

ITEM 5
TEST CLAIM
REVISED FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENTS OF DECISION

Health and Safety Code Sections 120325 and 120335

Statutes 2010, Chapter 434 (AB 354)

Immunization Records - Pertussis

11-TC-02

Twin Rivers Unified School District, Claimant

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Exhibit 1

Record of May 24, 2013 Hearing before the Commission on State Mandates, May 15, 2013

1. TEST CLAIM TITLE

Immunization Records Pertussis

2. CLAIMANT INFORMATION

Twin Rivers Unified School District

Name of Local Agency or School District

Robert Roach

Claimant Contact

Mandated Cost Analyst

Title

3222 Winona Way

Street Address

North Highlands, CA 95660

City, State, Zip

(916) 566-1600, ext. 50136

Telephone Number

None

Fax Number

rob.roach@twinriversusd.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Arthur M. Palkowitz

Claimant Representative Name

Attorney at Law

Title

Stutz Artiano Shinoff & Holtz

Organization

2488 Historic Decatur Road, Suite 200

Street Address

San Diego, CA 92106

City, State, Zip

(619) 232-3122

Telephone Number

(619) 232-3264

Fax Number

apalkowitz@stutzartiano.com

E-Mail Address

For CSM Use Only

Filing Date:

RECEIVED

SEP 26 2011

COMMISSION ON
STATE MANDATES

Test Claim #: 11-TC-02

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

2010 Cal. Legislative Chapter 434 (AB354)

Health & Safety Code section 120325

Health & Safety Code section 120335

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 6 to 10.

6. Declarations: pages 11 to 13.

7. Documentation: pages 14 to 36.

SECTION NUMBER: 5
Heading: WRITTEN NARRATIVE

The actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000).

- 1. Statutes 2010 Chapter 434 (AB 354):**
- 1. Health and Safety Code section 120325**
 - 2. Health and Safety Code section 120335**

Section A: Detailed description of new activities and costs that arise from the Mandate:

Students entering or advancing to grades seven through twelve in the 2011–12 school year are required to show proof of immunization with a pertussis (whooping cough) vaccine booster called tetanus toxoid, reduced diphtheria toxoid and acellular pertussis vaccine (Tdap). The new requirement affects all students—current, new, and transfers—in public and private schools.

The governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

- (1) Diphtheria.
- (2) Haemophilus influenzae type b.
- (3) Measles.
- (4) Mumps.

- (5) Pertussis (whooping cough).
- (6) Poliomyelitis.
- (7) Rubella.
- (8) Tetanus.
- (9) Hepatitis B.
- (10) Varicella (chickenpox).

Claimant will be required to inform parents/students of the new immunization requirements and will be required to train staff, obtain, review, maintain student immunization records and contact parents and legal guardians for non-compliance. The law requires school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools.

Other activities include:

Request and review lawful exemption or proof of immunization from each pupil seeking admission to school in the state for the first time.

- Record each pupil's immunization for, or exemption from immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization from each pupil advancing to the seventh grade.
- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.

Section B. A detailed description of existing activities and costs that are modified by the mandate.

Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.

Section C. Actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

Actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate is estimated to be \$25,000.

Section D. The actual or estimated costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The actual or increased costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is estimated to be \$25,000.

Section E. The state wide cost estimate of increased costs at all local agencies for school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The state wide cost estimate of increased costs at all local agencies for school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is estimated to be \$6,000,000.

Section F. Identification of all the following funding sources available for this program:

(i) Dedicated state funds

Claimant is unaware at this time of any other dedicated state funds available for this program.

(ii) Dedicated federal funds

Claimant is unaware at this time of any dedicated federal funds available for this program. Federal funds may be available for the State to receive.

(iii) Other non-local agency funds

Claimant is unaware at this time of other non-local agency funds available for this program.

(iv) The local agency's general purpose funds

Claimant is unaware at this time of any general purpose funds available for this program.

(v) Fee authority to offset costs

Claimant is unaware at this time of any fee authority to offset costs available for this program.

Section G. Identification of prior mandate determinations made by the board of control or the commission on state mandates that may be related to the alleged mandate.

Claimant is aware at this time of the following prior mandate determinations made by the board of control or the commission on state mandates that may be related to the alleged mandate.

IMMUNIZATION RECORDS

Health and Safety Code Division 4, Chapter 7, sections 3380 through 3390 as added by Chapter 1176, Statutes of 1977, provides uniform requirements for immunization of students prior to entering private or public elementary, secondary school, or other specific institutions. In addition, the governing authority of the school or specified institution is required to maintain immunization records on each student and file a written report on the immunization status of new entrants to the school or institution with the State Department of Health Services at times and on forms prescribed by the Department. Chapter 415, Statutes of 1995, has revised the numbering of sections 3380 through 3390 to sections 120335 through 120380.

On June 20, 1979, the Commission on State Mandates (CSM) determined that Chapter 1176, Statutes of 1977, resulted in state-mandated costs that are reimbursable pursuant to Part 7, (commencing with GC § 17500) of Division 4, Title 2. In addition, on July 28, 1988, the CSM determined that reimbursement of Chapter 1176, Statutes of 1977, and costs will be pursuant to the State Mandate Apportionment System (SMAS).

IMMUNIZATION RECORDS: HEPATITIS B

On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Immunization Records: Hepatitis B test claim, finding that Statutes 1978, chapter 325; Statutes 1979, chapter 435; Statutes 1982, chapter 472; Statutes 1991, chapter 984; Statutes 1992, chapter 1300; Statutes 1994, chapter 1172; Statutes 1995, chapters 291 and 415; Statutes 1996, chapter 1023; Statutes 1997, chapters 855 and 882; and California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075, imposed a new

program or higher level of service within an existing program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella and hepatitis B from each pupil seeking admission to school in the state for the first time.
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade.
- Conditionally admit any pupil who has not been fully immunized for mumps, rubella and hepatitis B.
- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.

Section H. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Claimant is unaware at this time of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Test Claim Name: Immunization Records-Pertussis
Claimant: Twin Rivers Unified School District
Section: 6 - Declaration

SECTION NUMBER: 6
Heading: DECLARATION

I, Robert Roach, Mandate Analyst for the Twin Rivers Unified School District, declare as follows:

Section A. The actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

It is estimated the increased costs that will be incurred by the claimant to implement the alleged mandate is approximately \$25,000.

Section B. Identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;

Claimant is unaware of local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

Section C. Describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections or page numbers alleged to impose a reimbursable state mandated program)

The governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. (AB 354, Section 2, Health & Safety Code Section 120335 (d))

As a result, students entering or advancing to grades seven through twelve in the 2011–12 school year are required to show proof of immunization with a pertussis (whooping cough) vaccine booster called tetanus toxoid, reduced diphtheria toxoid and acellular pertussis vaccine (Tdap). The new requirement affects all students—current, new, and transfers—in public and private schools.

The governing authority shall not unconditionally admit any person as a pupil of any

Test Claim Name: Immunization Records-Pertussis
Claimant: Twin Rivers Unified School District
Section: 6 - Declaration

private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented: (AB 354, Section 2, Health & Safety Code Section 120335 (b))

- (1) Diphtheria.
- (2) Haemophilus influenzae type b.
- (3) Measles.
- (4) Mumps.
- (5) Pertussis (whooping cough).
- (6) Poliomyelitis.
- (7) Rubella.
- (8) Tetanus.
- (9) Hepatitis B.
- (10) Varicella (chickenpox).

Claimant will be required to inform parents/students of the new immunization requirements, develop procedures, train staff, obtain, review, maintain student immunization records and contact parents and legal guardians. The law requires school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools.

Other activities include:

Request and review lawful exemption or proof of immunization from each pupil seeking admission to school in the state for the first time.

- Record each pupil's immunization for, or exemption from immunization record and

Test Claim Name: Immunization Records-Pertussis
Claimant: Twin Rivers Unified School District
Section: 6 - Declaration

maintain the form in the pupil's permanent record.

- Request and review lawful exemption or proof of immunization from each pupil advancing to the seventh grade.
- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.

Section D.

I declare under penalty of perjury under the laws of the State of California, that this information in this declaration is true and complete to the best of my own knowledge, information or belief.

Dated: September 22, 2011



Robert Roach

Test Claim Name: Immunization Records-Pertussis
Claimant: Twin Rivers Unified School District
Section: 7 - Documentation

BILL NUMBER: AB 354 CHAPTERED
BILL TEXT

CHAPTER 434

FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2010

APPROVED BY GOVERNOR SEPTEMBER 29, 2010

PASSED THE SENATE AUGUST 20, 2010

PASSED THE ASSEMBLY AUGUST 23, 2010

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

INTRODUCED BY Assembly Members Arambula and Fletcher

FEBRUARY 19, 2009

An act to amend Section 120325 of, and to amend, repeal, and add Section 120335 of, the Health and Safety Code, relating to vaccinations.

LEGISLATIVE COUNSEL'S DIGEST

AB 354, Arambula. Health: immunizations.

Existing law prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized against various diseases, including hepatitis B, pertussis (whooping cough), and varicella (chickenpox), and any other disease deemed appropriate by the State Department of Public Health, taking into consideration the recommendations of specified entities.

This bill would add to these entities the American Academy of Family Physicians.

This bill would also, in part, remove certain of the age and date restrictions.

Existing law makes these provisions, as they relate to varicella (chickenpox), operative only to the extent that funds are appropriated in the annual Budget Act, and authorizes the department to adopt emergency regulations, as specified.

This bill would, regarding the varicella (chickenpox) provisions, delete the requirement that it be operative only to the extent that funds are appropriated in the annual Budget Act, and delete the department's authorization to adopt emergency regulations.

Existing law prohibits the governing authority from

unconditionally admitting, or advancing, a pupil into the 7th grade unless the pupil has been fully immunized against hepatitis B.

This bill would delete immunizations against hepatitis B as a 7th grade admission or advancement requirement and would, instead, prohibit the governing authority from unconditionally admitting, or advancing, a pupil into the 7th and, for one year, the 8th through 12th grades unless the pupil has been fully immunized, as prescribed, including, but not limited to, having received all pertussis boosters appropriate for that age.

