notices of Parent and Guardian Rights that Constitute State-Mandated New Programs or Higher Levels of Service.

Prior to the enactment of Education Code section 51101.1, schools were not required to provide notice to parents and guardians of pupils that speak a primary language other than English, of the following rights set forth in Education Code section 51101(a) and 51101.1(b):

1. To observe, within a reasonable time following a request, the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs. (Ed. Code, § 51101.1(a) read in conjunction with 51101(a)(1).)
2. To meet with their child's teacher or teachers and the principal of the school in which their child is enrolled. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(2).)

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<sup>119</sup> Former Education Code section 52011, as added by Statutes 1977, chapter 894, was repealed by Statutes 2004, chapter 871, operative January 1, 2006. Former Education Code section 54725, as added by Statutes 1985, chapter 1431, was repealed by Statutes 2004, chapter 871, operative January 1, 2006.

<sup>120</sup> The Commission notes that the schoolsite councils established under the School-Based Coordination Program, School Improvement Program, and the Motivation and Maintenance Program were the subject of the *School Site Councils and Brown Reform Act* (CSM 4501 and Portions of CSM 4469) test claim on which the Commission has issued statement of decisions. Statement of decision for *School Site Councils and Brown Reform Act* (CSM 4501 and Portions of CSM 4469) test claim, adopted April 27, 2000, at <<http://www.csm.ca.gov/sodscan/4501sod.pdf>> as of October 16, 2012.

3. To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(3).)
4. To be notified on a timely basis if their child is absent from school without permission. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(4).)
5. To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(11).)
6. To be informed in advance about retention and promotion policies pursuant to Education Code section 48070.5. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(12).)
7. To be notified, as early in the school year as practicable pursuant to Education Code section 48070.5, if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child. (Ed. Code, § 51101.1(a) read in conjunction with § 51101(a)(16).)
8. To be given any required written notification in English and the pupil's home language pursuant to Education Code section 48985 and any other applicable law. (Ed. Code, § 51101.1(a) read in conjunction with § 51101.1(b)(2).)
9. To support their children's advancement toward literacy. (Ed. Code, § 51101.1(a) read in conjunction with § 51101.1(b)(4).)

As a result, providing notice of all of the above rights to parents and guardians of pupils that speak a single primary language other than English, if at least 15 percent of the pupils in the school speak that single primary language, is new as compared with the legal requirements in effect immediately before the enactment of section 51101.1. Also, providing notice of these rights carry out the governmental function of education by encouraging parental involvement in education, and thus, constitute a "program."<sup>121</sup> As a result, the Commission finds that the following activity constitutes a state-mandated new program or higher level of service:

Provide notice of the rights set forth in Education Code section 51101(a)(1), (a)(2), (a)(3), (a)(4), (a)(11), retention and promotion policies as provided in (a)(12) and (a)(16) (Stats. 2002, ch. 1037) and Education Code section 51101.1(b)(2) and (b)(4) (Stats. 2002, ch. 1037) to the parents and guardians of pupils that speak a single primary language other than English if 15 percent or more of the pupils in the school speak that single primary language. (Ed. Code, § 51101.1(a) (Stats. 2002, ch. 1037).)

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<sup>121</sup> *Long Beach Unified School Dist. v. State of California* (1990) 275 Cal.App.3d 155, 172, finding, "[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. .... Further, public education is administered by local agencies to provide service to the public." (Citation omitted.)

**B. The State-Mandated New Programs or Higher Levels of Service Impose Costs Mandated by the State within the Meaning of Government Code Sections 17514 and 17556.**

The final issue is whether the state-mandated activities impose costs mandated by the state,<sup>122</sup> and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. 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.” “Any increased costs” for which a claimant may seek reimbursement include both direct and indirect costs.<sup>123</sup> Government Code section 17564 requires reimbursement claims to exceed \$1,000 to be eligible for reimbursement.

The claimant estimates that the San Jose Unified School District “incurred more than \$1,000 for the fiscal year of July 1, 2002 through June 30, 2003” to implement all duties alleged by the claimant to be mandated by the state.<sup>124</sup> Thus, the claimant has met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if the statute, executive order, or an appropriation in a Budget Act or other bill that 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. Here, there is no evidence that any funds, in an amount sufficient to cover the costs of the mandated activities, have been specifically appropriated for the cost of the state-mandated activities found in this test claim.

Although various federal and state grant programs provide funding that schools can use for the state-mandated parent involvement activities found in this analysis, schools are not *required* to participate in the grant programs, or to use the grant funding for the state-mandated activities found in this test claim if they do participate. For example, schools that voluntarily receive federal funds under Chapter 1 of the ESEA, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297) are required to have parental involvement components in programs assisted by such funds.<sup>125</sup> However, no funds are specifically required to be used for this purpose. Similarly, federal funds voluntarily received under Title III of the ESEA, for the purpose of ensuring that children attain English proficiency, requires a parental involvement component in programs funded by Title III, but does not require funds to be expended specifically for this purpose.<sup>126</sup>

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<sup>122</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>123</sup> Government Code section 17564.

<sup>124</sup> Exhibit A, test claim, dated September 25, 2003, Exhibit 1, “Declaration of Don Iglesias” p. 37-45.

<sup>125</sup> ESEA as reauthorized by the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297, § 1016) codified at former 20 United States Code section 2726. Currently, reauthorized by the NCLB ((Pub. L. No. 107-110, § 1118) (20 U.S.C. § 6318)).