By requiring school districts to comply with these requirements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 120325 of the Health and Safety Code is amended to read:

120325. In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400, 120405, 120410, and 120415, it is the intent of the Legislature to provide:

(a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases:

- (1) Diphtheria.
- (2) Hepatitis B.
- (3) Haemophilus influenzae type b.
- (4) Measles.
- (5) Mumps.
- (6) Pertussis (whooping cough).
- (7) Poliomyelitis.
- (8) Rubella.
- (9) Tetanus.
- (10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons or because of personal beliefs.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children.

SEC. 2. Section 120335 of the Health and Safety Code is amended to read:

120335. (a) As used in this chapter, but excluding Section 120380, and as used in Sections 120400, 120405, 120410, and 120415, the term "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

- (1) Diphtheria.
- (2) Haemophilus influenzae type b.
- (3) Measles.
- (4) Mumps.
- (5) Pertussis (whooping cough).
- (6) Poliomyelitis.
- (7) Rubella.
- (8) Tetanus.
- (9) Hepatitis B.
- (10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against

pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents which may be utilized and the manner in which immunizations are administered.

(f) This section shall become inoperative on June 30, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(g) The department may adopt emergency regulations to implement subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

SEC. 3. Section 120335 is added to the Health and Safety Code, to read:

120335. (a) As used in this chapter, but excluding Section 120380, and as used in Sections 120400, 120405, 120410, and 120415, the term "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

- (1) Diphtheria.
- (2) Haemophilus influenzae type b.
- (3) Measles.
- (4) Mumps.
- (5) Pertussis (whooping cough).
- (6) Poliomyelitis.
- (7) Rubella.
- (8) Tetanus.
- (9) Hepatitis B.
- (10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents which may be utilized and the manner in which immunizations are administered.

(f) This section shall become operative on July 1, 2012.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

2010 Cal. Legis. Serv. Ch. 434 (A.B. 354) (WEST)

CALIFORNIA 2010 LEGISLATIVE SERVICE
2010 Portion of 2009-2010 Regular Session

Additions are indicated by **Text**; deletions by
***.

CHAPTER 434
A.B. No. 354
SOCIAL SERVICES--HEALTH--IMMUNIZATION

AN ACT to amend Section 120325 of, and to amend, repeal, and add Section 120335 of, the Health and Safety Code, relating to vaccinations.

[Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 354, Arambula. Health: immunizations.

Existing law prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized against various diseases, including hepatitis B, pertussis (whooping cough), and varicella (chickenpox), and any other disease deemed appropriate by the State Department of Public Health, taking into consideration the recommendations of specified entities.

This bill would add to these entities the American Academy of Family Physicians.

This bill would also, in part, remove certain of the age and date restrictions.

Existing law makes these provisions, as they relate to varicella (chickenpox), operative only to the extent that funds are appropriated in the annual Budget Act, and authorizes the department to adopt emergency regulations, as specified.

This bill would, regarding the varicella (chickenpox) provisions, delete the requirement that it be operative only to the extent that funds are appropriated in the annual Budget Act, and delete the department's authorization to adopt emergency regulations.

Existing law prohibits the governing authority from unconditionally admitting, or advancing, a pupil into the 7th grade unless the pupil has been fully immunized against hepatitis B.

This bill would delete immunizations against hepatitis B as a 7th grade admission or advancement requirement and would, instead, prohibit the governing authority from unconditionally admitting, or advancing, a pupil into the 7th and, for one year, the 8th through 12th grades unless the pupil has been fully immunized, as prescribed, including, but not limited to, having received all pertussis boosters appropriate for that age.

By requiring school districts to comply with these requirements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 120325 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 120325 >>

120325. In enacting **this** chapter~~***~~, but excluding Section 120380, and in enacting Sections 120400, 120405, 120410, and 120415, it is the intent of the Legislature to provide:

(a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases:

- (1) Diphtheria.
- (2) Hepatitis B.
- (3) Haemophilus influenzae type b.
- (4) Measles.
- (5) Mumps.
- (6) Pertussis (whooping cough).
- (7) Poliomyelitis.
- (8) Rubella.
- (9) Tetanus.
- (10) Varicella (chickenpox).~~***~~

(11) Any other disease ~~***~~ **deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States *** Department of Health and *** Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.**

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons or because of personal beliefs.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children.

SEC. 2. Section 120335 of the Health and Safety Code is amended to read:

<< CA ST § 120335 >>

120335. (a) As used in **this chapter** ~~***~~, but excluding Section 120380 ~~***~~, and as used in Sections 120400, 120405, 120410, and 120415, the term "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

- (1) Diphtheria.
- (2) Haemophilus influenzae type b ~~***~~.
- (3) Measles.
- (4) Mumps ~~***~~.
- (5) Pertussis (whooping cough) ~~***~~.
- (6) Poliomyelitis.

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(7) Rubella.

(8) Tetanus.

(9) Hepatitis B ~~***~~.

(10) Varicella (chickenpox) ~~***~~.

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents which may be utilized and the manner in which immunizations are administered.

(f) This section shall become inoperative on June 30, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(g) The department may adopt emergency regulations to implement ~~*~~ subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this **subdivision** shall remain in effect for no more than 180 days.**

~~***~~

SEC. 3. Section 120335 is added to the Health and Safety Code, to read:

<< CA ST § 120335 >>

22

120335. (a) As used in this chapter, but excluding Section 120380, and as used in

Sections 120400, 120405, 120410, and 120415, the term "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) Haemophilus influenzae type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents which may be utilized and the manner in which immunizations are administered.

(f) This section shall become operative on July 1, 2012.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CA LEGIS 434 (2010)
END OF DOCUMENT

Copr. (c) West 2008 No Claim to Orig. Govt. Works

Adopted 6-18-80
Amended 12-16-81
Amended 5-27-82
Amended 2-3-83
Amended 3-17-83

W.P. Code: SPG117.SK

Parameters and Guidelines
Chapter 1176, Statutes of 1977
(Immunization Records)

This act mandated that school districts must maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools. Additional record keeping is required, and follow-up procedures to ensure compliance must be maintained. The State Department of Health, in consultation with the State Department of Education, adopted regulations (as required in Section 3390 of the Health and Safety Code) in September 1978, to implement this act.

A. Board Decision: June 20, 1979 - The State Board of Control determined a mandate exists in Chapter 1176, Statutes of 1977.

B. Period of Claim: Only costs incurred after January 1, 1978 may be claimed. Costs must be submitted by fiscal year.

C. Reimbursement: Local entities will be reimbursed for their increased costs resulting from compliance with Chapter 1176/77. A uniform reimbursement shall be made for each student processed, as specified below:

1. For the 1980-81 FY:

Total Reimbursement = \$2.39 x Total New Entrants (Total New Entrants = Students entering kindergarten and students transferring from other states.)

2. For the 1981-82 FY:

Total Reimbursement = Rate A x Total New Entrants (Rate A = \$2.39 x Gross National Product, Implicit Price Deflator (GNP, IPD) for the 1981-82 FY-- GNP/IPD statistic supplied by the State Department of Finance, Financial Research Unit.)

(Total New Entrants = Students entering kindergarten and students transferring from other states.)

3. For the 1982-83 FY:

Total Reimbursement = \$2.53 x Total New Entrants (Total New Entrants = Students entering kindergarten and students transferring from other states.)

4. For the 1983-84 FY:

Total Reimbursement = \$2.68 x Total New Entrants (Total New Entrants = Students entering kindergarten and students transferring from other states.)

5. For fiscal years subsequent to 1983-84 FY:

Use same unit rate of reimbursement as calculated in 1983-84 FY.

D. Presentation of Required Data:

The reimbursement calculation shall be accompanied by supporting data, which shall be presented as indicated in the following format:

School District _____
Fiscal Year Claimed _____

Name of School	Number of Kindergarten Entrants	Number of Out-of-State Transfers	Total New Entrants
----------------	---------------------------------	----------------------------------	--------------------

_____ Total New Entrants _____

Total New Entrants _____ x Rate _____ = Claimed Amount _____

No reimbursement will be made if a school district does not submit to the State Department of Health Services, the immunization report required by Chapter 1176, Statutes of 1977.

E. A certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Our district has adopted and is enforcing a policy of exclusion of pupils who remain out of compliance with the immunization requirements beyond the time periods allowed in regulations adopted by the State Department of Health Services.

Signature of Authorized Representative Date

Title Telephone Number

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48216, Health and Safety Code Sections 120325, 120335, 120340, and 120375 as amended by Statutes of 1978, Chapter 325, Statutes of 1979, Chapter 435, Statutes of 1982, Chapter 472, Statutes of 1991, Chapter 984, Statutes of 1992, Chapter 1300, Statutes of 1994, Chapter 1172, Statutes of 1995, Chapters 219 and 415, Statutes of 1996, Chapter 1023, and Statutes of 1997, Chapters 855 and 882

Title 17, California Code of Regulations, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

Filed on August 17, 1998

By the Los Angeles County Office of Education, Claimant.

No. 98-TC-05

Immunization Records - Hepatitis B

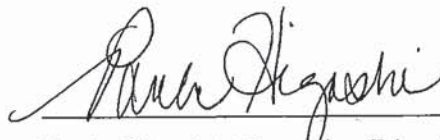
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on August 24, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 25, 2000.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48216, Health and Safety Code Sections 120325, 120335, 120340, and 120375 as amended by Statutes of 1978, Chapter 325, Statutes of 1979, Chapter 435, Statutes of 1982, Chapter 472, Statutes of 1991, Chapter 984, Statutes of 1992, Chapter 1300, Statutes of 1994, Chapter 1172, Statutes of 1995, Chapters 219 and 415, Statutes of 1996, Chapter 1023, and Statutes of 1997, Chapters 855 and 882
Title 17, California Code of Regulations, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

Filed on August 17, 1998

By the Los Angeles County Office of Education, Claimant.

No. 98-TC-05

Immunization Records - Hepatitis B

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

(Adopted on August 24, 2000)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. The Commission approved this test claim on its consent calendar.

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

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

The Commission noted that an earlier test claim, *Immunization Record*, was filed after the adoption of Statutes of 1977, Chapter 1176, which required school districts to require, maintain, and report on immunization records for diphtheria, pertussis, tetanus, poliomyelitis and measles for each pupil's permanent record. In 1979, the Board of Control, as predecessor

to the Commission, found these requirements constituted a reimbursable state mandate, finding prior law did not require school districts to engage in record keeping, record review, parent notification, or reporting activities related to the specified pupil immunizations.

The current test claim alleges a reimbursable state mandate resulting from legislation and regulations amending pupil immunization record requirements. This claim arises from amendments to Health and Safety Code section 120335, which establishes a list of diseases which an entering student must be immunized against prior to the first admission into the school. Specifically, Statutes of 1979, Chapter 435 amended current section 120335 by adding mumps and rubella to the list of diseases. And, Statutes of 1995, Chapter 291 further amended section 120335 by adding hepatitis B "for all children entering . . . kindergarten level or below on or after August 1, 1997. " The requirement for hepatitis B immunization was further amended pursuant to Statutes of 1997, Chapter 882 to require that:

"On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, . . . unless the pupil has been fully immunized against hepatitis B ."

In addition to the above amendments to Health and Safety Code section 120335, the test claim legislation amended related statutes and regulations relating to the monitoring, record keeping, reporting and parent notification requirements relative to the enforcement of the pupil immunization requirements.

The claimant contended that the test claim alleges mandated costs reimbursable by the state for meeting immunization record requirements. This claim was uncontested by the Department of Finance which agreed that the statutes result in a reimbursable state mandated local program for new activities related to review and reporting on pupil immunization records.

The sole issue before the Commission was whether the test claim statutes and regulations impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution¹ and costs mandated by the state pursuant to Government Code section 17514² by adding additional diseases and conditional enrollment policies to pupil immunization requirements?

¹ Section 6, article XIII B of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

² Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The Commission found that the test claim legislation and regulations involve the administration of pupil immunization records by school districts. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation, which requires school districts to review student immunization records and exclude students from school who have not met immunization requirements, imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Thus) the Commission found that the administration of pupil immunization records by school districts constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.³

However, the Commission continued its inquiry to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state.

Prior Law

The Commission recognized that under the original mandate, Statutes of 1977, Chapter 1176, which added former Health and Safety Code section 3380, persons under 18 years of age were required to be immunized against poliomyelitis, measles, diphtheria, pertussis, and tetanus prior to unconditional first admission to a public or private elementary or secondary school, child care center, day nursery, nursery school, or development center. The law required school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools."

Test Claim Legislation

Mumps and rubella added to immunization records for kindergarteners and incoming students

Statutes of 1979, Chapter 435, amended former Health and Safety Code sections 3380 and 3381, now renumbered as Health and Safety Code sections 120325 and 120335, by adding mumps and rubella to the list of diseases school districts must screen for and maintain immunization records before unconditionally admitting a kindergarten or out of state transfer student to school. This amendment applied for students 'not already enrolled in school as of January 1, 1980. The Commission found that this requirement was not in effect under prior law.

Hepatitis B added to immunization records for kindergarteners and incoming students

Statutes of 1995, Chapter 291, amended former Health and Safety Code section 3381, now renumbered by Statutes of 1996, Chapter 1023 as Health and Safety Code section 120335. The 1995 amendment added subdivision (b) (9), requiring documentation for hepatitis B for all children entering specified institutions at the kindergarten level or below on or after August 1, 1997. " The Commission found' that this requirement was not in effect under prior law.

³ *Id.*

⁴ The State Board of Control initially determined the amount of the mandate to be: \$2.00 x total K-12 academic year enrollment and \$2.20 x "new entrants. "

Hepatitis B immunization required for all students entering seventh grade

Statutes of 1997, Chapter 882, added subdivision (c) to Health and Safety Code section 120335, which provided:

“On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, of any of the institutions listed in subdivision (b) unless the pupil has been fully immunized against Hepatitis B.”

The Commission found that this requirement was not in effect under prior law. The Commission also found that this amendment, by adding a new timeframe (entry to seventh grade) to check for an immunization that would not have been screened for previously, requires a district to perform paperwork, parent notifications and file reviews, as they would have to do for a new student to the district.

Documentation and reporting requirements for immunizations listed in section 120335

Health and Safety Code section 120375, as added by Statutes of 1995, Chapter 415 and derived from former Health and Safety Code section 3383, refers back to the list of diseases in Health and Safety Code section 120335, requiring school districts to:

- Maintain documentary proof of pupil's immunization status in the student's permanent record information, including adding subsequent immunizations to the file;
- File reports on state forms regarding the immunization status of entering students; and
- Prohibit further school attendance of conditionally admitted students who either fail to get their immunizations completed or fail to receive an appropriate exemption from immunizations for health or religious reasons.

The Commission found that the above requirements for all immunizations listed under Health and Safety Code section 120335 were not in existence under prior law. The Commission further found that as legislation adds diseases to section 120335, the requirements referred to in section 120375 must be performed for each of the new diseases as part of the immunization records requirements.

Mandatory pupil exclusion and parent notification requirements

Statutes of 1997, Chapter 855 amended and renumbered Education Code section 46010.5, as section 48216, operative after July 1, 1998. Statutes of 1978, Chapter 325, originally added the statute. Section 46010.5 originally provided that the district:

“Shall exclude any, pupil of the district who has not been immunized properly . . . the first five schooldays of the exclusion *shall not* be deemed an absence in computing average daily attendance *if* the following conditions are complied with. ” (Emphasis added.)

The Commission found that the original conditions were that if the school district did not wish an excluded student to be counted absent for the purpose of calculating average daily attendance, the district was to provide notice to the parent or guardian of the excluded student

of the need for the parent to provide evidence of immunization within two weeks, and the district was to refer the parent to a medical source to obtain the required immunizations.

The Commission noted that Education Code section 48216 now provides:

“(a) The county office of education or the governing board of the school district of attendance *shall* exclude any pupil who has not been immunized properly pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code,

“(b) The governing board of the district *shall* notify the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 120365 or 120370 of the Health and Safety Code.

“(c) The governing board of the district, in the notice, *shall* refer the parent or guardian of the pupil to the pupil’s usual source of medical care to obtain the immunization, or if no usual source exists, either refer the parent or guardian to the county health department, or notify the parent or guardian that the immunizations will be administered at a school of the district.” (Emphasis added.)

The Commission found that, substantively, section 48216 removed the exceptions for having immunization exclusions counted against the district for purposes of calculating average daily attendance. In addition, the Commission found that with this amendment, the formerly optional provisions upon school districts for notifying parents to avoid counting excluded students absent was expressed in mandatory terminology. Thus, following the amendments of Statutes of 1997, Chapter 855, the Commission found that the following new activities are now required:

- Excluding a pupil whose immunizations are not up to date;
- Notifying the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized or qualifies for an exemption; and
- Referring the parents to a source of medical care to obtain the immunizations.

Conclusion

The Commission found that the above-described test claim activities were not contained in prior law and thus constitute a new program or higher level of service.

The Commission further found that amendments to Health and Safety Code section 120335 requiring school districts to perform immunization records activities for additional diseases, namely mumps, rubella, and hepatitis B, for incoming kindergartners and students entering the district from out of state increases the paperwork and staff time beyond what was required under prior immunization record requirements and thus constitute a reimbursable state mandate.

The Commission also found that amendments to Health and Safety Code section 120335 requiring school districts to perform immunization records reviews for all incoming seventh graders for hepatitis B, including all students whose immunization records were checked upon entry to school, increases the paperwork and staff time beyond what was required under prior immunization record requirements and thus constitute a reimbursable state mandate.

Finally, the Commission found that the amendments to Education Code section 48216 requiring parental notifications and referrals regarding deficiencies in a pupil's immunization record were altered from optional to mandatory language and thus constitute a reimbursable state mandate.

Test Claim Regulations

The Commission noted that the requirements of Health and Safety Code sections 120325 through 120375 are codified in Title 17, California Code of Regulations, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075. These regulations contain the requirements for record keeping and reporting on immunization records; for conditionally admitting pupils who have not completed their immunizations; and for pupil exclusion if the unconditional admission conditions are not met. The Commission found that this requirement was not in effect under prior law.

Conclusion

The Commission found that the regulations requiring school districts to perform immunization records checks for additional diseases increases the paperwork and staff time beyond what was required of school districts under prior immunization record requirements and thus constitute a new program or higher level of service and a reimbursable state mandate.

CONCLUSION

The Commission concluded that the test claim legislation and regulations impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella and hepatitis B from each pupil seeking admission to school in the state for the first time;
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record;
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade;
- Conditionally admit any pupil who has not been fully immunized for mumps, rubella and hepatitis B;
- Periodically review the pupil's immunization record until the pupil is fully immunized;
- Document vaccine doses on the pupil's immunization record as they are administered;

- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.

PARAMETERS AND GUIDELINES

Education Code Section 48216
Health and Safety Code Sections 120325, 120335, 120340, and 120375

Statutes 1978, Chapter 325
Statutes 1979, Chapter 435
Statutes 1982, Chapter 472
Statutes 1991, Chapter 984
Statutes 1992, Chapter 1300
Statutes 1994, Chapter 1172
Statutes 1995, Chapters 291 and 415
Statutes 1996, Chapter 1023
Statutes 1997, Chapters 855 and 882

California Code of Regulations, Title 17
Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

Immunization Records – Hepatitis B

I. SUMMARY OF THE MANDATE

Statutes 1977, chapter 1176, required persons under 18 years of age to be immunized against poliomyelitis (polio); measles; and diphtheria, pertussis, and tetanus (DPT) prior to unconditional first admission to a public or private elementary or secondary school, child care center, day nursery, nursery school, or development center. The law required school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools. On June 20, 1979, the Board of Control (predecessor to the Commission) adopted the Statement of Decision for the *Immunization Records* test claim, finding that Statutes 1977, chapter 1176 imposed a reimbursable state-mandated program. On July 28, 1988, the Commission determined that costs incurred for compliance with Statutes 1977, chapter 1176 would be reimbursed through the State Mandates Apportionment System (SMAS), which was enacted by the Legislature to allow certain ongoing state-mandated programs to be funded automatically through the State Budget process, without the need for local governments to file annual claims for those costs with the State Controller.

On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Immunization Records: Hepatitis B* test claim, finding that Statutes 1978, chapter 325; Statutes 1979, chapter 435; Statutes 1982, chapter 472; Statutes 1991, chapter 984; Statutes 1992, chapter 1300; Statutes 1994, chapter 1172; Statutes 1995, chapters 291 and 415; Statutes 1996, chapter 1023; Statutes 1997, chapters 855 and 882; and California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075, imposed a new program or higher level of service within an existing program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella and hepatitis B from each pupil seeking admission to school in the state for the first time.
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade.
- Conditionally admit any pupil who has not been fully immunized for mumps, rubella and hepatitis B.
- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.