<sup>126</sup> 20 United States Code sections 6801 and 7012.

Like federal law, state law provides for various categorical education programs which require a parental involvement component in programs funded with these funds. For example, schools that receive funding under the School Improvement Plans (SIP) program and the High Priority Schools Grant program are required to have parental involvement components for programs funded through these programs.<sup>127</sup> However, schools that received this funding were not specifically required to use those funds for the state-mandated activities found in this test claim.

Based on the above discussion, none of the statutory exceptions listed in Government Code section 17556 apply to the state-mandated new programs or higher levels of service found in the analysis above. However, to the extent that a school receives federal or state funding that can be used for the state-mandated parent involvement activities found in this test claim, *and* the school uses that funding for these activities, that funding constitutes offsetting revenue.

The following funding sources will be identified as possible sources of offsetting revenue:

1. Chapter 1 of the ESEA, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297).<sup>128</sup> Excluding the state-mandated activity imposed by section 11504 which applies *only* for schools that *do not* receive funds under Chapter 1.
2. Title III of the ESEA (Pub. L. No. 107-110, Title III, § 301 (20 U.S.C., § 6801 et seq.).
3. School Improvement Plans program.<sup>129</sup>
4. High Priority Schools Grant program.<sup>130</sup>

This list is not an exhaustive list of all possible sources of offsetting revenue.

Accordingly, none of the statutory exceptions listed in Government Code section 17556 apply that would deny the state-mandated new programs or higher levels of service found in the analysis above.

Based on the above discussion, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on employers within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

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<sup>127</sup> For SIP see former Education Code section 52000 et seq. (as added by Stats. 1977, ch. 894). Funding for SIP activities is currently found in the “School and Library Improvement Block Grant” at Education Code section 41570 et seq. For the High Priority Schools Grant program see Education Code section 52055.600 et seq.

<sup>128</sup> ESEA as reauthorized by the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297, § 1016) codified at former 20 United States Code section 2726. Currently, reauthorized by the NCLB ((Pub. L. No. 107-110, § 1118) (20 U.S.C. § 6318)).

<sup>129</sup> Former Education Code section 52000 et seq. (as added by Stats. 1977, ch. 894). Funding for SIP activities is currently found in the “School and Library Improvement Block Grant” at Education Code section 41570 et seq.

<sup>130</sup> Education Code section 52055.600 et seq.

## V. Conclusion

For the reasons discussed above, the Commission finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

### 1. Parent Involvement Policies (Ed. Code, §§ 11504 and 51101(b))

- a. For school districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted parent involvement policies prior to the 2002-2003 fiscal year, engage in the following one-time activity:

Adopt a policy on parent involvement, consistent with the purposes and goals set forth in Education Code section 11502 (Stats. 1990, ch. 1400), for each school that does not receive funding under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). (Ed. Code, § 11504 (Stats. 1990, ch. 1400).)

- b. For school districts formed, or school districts with schools formed, during the reimbursement period that could not have adopted a policy prior to the 2002-2003 fiscal year, engage in the following one-time activity:

Develop jointly with parents and guardians, and adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite.

The policy must include the following: (1) the means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school; (2) a description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school; and (3) the manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to: (a) monitoring attendance of their children, (b) ensuring that homework is completed and turned in on a timely basis, (c) participation of the children in extracurricular activities, (d) monitoring and regulating the television viewed by their children, (e) working with their children at home in learning activities that extend learning in the classroom, (f) volunteering in their children's classrooms, or for other activities at the school, (g) participating, as appropriate, in decisions relating to education of their own child or the total school program. (Ed. Code, § 51101(b) (Stats. 1998, ch. 864).)

### 2. Parent Involvement Opportunities (Ed. Code, § 49091.10)

- a. Promptly make all assessments, excluding standardized tests described in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, available for inspection by a parent or guardian in a reasonable



- timeframe or in accordance with procedures determined by the governing board of the school district.<sup>131</sup> (Ed. Code, § 49091.10(a) (Stats. 1998, ch. 1031).)
- b. Upon written request by a parent or guardian, arrange for the parental observation of the requested class or classes or activities by the parent or guardian within a reasonable timeframe and in accordance with procedures determined by the governing board of the school district. (Ed. Code, § 49091.10(b) (Stats. 1998, ch. 1031).)
3. Notice of Parent and Guardian Education Related Rights (Ed. Code, § 51101.1)
- a. Provide notice of the rights set forth in Education Code section 51101(a)(1), (a)(2), (a)(3), (a)(4), (a)(11), retention and promotion policies as provided in (a)(12) and (a)(16) (Stats. 2002, ch. 1037) and Education Code section 51101.1(b)(2) and (b)(4) (Stats. 2002, ch. 1037) to the parents and guardians of pupils that speak a single primary language other than English if 15 percent or more of the pupils in the school speak that single primary language. (Ed. Code, § 51101.1(a) (Stats. 2002, ch. 1037).)

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

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<sup>131</sup> In 2009, the Legislature made a non-substantive amendment to section 49091.10 in order to modernize existing statutory references to audio or video recordings. Specifically, the Legislature replaced “tapes” with “audio video records.” (Stats. 2009, ch. 88.)

## Commission on State Mandates

Original List Date: 10/3/2003  
Last Updated: 11/16/2012  
List Print Date: 11/19/2012  
Claim Number: 03-TC-16  
Issue: Parental Involvement Programs

### Mailing List

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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