II. ELIGIBLE CLAIMANTS

Any school district, as defined in Government Code section 17519, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes 1998, chapter 681 (effective September 22, 1998), provided that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year.

The test claim for *Immunization Records: Hepatitis B* was submitted on August 17, 1998. Therefore all mandated costs incurred on or after July 1, 1997 for compliance with Statutes 1978, chapter 325, Statutes 1979, chapter 435, Statutes 1982, chapter 472, Statutes 1991, chapter 984, Statutes 1992, chapter 1300, Statutes 1994, chapter 1172, Statutes 1995, chapters 291 and 415, and Statutes 1996, chapter 1023 are eligible for reimbursement.

Statutes 1997, chapter 855 had a delayed operative date of July 1, 1998. Therefore, costs incurred on or after July 1, 1998, for compliance with Statutes 1997, chapter 855, are eligible for reimbursement.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission. **

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Robert Roach

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

Mandated Cost Analyst

Print or Type Title

September 22, 2011

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

INITIAL STATEMENT OF REASONS

SUMMARY OF CHANGES

The California Department of Public Health (Department¹) is amending California Code of Regulations (CCR), Title 17, Sections 6020, 6035, 6051, 6065, 6070, and 6075.

This emergency regulation:

- Amends Sections 6020 and 6035 by deleting the requirement for hepatitis B vaccine for admission or advancement to the 7th grade; specifies the requirement for full immunization against pertussis for admission or advancement to the 7th through 12th grades for one-year, and the immunizing agent, pertussis vaccine (Tdap) to meet this new one-year requirement; and deletes obsolete and conflicting language related to Td.
- Amends Section 6051 to reformat into two subparagraphs to delineate between medical exemption and personal beliefs exemption. The regulation is amended to require a new personal beliefs exemption letter or affidavit for the pertussis (Tdap) booster requirement. An optional form to document personal beliefs exemption (PBE) for the pertussis Tdap booster requirement is incorporated by reference.
- Amends Section 6065 to specify what date components are required as documentary proof of immunization for the pertussis immunization age requirement and to delete an obsolete immunization requirement for cohort of students who have graduated.
- Amends Section 6070 to add a recording requirement for Tdap dose given during month of 7th birthday and adds a required form for the governing authority to document the pertussis immunization or exemption status of each pupil to meet the requirement for 7th through 12th grades.
- Amends Sections 6075 to add a required form for the governing authority to report aggregate pertussis immunization status for pupils by grade level for the one-year requirement.

BACKGROUND

Under existing law, Health and Safety Code (HSC), Sections 120325 -120375, children are required to receive certain immunizations in order to attend public and private elementary and secondary schools, child care centers, family day care homes, nursery schools, day nurseries and developmental centers. The immunizing agents and age-appropriate immunization requirements are specified

¹ Effective July 1, 2007, the California Department of Health Services was split into two separate agencies, the Department of Health Care Services, and the Department of Public Health. This split was effected by the passage of S.B. 162, Chapter 241, Statutes of 2006. The subject of this emergency regulatory package was assigned in that legislation to the Department of Public Health

by the Department, in consultation with the California Department of Education (CDE), pursuant to HSC, Sections 120330 and 120335, and defined by the Department in regulations (CCR, Title 17, Sections 6020 and 6035). A parent or guardian may exercise the right to refuse required immunizations by filing a letter or affidavit stating that the immunization is contrary to his/her beliefs (HSC, Section 120365). The Department also specifies the documenting and reporting requirements for governing authorities (CCR, Title 17, Sections 6065, 6070, and 6075). The governing authority is defined in HSC, Section 120335 (a) as "the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution."

Advancements in research and development of new immunizations continue to expand the number of recommended vaccines. National immunization recommendations are developed and harmonized by the federal Advisory Committee on Immunization Practices (ACIP) in cooperation with the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) and published yearly.

School immunization requirements are developed by each state and generally reflect national recommendations but are updated less frequently and do not necessarily require all recommended vaccines. In 1995, the Legislature added a Kindergarten hepatitis B vaccine requirement which was implemented in 1997. In 1997, the Legislature added a 7th grade hepatitis B vaccine requirement to increase coverage for hepatitis B vaccine for children who were not affected by the Kindergarten requirement. This 7th grade requirement was implemented in 1999. In 1999, Varicella vaccine was required by the Legislature for Kindergarten entry. This requirement was implemented in 2001.

California is in the midst of a pertussis epidemic. In 2010, there were 10 infant deaths and more than 9,000 cases of pertussis reported to the Department; the most cases reported in one year in California since 1947. The infants who died were too young to begin their immunizations and were most likely infected by adolescents and adults with pertussis disease. Routine childhood immunization against pertussis does not provide lasting immunity. The first pertussis-containing vaccines for adolescents and adults were licensed in 2005 as a combination tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap). Tdap vaccine is recommended by ACIP, AAP, and AAFP to protect adolescents and adults against pertussis. Based on recent survey data², many adolescents have not received a recommended pertussis booster. The 7th through 12th grade

² Centers for Disease Control and Prevention. National, State, and Local Area Vaccination Coverage Among Adolescents Aged 13—17 Years—United States, 2009. MMWR Weekly 2010; 59 (32): 1018-1023.

pupils are at highest risk of waning pertussis immunity and without intervention will continue to prolong the pertussis epidemic.

The Legislature determined it would be in the public interest and welfare to adopt immunization requirements for pertussis booster vaccine for adolescents. Assembly Bill (AB) 354 (Arambula, Chapter 434, Statutes of 2010) signed into law on September 29, 2010, amends HSC, Sections 120325 and 120335 to remove the statutory age restriction for pertussis immunization and require all pupils being admitted or advancing to the 7th through 12th grades during the 2011-2012 school year to be fully vaccinated against pertussis.

AB 354 identifies two separate and distinct implementation dates. For this reason, the Department is promulgating two individual regulation packages. This package reflects the Tdap requirement for pupils in 7th through 12th grades, for statutory provisions that are effective July 1, 2011 and inoperative on July 1, 2012. A second package specifying the Tdap requirement for 7th grade pupils only would implement ongoing statutory requirements that take effect on July 1, 2012.

Additionally, AB 354 deleted the requirement for full immunization against hepatitis B as a condition for admission or advancement to the 7th grade. This requirement is no longer necessary as pupils entering 7th grade were required to have hepatitis B before admission to Kindergarten.

AUTHORITY

HSC, Section 131200, authorizes the Department to adopt and enforce regulations for the execution of its duties. HSC, Section 120330 authorizes the Department to adopt and enforce regulations, in consultation with the California Department of Education, to carry out Chapter 1, Educational and Child Care Facility Immunization Requirements (commencing with Section 120325 but excluding Section 120380).

NECESSITY

HSC, Section 120330, authorizes the Department to specify in regulations the details of the pupil immunization requirements, including the immunizing agents and recording and reporting requirements for schools. The regulations are needed to provide specific instructions for the regulated public, health care providers, schools, school governing authorities, and local health departments. If the regulations are not amended the governing authorities will have no direction regarding the specifics of the one-year pertussis requirement for pupil admission or advancement to the 7th through 12th grades. Without the specificity of

regulation, enforcement of the requirement by schools will be inconsistent or difficult to implement, possibly resulting in lower pertussis vaccination rates.

FEDERAL STATUTE OR REGULATIONS

The regulation does not duplicate or conflict with any existing federal law or regulation.

AMENDMENTS

AMENDMENTS TO DEFINITIONS AND SPECIFIC PURPOSE IN CCR, TITLE 17, SECTIONS 6020-6065

The purpose and factual basis of the standard adopted as an emergency rule are outlined below:

Article 2. Required Immunizations

Section 6020

This regulation amends subsections (b), (c) and (d), and adds subsection (h). The regulation amendment adds and defines tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine as Tdap in subsection (b). The amendment adds pertussis vaccine and Tdap to subsection (c) and deletes pertussis in subsection (d). A new sub-section (h) adds the new immunization requirement for 8th through 12th grade entry or advancement. These changes are reflected in Table 1.

Reasons

The Department is amending subsection (b) to add the definition for tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap). Tdap was licensed in 2005 in the United States and is the only pertussis-containing vaccine available for adolescents and adults ages 10 years and older. Previous regulatory requirements were adopted before this vaccine was available. The addition of the Tdap definition makes specific the correct pertussis-containing vaccine to fulfill the pertussis immunization requirement for 7th through 12th grades. Subsection (c) is amended to include Tdap vaccine as an option to meet this requirement. Subsection (d) is amended to align with the revised statute, HSC Sections 120325 and 120335. Subsection (h) is added to refer the affected public to Table 1: Immunization Requirements, for pupils entering or advancing into 8th through 12th grades.

Table 1

The immunization requirements are displayed in Table 1 in a format that allows the regulated public and authority to easily obtain information on immunizations required for any age school entry. The requirement for pertussis vaccine is added and hepatitis B immunization for admission or advancement into the 7th grade is deleted in Table 1.

Specific changes to Table 1 are as follows:

Elementary school, secondary school/7-17 years section

Vaccine column:

The phrase "Diphtheria and tetanus toxoids, given as DTP, DT, or Td" is amended to read "Diphtheria and tetanus toxoids and pertussis vaccine given as DTP, DT, Td, or Tdap", and the parenthetical statement "(pertussis not required)" is deleted.

Total doses received column:

The parenthetical statement "(See below for additional recommendations for 7th grade enrollment effective 7/1/99.)" is deleted.

Reasons

These columns are amended to add pertussis vaccine given as Tdap. Non-substantive changes were made to add a comma and move the word "or" after the word "Td" in the amended phrase. The addition of Tdap to the list of acceptable vaccines accommodates the inclusion of the pertussis containing vaccine licensed for adolescents. The deletion of the parenthetical statements "(pertussis not required)" and "(See below for additional recommendations for 7th grade enrollment effective 7/1/99.)" are necessary to avoid confusion with the new pertussis requirement.

Seventh Grade/Any section

Institution column:

The superscript "4" is moved from after the phrase "Seventh Grade" to the Vaccine Column after the vaccine "Measles".

Vaccine column:

Delete [Hepatitis B] add [Tdap^{6,7}]. Add Superscript 4 to Measles. Delete [Recommended but not required: Tetanus-diphtheria, given as DTP, DT, Td or Tetanus].

The vaccine "Hepatitis B" is replaced with the vaccine and superscript "Tdap^{6,7}". The phrase "Recommended but not required: Tetanus diphtheria, given as DTP, DT, Td, or Tetanus" is deleted. The formatting line directly above this phrase is also deleted.

Total doses received column:

Delete [3 doses]. Add [1 dose on or after 7th birthday]. Delete bold perforated line. Delete [One Td dose is recommended if 5 years or more have elapsed since the last dose.].

The phrase "3 doses" is deleted and the phrase "1 dose on or after the 7th birthday" is added. The statement "One Td Dose is recommended if 5 years or more have elapsed since the last dose." is deleted. The formatting line directly above this statement is also deleted.

Reasons

Due to the deletion of the Hepatitis B requirement, the superscript "4" is moved from Seventh Grade (Institution Column) to the Measles (Vaccine Column) as footnote 4 now applies solely to the measles requirement which is unchanged in regulation. Hepatitis B is deleted and Tdap vaccine is added to align the regulation with the requirements of HSC, Section 120335. The superscripts "6" and "7" are added to refer the reader to clarifying footnotes described below. The Tdap dose requirement, specified as 1 dose on or after the 7th birthday, replaces the obsolete dose language related to Hepatitis B. The deletion of the phrases "Recommended but not required: Tetanus diphtheria, given as DTP, DT, Td, or Tetanus" and "one Td Dose is recommended if 5 years or more have elapsed since the last dose." are necessary to avoid confusion with the new pertussis requirement. The deletion of the two formatting lines is a non-substantive change.

Add new section [Eighth through Twelfth Grades⁸/ Any pupil under 18 years]

Institution column:

The phrase "Eighth through Twelfth Grades⁸" is added.

Age column:

The phrase "Any pupil under 18 years" is added.

Vaccine column:

The vaccine and superscript "Tdap^{6,7}" is added.

Total doses received column:

The phrase "1 dose on or after the 7th birthday" is added.

Reasons

This entire section is added to specify the one-year statutory requirement for pertussis immunization for 8th through 12th grade pupils. The superscripts "6", "7" and "8" are added to refer the reader to clarifying footnotes described below.

Footnotes section

The footnotes, “⁶Pupils must have received at least one dose of Tdap prior to admission or advancement into the 7th through 12th grades.”, “⁷If DTP was given on or after age 7 years instead of Tdap, this dose may also be counted as a valid dose for this requirement.”, and “⁸This requirement is effective July 1, 2011, through June 30, 2012.”, are added.

Reasons

Footnote “6” is added to clarify the Tdap dose required prior to admission or advancement in accordance with HSC 120335. Footnote “7” is added to clarify which vaccines meet the requirement as stated above for elementary school, secondary school/7 – 17 years section. Footnote “8” is added to refer to the effective and end dates of this requirement in accordance with HSC 120335.

Nonsubstantive Amendment

The authority and reference note is updated.

Article 3. Admission to School, Child Care Center, Day Nursery, Nursery School, Family Day care home, or Development Center

Section 6035 - Conditional Admission

Table 2

Diphtheria, Tetanus, and Pertussis section

Vaccine column:

FOR PUPILS AGE 7 AND OLDER:

The phrase “Diphtheria-tetanus” is amended to read “Diphtheria-tetanus-pertussis (DTP, Tdap) and diphtheria-tetanus toxoids”. The parenthetical statement “(Pertussis not required)” is deleted.

Dose column:

The statement “Recommended but not required for 7th grade entry²: Booster dose of Td” is deleted and the phrase “One Tdap dose” is added.

Time intervals column:

The statement “Before entry, 1 Td dose is recommended if 5 years or more have elapsed since the last dose of DTP, DT, Td or Tetanus.” is amended to read “Before 7th through 12th grade entry.”

Reasons

The vaccine column is amended to add pertussis and diphtheria-tetanus toxoids to align the vaccine requirements with the HSC and National ACIP recommendations. The deletion of the parenthetical statement and

recommendation are necessary to avoid confusion with the new pertussis requirement. The addition of the one Tdap dose requirement is necessary to align with the statutory pertussis immunization mandate as authorized by HSC, Sections 120325 and 120335. The time interval column is also amended to delete the obsolete recommendation and specify the applicable time interval for Tdap. A non-substantive change is made to replace a comma after "entry" with a period.

Hepatitis B section

Vaccine column:

The statement "For children entering 7th grade on or after July 1, 1999, the series shall be in process or completed." is deleted.

Reasons

The deletion of the Hepatitis B requirement aligns with HSC, Section 120335.

Varicella section

Vaccine column:

After the vaccine Varicella, the superscript "3" is renumbered to superscript "2".

Reasons

The renumbering of the footnote superscript was necessary due to the deletion of footnote "2" and is a non-substantive change.

Footnote section

The footnote "² Applies only to children (of any age) entering or advancing to the 7th grade on or after July 1, 1999." is deleted. The footnote "3" is renumbered as footnote "2".

Reasons

Footnote "2" is deleted as it no longer applies to any vaccine listed in this table. As a result, previously existing footnote "3" is redesignated as "2"; this is a non-substantive change.

Nonsubstantive Amendment

The authority and reference note is updated.

**Section 6051- Unconditional Admission with Permanent Medical Exemption
or Personal Beliefs Exemption.**

This section is amended to incorporate by reference the new form, Personal Beliefs Exemption [CDPH 8261 (03/11)] to be part of the mandatory permanent pupil record for pupils whose parent/guardian have requested this exemption using this form.

Reasons

Under HSC, Section 120365, a Personal Beliefs Exemption (PBE) shall be granted upon the filing with the governing authority a letter or affidavit from the pupil's parent or guardian stating that immunization is contrary to his or her beliefs. The fact of the PBE shall be recorded on the California School Immunization Record, PM 286 (CCR, Title 17, Section 6051). Additionally, HSC, Section 120365, and CCR, Title 17, Section 6060, state that whenever there is good cause to believe that an unimmunized student has been exposed to the disease for which immunization has been declined, the student may be temporarily excluded from school until they are no longer at risk of developing the disease.

A parent or guardian may have signed and submitted, via a letter or affidavit, a PBE with the governing authority when his/her child entered school, usually at the kindergarten level. At that time, this immunization requirement did not exist; therefore, the Department is requiring the parent/guardian to file a new PBE with the governing authority specific to the new pertussis booster requirement. Parent/guardians are required to sign a new PBE so that they can make an informed decision for this new vaccine requirement. The new PBE provides documentation that the parent/guardian has exercised their PBE from the pertussis booster requirement.

To accommodate the parent/guardian who wishes to exempt from the 7th through 12th grade pertussis requirement, the Department offers this new PBE form [CDPH 8261(03/11)] at the school, to provide the pupil's parent/guardian with the option to file a PBE while at the school. As alternatives, current statute still allows for a PBE to be recorded in the form of a letter or affidavit from the pupil's parent or guardian. The letter or affidavit exempting a pupil from the new pertussis booster requirement is filed with the governing authority and kept in the pupil's permanent record.

The PBE statement on the new form [CDPH 8261(03/11)] has been adapted from and is consistent with that on the California School Immunization Record (PM 286) and includes a Spanish translation of the statement. This new form includes student identifying information which will assist the school with documentation and record keeping of personal beliefs exemptions. This form

also includes detailed information specific to pertussis and the potential for exclusion from school for an extended period in the event of an outbreak. As with the PM 286, the new PBE form [CDPH 8261(03/11)], or letter, or affidavit is a record keeping document used exclusively by schools, and is to be kept at the school.

Nonsubstantive Amendment

The authority and reference note is updated. The section is reformatted to provide ease of viewing different types of exemptions.

Article 5. Records As Evidence of Immunization

Section 6065 – Documentary Proof

This regulation amendment adds the requirement that for a dose of Tdap vaccine given during the month of the pupil's 7th birthday, the written record shall give the month, day, and year of immunization. Additionally, the obsolete subsection (d) is deleted.

Reasons

The month, day and year of Tdap immunization is required to be documented if given during the month of the pupil's 7th birthday in order for schools to determine whether the Tdap immunization was given on or after the 7th birthday.

Children admitted to California schools before March 5, 1986 have now all advanced out of school so subsection (d) is no longer necessary and is deleted.

Nonsubstantive Amendment

The authority and reference note is updated.

Section 6070 – School/Child Care Facility Immunization Record

This section is amended to add Tdap to the vaccines that must include the date of immunization if administered in the month of the 7th birthday.

A new subsection (f) is added to require the governing authority to document receipt of a pertussis (Tdap) vaccine dose on a supplemental sticker form, Tdap (Pertussis Booster) Requirement [PM 286 S (01/11)], which is affixed to the front of the pupil's existing California School Immunization Record (PM 286). The supplemental sticker is incorporated by reference. This is a self-explanatory data collection tool for the schools.

Reasons

To comply with HSC, Section 120335, Tdap is added to the vaccines that require documentation of the date administered, so that the governing authority can determine that the dose was given on or after the 7th birthday.

For pupils who are being admitted or are advancing into the 7th through 12th grades beginning July 1, 2011, the governing authority needs the ability to record each pupil's immunization in their cumulative record to demonstrate compliance with the Tdap immunization requirement. Pupils enrolled in California schools already have a PM 286 form as part of their permanent cumulative record. This PM 286 is initiated at Kindergarten entry and follows the student through 12th grade. For this reason, the Department developed the PM 286 S (01/11) to document receipt of a Tdap immunization on or after the 7th birthday or that the pupil has a medical or personal belief exemption on file. This form allows the governing authority to have one place where the information is documented for each student.

The governing authority will use this information to compile and record student compliance with the Tdap requirement and report cumulative compliance data for each school. Because of the burden to schools, this subsection is added to clarify the immunization record requirement for this specific one-time group of pupils. The sticker form was developed in consultation with CDE and is added to make complying with the documentation and reporting requirements less burdensome for the governing authority.

Nonsubstantive Amendment

The authority and reference note is updated.

Section 6075 - Reporting

A new subsection (a)(5) is added to incorporate the new form, Pertussis (Tdap) Assessment of 7-12th Grade Students 2011- 2012 School Summary Sheet, CDPH 8260, incorporated by reference.

Reasons

The new reporting form, Pertussis (Tdap) Assessment of 7-12th Grade Students 2011- 2012 School Summary Sheet, CDPH 8260 (01/11), will accommodate the mandatory reporting for the one-time 7th through 12th grade pertussis (Tdap) immunization requirement. The governing authority shall report on the number of pupils admitted or continuing 7th through 12th grades, who meet the pertussis (Tdap) requirement or have a medical or personal beliefs exemption. Each public and private school in the state is required to provide this information to assist public health officials as required in HSC, Section 120375 (c). This aggregate

reporting will provide statistical compliance information with the mandate for the Department and local public health agencies. The form also includes identifying information of the person completing and submitting the summary report on behalf of the governing authority.

Nonsubstantive Amendment

The authority and reference note is updated.

STATEMENTS OF DETERMINATION

A. ALTERNATIVES DETERMINATION:

The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified or brought to the attention of the Department would be more effective in carrying out the purpose for which this emergency action is proposed, or would be as effective and less burdensome to affected private persons than the emergency action.

B. LOCAL MANDATE DETERMINATION:

Existing regulations (CCR, Title 17, Sections 6000 - 6075) and the governing statutes (HSC, Sections 120325 - 120380) may impose a mandated cost for pupil immunization assessment by schools pursuant to Government Code, Section 17561. The State Controller's Office may be required to reimburse public school districts for the additional costs associated with this new immunization requirement. This reimbursement is based on per pupil per vaccine dose. The decision on costs incurred would be determined by the Commission on State Mandates.

C. ECONOMIC IMPACT STATEMENT:

The Department has made an initial determination that these regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the emergency regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

D. EFFECT ON SMALL BUSINESSES:

The Department determined that the emergency action will effect small businesses but should not be unduly burdensome. These small businesses (private schools with 7th through 12th grades) would not be eligible for cost reimbursement if it is determined by the Commission on State Mandates that the regulations impose a reimbursable state mandate.

E. HOUSING COSTS DETERMINATION:

The Department has made an initial determination that the emergency regulations will have no impact on housing costs.

DOCUMENTS RELIED UPON

American Academy of Pediatrics. [Pertussis (Whooping Cough)]. In: Pickering LK, Baker CJ, Kimberlin DW, Long SS, eds. Red Book: 2009 Report of the Committee on Infectious Diseases. 8th ed. Elk Grove Village, IL: American Academy of Pediatrics; 2009; 504-521.

Centers for Disease Control and Prevention. Preventing Tetanus, Diphtheria, and Pertussis Among Adolescents: Use of Tetanus Toxoid, Reduced Diphtheria Toxoid, and Acellular Pertussis Vaccines. Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2006; 55 (RR-3): 1-43. <http://www.cdc.gov/mmwr/PDF/rr/rr5503.pdf>

Centers for Disease Control and Prevention. National, State, and Local Area Vaccination Coverage Among Adolescents Aged 13—17 Years---United States, 2009. MMWR Weekly 2010; 59 (32): 1018-1023.

Purdy KW, Hay JW, Botteman MF, et al. Evaluation of Strategies for Use of Acellular Pertussis Vaccine in Adolescents and Adults: A Cost-Benefit Analysis. Clin Infect Dis 2004; 39: 20-28.

Centers for Disease Control and Prevention. Updated Recommendations for Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis (Tdap) Vaccine from the Advisory Committee on Immunization Practices, 2010. MMWR Weekly 2011; 60 (01): 13-15.

Hearing Date: April 19, 2013

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ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Health and Safety Code Sections 120325 and 120335

Statutes 2010, Chapter 434 (AB 354)

Immunization Records - Pertussis

11-TC-02

Twin Rivers Unified School District, Claimant

Attached is the draft proposed statement of decision for this matter. This Executive Summary and the draft proposed statement of decision also function as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

EXECUTIVE SUMMARY

Overview

This test claim seeks reimbursement for costs incurred by school districts for activities pertaining to a new pertussis (whooping cough) immunization requirement for adolescent students. Claimant, Twin Rivers Unified School District (claimant) seeks reimbursement for the costs of the following activities:

- Informing parents and students of pertussis immunization requirements;
- Training staff regarding immunization requirements;
- Reviewing and maintaining immunization records;
- Excluding students from school if they have not been fully vaccinated against pertussis; and
- Related activities.

The Health and Safety Code sections pled in this test claim were intended to provide a “means for the eventual achievement of total immunization of appropriate age groups against...” diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and varicella.¹ The 2010 amendments were “needed to allow [the Department

¹ Health and Safety Code section 120325.

of Public Health (DPH)] to require pertussis booster vaccines for students prior to the start of the seventh grade.”² Accordingly, section 120335 was amended to prohibit school districts from unconditionally admitting or advancing pupils to the 7th through 12th grade levels during the 2011-2012 fiscal year, and to the 7th grade for every school year beginning in fiscal year 2012-2013, unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil’s age.³

Procedural History

Claimant filed the test claim on September 26, 2011. Based on the September 26, 2011 filing date, the potential period of reimbursement for this test claim begins on July 1, 2010. On October 5, 2011, Commission staff deemed the filing complete and numbered it 11-TC-02. No state agencies or interested parties have submitted comments on the test claim.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including 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: 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.

Claims

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

² Assembly Third Reading Bill Analysis, Assembly Bill 354, as amended April 28, 2009.

³ See Health and Safety Code section 120335 operative until July 1, 2012; see also Health and Safety Code section 120335 operative July 1, 2012.

Subject	Description	Staff Recommendation
<u>Health and Safety Code section 120325, as amended by Statutes 2010, chapter 434.</u>	Health and Safety Code section 120325 recites the Legislature’s intent to provide a means for the eventual achievement of total immunization of certain childhood diseases, including pertussis. Statutes 2010, chapter 434 amended section 120325 to add the American Academy of Family Physicians to the list of entities whose recommendations DPH should consider when determining whether to update the list of required vaccinations contained in sections 120325 through 120375. The test claim statute did not otherwise amend section 120325.	<i>Deny</i> – the plain language of section 120325 does not impose any state-mandated activities on school districts.
<u>Health and Safety Code section 120335, as amended by Statutes 2010, chapter 434.</u>	Commencing July 1, 2011, Health and Safety Code section 120335(d) prohibits a school district from unconditionally admitting or advancing any pupil to the 7th through 12th grade levels of any private or secondary school unless the pupil has been fully immunized against pertussis. Beginning July 1, 2012, Health and Safety Code section 120335(d) prohibits a school district from unconditionally admitting or advancing any pupil to the 7th grade unless the pupil has been fully immunized against pertussis.	<i>Deny</i> – the plain language of section 120335(d), contains a prohibition, but does not impose any state-mandated activities on school districts. DPH has adopted regulations to implement section 120335, which do address the activities identified by claimant. (Cal. Code Regs, tit. 17, §§ 6020 et seq.) Those regulations, however, have not been pled. The Commission does not have jurisdiction to make findings on regulations that have not been pled.

Analysis

Staff recommends that the Commission deny this test claim. Health and Safety Code section 120325 is a statement of legislative intent, and does not require school districts to perform any activities. Health and Safety Code section 120335, as amended and replaced by Statutes 2010, chapter 434, adds subdivision (d), which prohibits school districts from “unconditionally admit[ting] or advance[ing]” pupils to grades 7 through 12 unless they are fully immunized against pertussis. Section 120335(d), itself, does not direct or obligate school districts to engage

in any activity or task. Although the activities identified by the claimant are addressed in emergency regulations adopted by DPH in June 2011, those regulations have not been pled. The Commission does not have jurisdiction to make findings on regulations that are not properly pled in a test claim. Accordingly, staff finds that the test claim statute, which amended and replaced Health and Safety Code sections 120325 and 120335, does not impose a state-mandated program on school districts.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Health and Safety Code Sections 120325 and 120335, as amended and replaced by Statutes 2010, Chapter 434 (AB 354)

Filed on September 26, 2011

By the Twin Rivers Unified School District,
Claimant.

Case No.: 11-TC-02

Immunization Records - Pertussis

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

(Adopted April 19, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on April 19, 2013. [Witness list will be included in the final statement of decision.]

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

The Commission [adopted/modified] the 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 a 2010 test claim statute that responded to a recent pertussis (whooping cough) epidemic in California. The test claim statute prohibits schools from admitting or advancing pupils to the 7th through 12th grade levels during the 2011-2012 fiscal year and, beginning in fiscal year 2012-2013, pupils entering or advancing to the 7th grade level, unless the pupil is fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. Under prior law, immunization against pertussis was, and continues to be required prior to the *first* admission to school, typically in kindergarten.

The Commission denies this test claim. Health and Safety Code section 120325 is a statement of legislative intent, and does not require school districts to perform any activities. Health and Safety Code section 120335, as amended by Statutes 2010, chapter 434, adds subdivision (d), which prohibits school districts from “unconditionally admit[ing] or advance[ing]” pupils to grades 7 through 12 unless they are fully immunized against pertussis. Section 120335(d), itself, does not direct or obligate school districts to engage in any activity or task. Although the activities identified by the claimant are addressed in emergency regulations adopted by the Department of Public Health (DPH) in June 2011, those regulations have not been pled. The Commission does not have jurisdiction to make findings on regulations that are not properly pled in a test claim. Accordingly, the Commission finds that the test claim statute, which amended and replaced Health and Safety Code sections 120325 and 120335, does not impose a state-mandated program on school districts.

COMMISSION FINDINGS

I. Chronology

- 09/26/2011 Claimant, Twin Rivers Unified School District, filed the test claim with the Commission.
- 10/05/2011 Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.

II. Background

A. Test Claim Statute

This test claim seeks reimbursement for costs incurred by the Twin Rivers Unified School District (claimant) for activities pertaining to immunization against pertussis (whooping cough) for adolescent students. Amendments of sections 120325 and 120335 were “needed to allow [the Department of Public Health] to require pertussis booster vaccines for students prior to the start of the seventh grade.”⁴ Pertussis is a highly communicable disease that lasts for many weeks and can be fatal in infants. Children, adolescents, and adults alike become susceptible and can contract pertussis when immunity from infection by the vaccine wanes. Therefore, a booster shot against pertussis is recommended in early adolescence to reduce pertussis infection rates.⁵ After the test claim statute was enacted, DPH adopted emergency regulations relating to pertussis vaccination and reported the following information in its statement of reasons:

California is in the midst of a pertussis epidemic. In 2010, there were 10 infant deaths and more than 9,000 cases of pertussis reported to the Department; the most cases reported in one year in California since 1947. The infants who died were too young to begin their immunizations and were most likely infected by

⁴ Assembly Third Reading Bill Analysis, Assembly Bill 354, as amended April 28, 2009, p. 2.

⁵ *Id.* at pp. 2-3.

adolescents and adults with pertussis disease. Routine childhood immunization against pertussis does not provide lasting immunity. The first pertussis-containing vaccines for adolescents and adults were licensed in 2005 as a combination tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap). Tdap vaccine is recommended by ACIP, AAP, and AAFP to protect adolescents and adults against pertussis. Based on recent survey data, many adolescents have not received a recommended pertussis booster. The 7th through 12th grade pupils are at highest risk of waning pertussis immunity and without intervention will continue to prolong the pertussis epidemic.⁶

i. Health and Safety Code Section 120325

Health and Safety Code section 120325 was originally enacted in 1977 and contains the Legislature’s statement of intent regarding Health and Safety Code sections 120325 through 120375. Section 120325 states that sections 120325 through 120375 were enacted to provide “[a] means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases: [diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis (whooping cough), poliomyelitis, rubella, tetanus, and varicella (chickenpox)].” The Legislature also intended the law to provide that:

- Persons required to be immunized be allowed to obtain immunization from whatever medical source they desire, subject only to the condition that the immunization be performed in accordance with the regulations of the DPH and that a record of the immunization is made in accordance with the regulations;
- Exemptions from immunization be available for medical reasons or because of personal beliefs; and that
- Adequate records of immunization be kept so that health departments, schools, and other institutions, parents and guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools.⁷

The test claim statute did not alter the childhood diseases included in section 120325 or the Legislature’s statement of intent contained in section 120325. The code section was amended, however, to add the American Academy of Family Physicians to the list of entities whose recommendations the Department of Public Health must consider when determining whether to update the list of required vaccinations contained in sections 120325 through 120375.

⁶ Exhibit B, DPH Initial Statement of Reasons for “School Immunization Requirements: Grades 7 through 12” dated May 19, 2011, pages 2 and 3 (internal citations omitted).

⁷ Health and Safety Code section 120325(b)(c)(d).

ii. Health and Safety Code Section 120335

Health and Safety Code section 120335 incorporates the list of childhood diseases contained in section 120325 and prohibits school districts from admitting students unless they are fully immunized.⁸ The test claim statute did not alter the childhood diseases listed in section 120335. However, with respect to pertussis immunization, the test claim statute added subdivision (d) to section 120335, which prohibited school districts, during the period from July 1, 2011 until June 30, 2012, from admitting or advancing any student to the 7th through 12th grade levels unless the pupil was fully immunized, with appropriate boosters for the pupil's age. Subdivision (d) states:

Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.⁹

Section 3 of the bill then replaced section 120325 with a new code section, effective July 1, 2012, to prohibit school districts from admitting or advancing any pupil to the 7th grade unless the pupil is fully immunized against pertussis, including all age appropriate boosters. Section 120325 subdivision (d) as of July 1, 2012 states:

The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

Claimant has alleged that Health and Safety Code sections 120325 and 120335 have caused it to incur reimbursable costs to notify parents of the pertussis vaccination requirements for students entering the 7th through 12th grades, to perform activities not required by prior law including training staff, notifying parents and students, and reviewing and keeping immunization records.

B. Prior Law and Prior Related Test Claim Decisions

1. Prior Law

Under the law immediately prior to the enactment of the test claim statute, Health and Safety Code section 120335(b) prohibited the “governing authority”¹⁰ of schools from unconditionally

⁸ Health and Safety Code section 120335(b).

⁹ *Ibid.*

¹⁰ Health and Safety Code section 120335(a) defines “governing authority” as “the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.”

admitting a pupil to “...any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center unless prior to his or her first admission to the institution he or she has been fully immunized.” In determining whether a student is fully immunized, section 120335(b) further required that the following diseases be documented: diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and varicella.

The immunizing agents and age appropriate immunization requirements for each disease are specified by DPH, in consultation with the California Department of Education (CDE), pursuant to Health and Safety Code sections 120330 and 120335, and California Code of Regulations, title 17, sections 6020 *et seq.* (DPH regulations). These regulations lay out the process by which school districts are required to receive documentation that the student was fully immunized. Health and Safety Code section 120345 and section 6065 of the Title 17 regulations, for example, require that a written record be given to the person immunized by the physician or agency performing the immunization that includes the child’s name, birthdate, type of vaccine administered, the date the vaccine was administered, and the name of the physician or agency administering the vaccine. Under existing regulations, school districts are also required to record each student’s immunization information on a form supplied by DPH, which becomes part of each student’s mandatory pupil record. Pursuant to Health and Safety Code section 120375 and section 6070 of the Title 17 regulations, each student’s immunization record shall contain the child’s name, birthdate, date of unconditional or conditional admission, type of vaccine administered, the date the vaccine was administered, date and type of exemption, if any.

The immunizations required by Health and Safety Code sections 120325 *et seq.* may be obtained from any private or public source desired as long as the immunization is administered and records are made in accordance with regulations of DPH.¹¹ In addition, pursuant to Health and Safety Code section 120365 and section 6051 of the Title 17 regulations, a parent or guardian may exercise the right to refuse required immunizations by asserting either a medical or personal belief exemption, which allows the student to be admitted unconditionally. A permanent medical exemption shall be granted upon the filing with the school a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated.¹² A personal beliefs exemption shall be granted upon the filing of a letter or affidavit from the pupil’s parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, that such immunization is contrary to his or her beliefs.¹³

¹¹ Health and Safety Code section 120345.

¹² California Code of Regulations, title 17, section 6051(a); Health and Safety Code section 120370.

¹³ *Id.* at section 6051(b).

Any student who lacks documentation of all immunizations required by prior law, and did not have a permanent medical exemption or personal beliefs exemption to immunization, could be admitted *conditionally* under specified circumstances pursuant to section 6035 of the Title 17 regulations; for example if the student had a temporary medical exemption or was in the process of receiving doses of the required vaccines. However, schools are required to prohibit from further attendance any student admitted conditionally who fails to obtain the required immunizations within the 10 school days time limit set forth in the Title 17 regulations and is not otherwise exempted from immunization requirements.¹⁴ These requirements remain in the law.

2. Prior Test Claim SB 90-120: Immunization Records

Under test claim SB 90-120 regarding immunizations, Statutes of 1977, Chapter 1176, which added former Health and Safety Code section 3380, now renumbered as Health and Safety Code section 120325, required that persons under 18 years of age were immunized against poliomyelitis, measles, diphtheria, pertussis, and tetanus prior to unconditional first admission to a public or private elementary or secondary school, child care center, day nursery, nursery school, or development center. Regulations adopted to implement this act required school districts to maintain records of immunization of all school age children and to report periodically to the state on the immunization status of all new entrants into the schools. The Board of Control, as predecessor to the Commission, found that these requirements constituted a reimbursable state mandate, finding prior law did not require school districts to engage in record keeping, record review, parent notification, or reporting activities related to the specified pupil immunizations.

3. Prior Test Claim 98-TC-05: Immunization Records – Hepatitis B

A second test claim, 98-TC-05, regarding immunizations for Hepatitis B, sought reimbursement for costs incurred as a result of amendments to Health and Safety Code section 120335 and legislation amending other statutes and regulations adopted by DPH relating to monitoring, record keeping, reporting, and parent notification requirements, and enforcement of pupil immunization requirements for Hepatitis B.¹⁵ The Commission found that, as amended, Health and Safety Code section 120335 and other related legislation and regulations imposed new requirements regarding immunizations for Hepatitis B, documentation and reporting of immunizations, mandatory pupil exclusion and parent notification requirements. The Commission found that these activities were not contained in prior law and thus constituted a new program or higher level of service and a reimbursable state mandate.

¹⁴ Health and Safety Code section 120375; California Code of Regulations, title 17, section 6055.

¹⁵ Test claim 98-TC-05 arose from amendments and additions to Education Code section 48216, Health and Safety Code sections 120325, 120335, 120340, and 120375, and California Code of Regulations, Title 17 sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075.

III. Position of Claimant and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program or higher level of service within an existing program. Specifically, claimant requests reimbursement for the following activities, which it alleges must be done to comply with Health and Safety Code sections 120325 and 120335:

- (1) Informing parents/students of the immunization requirements regarding pertussis; developing procedures; training staff; obtaining, reviewing, and maintaining student immunization records; and contacting parents and legal guardians for non-compliance;
- (2) Periodically reporting to the state on the immunization status of all entrants into schools;
- (3) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil seeking admission to the school in the state for the first time;
- (4) Recording and maintaining in each pupil's permanent record the pupil's immunization or exemption from immunization against pertussis;
- (5) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil advancing to the seventh grade;
- (6) Periodically reviewing each pupil's immunization record until the pupil is fully immunized against pertussis;
- (7) Documenting vaccine doses on each pupil's immunization record as immunizations are administered;
- (8) Notifying parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;
- (9) Referring the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- (10) Excluding pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and
- (11) Collecting data and preparing reports annually on immunization status for the Department of Health Services, and preparing follow-up or additional reports upon request by county health departments and the state.

Claimant alleges that the activities listed above caused the claimant to incur \$25,000 in costs during the 2011-2012 fiscal year and will cause the claimant to incur \$25,000 in costs for each

year thereafter. Claimant also alleges that the statewide cost estimate to all affected school districts to implement the test claim statutes will be \$6,000,000 per year.

B. Position of State Agencies and Interested Parties

No state agency or other interested party has filed a response to this test claim.

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 funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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.”¹⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁷

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.¹⁸
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.¹⁹

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

¹⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁸ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

¹⁹ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

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.²⁰
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²¹

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²² 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 6.²³ 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.”²⁴

A. Health and Safety Code Section 120325 Does Not Impose any State-Mandated Activities on School Districts.

Health and Safety Code section 120325 contains the Legislative intent with respect to childhood immunizations. The claimant pled section 120325 in its test claim and appears to suggest, although not directly, that section 120325 directs school districts to engage in a reimbursable state-mandated program or higher level of service relating to immunization against pertussis.²⁵ However, claimant’s written narrative and supporting declaration of Robert Roach, Mandate Analyst for the claimant, fail to specify what, if anything, section 120325 directs school districts to do.

The Commission finds that the plain language of section 120325 does not impose any specific activities on schools regarding immunizations against pertussis. Accordingly, Health and Safety Code section 120325, as amended by Statutes 2010, chapter 434, does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6.

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²² *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

²³ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

²⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

²⁵ Exhibit A, test claim, dated September 22, 2011, section 4 (“TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED”), p. 1, and section 5, p. 6.

B. The Plain Language of Health and Safety Code Section 120335 Does Not Impose any State-Mandated Activities on School Districts

In 2010, the test claim statute added subdivision (d) to section 120335 for fiscal year 2011-2012 to state the following:

Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. [Emphasis added.]

Statutes of 2010, Chapter 434, section 3 then repealed and replaced section 120335 subdivision (d) with a new section 120335(d), which became operative July 1, 2012 and which states the following:

The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. [Emphasis added.]

The claimant contends that section 120335(d) requires school districts to perform a number of tasks including the following:

- (1) Informing parents/students of the immunization requirements regarding pertussis; developing procedures; training staff; obtaining, reviewing, and maintaining student immunization records; and contacting parents and legal guardians for non-compliance;
- (2) Periodically reporting to the state on the immunization status of all entrants into schools;
- (3) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil seeking admission to the school in the state for the first time;
- (4) Recording and maintaining in each pupil's permanent record the pupil's immunization or exemption from immunization against pertussis;
- (5) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil advancing to the seventh grade;
- (6) Periodically reviewing each pupil's immunization record until the pupil is fully immunized against pertussis;
- (7) Documenting vaccine doses on each pupil's immunization record as immunizations are administered;

- (8) Notifying parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;
- (9) Referring the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- (10) Excluding pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and
- (11) Collecting data and preparing reports annually on immunization status for the Department of Health Services, and preparing follow-up or additional reports upon request by county health departments and the state.

The plain language of section 120335(d), however, does not require school districts to perform any activities. Section 120335(d) states that schools “shall not unconditionally admit or advance” pupils to the 7th through 12th grade levels during the 2011 school year and to the 7th grade thereafter unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil’s age. Section 120335 *prohibits* school districts from doing something; more specifically, from unconditionally admitting or advancing pupils unless the pupil has been fully immunized against pertussis.

This interpretation is supported by the legislative history of the test claim statute. The Assembly Floor analysis on the last amended version of the bill states the following:

Since potential costs to the bill would occur only if DPH made a decision to promulgate regulations to update its immunization requirements, the fiscal years in which potential costs and savings would occur are unknown and would depend on when DPH regulations went into effect.²⁶

As noted in legislative history, the activities identified by the claimant are addressed by DPH regulations that exist to implement and interpret Health and Safety Code sections 120325 through 120375. In 2011, DPH adopted emergency regulations implementing the test claim statute at issue here.²⁷ These regulations became effective on June 30, 2011, three months before the filing of this test claim, but have not been pled by the claimant.

²⁶ Assembly Floor Analysis, Concurrence in Senate Amendments to AB 354 on August 17, 2010 (AB 354, 2009-2010 Reg.Sess.)

²⁷ California Code of Regulations, Title 17 sections 6020, 6035, 6051, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11). (See also, DPH’s Initial Statement of Reasons, dated May 19, 2011.)

The Commission does not have jurisdiction to make findings on statutes and executive orders unless those statutes or executive orders are pled in a test claim. Government Code section 17521 defines test claim to mean “the first claim filed with the commission alleging that *a particular statute or executive order* imposes costs mandated by the state...” An executive order is defined to include regulations.²⁸ Government Code section 17553(b)(1) further requires that all test claims contain at least “a written narrative that *identifies the specific sections of statutes or executive orders* and the effective date *and register number of regulations* alleged to contain a mandate...” In addition, the statutes and executive orders pled for any given test claim are required to be listed in box 4 of the test claim form and are then included in the caption on page one of the Notice of Complete Test Claim Filing, draft staff analysis, final staff analysis and Statement of Decision, as well as on the notice and agenda. Statutes and executive orders not included in box 4 are not pled.²⁹ Thus, the Commission does not have jurisdiction to make findings or to analyze the DPH regulations that implement the test claim statute.

Finally, while claimant cites to prior test claims to support reimbursement in this test claim, prior Commission decisions are not controlling. Commission decisions are not precedential and, unlike this claim, the prior test claim on Hepatitis B (98-TC-05) properly pled the regulations that implemented the school immunization program.

Based on the foregoing, the Commission finds that it does not have jurisdiction to make findings on DPH regulations that were not pled. The Commission further finds that Health and Safety code section 120335, as amended and replaced in 2010, does not require school districts to perform any new activities and, thus, does not impose a state-mandated program on school districts.

V. Conclusion

Based on the foregoing, the Commission concludes that Health and Safety Code sections 120325 and 120335, as amended by Statutes 2010, chapter 434 do not impose a 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.

²⁸ Government Code section 17516.

²⁹ Sections 1183, subdivision (d) and 1183.02, subdivision (c) of the Commission’s regulations; and, Commission on State Mandates Test Claim Form adopted pursuant to Government Code section 17553, box 4.

2488 Historic Decatur Road
 Suite 200
 San Diego, CA 92106-6113
 619.232.3122
 Fax 619.232.3264
 www.stutzartiano.com



Arthur M. Palkowitz

apalkowitz@stutzartiano.com

Received
 March 28, 2013
 Commission on
 State Mandates

March 28, 2013

Heather Halsey
 Executive Director
 Commission on State Mandates
 980 9th Street, Suite 300
 Sacramento, CA 95814

**Re: Health and Safety Code sections 120325 and 120335
 Statutes 2010, Chapter 434 (AB 354)
 Immunization Records - Pertussis (11-TC-02)**

Dear Ms. Halsey:

The following comments are submitted in response to the Draft Staff Analysis for the Immunization Records - Pertussis (11-TC-02) test claim submitted by the claimant, Twin Rivers Unified School District.

1. TEST CLAIM STATUTE IMPOSES STATE MANDATED ACTIVITIES ON SCHOOL DISTRICTS

On September 26, 2011, claimant, Twin Rivers Unified School District, filed a test claim with the Commission. On October 5, 2011, Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.¹ “No state agency or other interested party has filed a response to this test claim.”²

The test claim stated: “Students entering or advancing to grades seven through twelve in the 2011–12 school year are required to show proof of immunization with a pertussis (whooping cough) vaccine booster called tetanus toxoid, reduced diphtheria toxoid and acellular pertussis vaccine (Tdap). The new requirement affects all students—current, new, and transfers—in public and private schools.” (test claim, p. 6.)

As pled by the claimant in the test claim, (test claim, p. 7.) school districts are required, “to inform parents/students of the new immunization requirements and will be required to train staff, obtain, review, maintain student immunization records and contact parents and legal guardians for non-compliance. The law requires school districts to maintain records of immunization of all school

¹ Immunization Records- Pertussis 11-TC-02 (DSA p. 6)

² Immunization Records- Pertussis 11-TC-02 (DSA p. 12)

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age children and report periodically to the state on the immunization status of all new entrants into the schools.”

Other activities pled in the test claim:

Request and review lawful exemption or proof of immunization from each pupil seeking admission to school in the state for the first time.

- Record each pupil's immunization for, or exemption from immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization from each pupil advancing to the seventh grade.
- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.³

2. TEST CLAIM PLED STATE MANDATED ACTIVITIES

The test claim (page 9), Section G, identifies a prior mandate determinations, Immunization Records: Hepatitis B test claim, made by the Commission on State Mandates that is *related* to the alleged mandate.(emphasis added) The test claim further references the California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075.⁴ Section 2 (g) of the test claim statute, attached to the test claim, states emergency regulations may be adopted to

³ “The activities identified by the claimant are addressed by DPH regulations that exist to implement and interpret Health and Safety Code sections 120325 through 120375.” (DSA, p.15)

⁴ On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Immunization Records: Hepatitis B test claim, finding that Statutes 1978, chapter 325; Statutes 1979, chapter 435; Statutes 1982, chapter 472; Statutes 1991, chapter 984; Statutes 1992, chapter 1300; Statutes 1994, chapter 1172; Statutes 1995, chapters 291 and 415; Statutes 1996, chapter 1023; Statutes 1997, chapters 855 and 882; and California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075. (test claim p. 9-10)(DSA p.10)

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implement the statute.⁵

Staff's application of Section 1183.02 (c)⁶ requiring the register number of regulations be attached to the test claim form is not supported by the reading of the "plain language" contained in the regulation (See footnote 29 of the Draft Staff Analysis), nor is it included in the requirements of the test claim form.⁷

⁵ Section 2 (g) of the test claim statute states, The department may adopt emergency regulations to implement subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rule making provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

⁶ 2 California Code of Regulation, section 1183.02(c) Content and Form. Written responses, opposition, or recommendations on the test claim shall contain the following documentary evidence, if applicable:

(1) If assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief.

(2) Include a copy of relevant portions of state constitutional provisions, federal statutes, and executive orders, and a copy of administrative decisions and court decisions that may impact the alleged mandate, unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

⁷ 7. Documentation support the written narrative with copies of all of the following:
(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and

(E) statutes, chapters of original legislatively determined mandate and any amendments.

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Moreover, neither the regulation 1183.02 (c), Government Code section 17553 (b) (1) ⁸ or the test claim form require California Code of Regulations be submitted with the test claim.

3. CLAIMANT REQUESTS TEST CLAIM BE AMENDED

The application of Government Code 17554, permits the parties to agree to waive the application of any procedural requirement.⁹ Claimant requests the test claim be amended to include the 17 California Code of Regulations sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075 and Register of Actions that are attached. The equitable application of Government Code section 17554, provides all parties to the claim, the opportunity to agree that the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.



Arthur M. Palkowitz
Attorney for the Claimant

⁸ Government Code section 17553 (b)(1): All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents: (1) A written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate and shall include all of the following.

⁹ Government Code section 17554. With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

Barclays Official California Code of Regulations Currentness

Title 17. Public Health

Division 1. State Department of Health Services

Chapter 4. Preventive Medical Service

Subchapter 8. Immunization Against Poliomyelitis, Diphtheria, Pertussis, Tetanus, Measles (Rubeola), Rubella, Haemophilus Influenzae Type B (Hib), Mumps, and Hepatitis B

Article 2. Required Immunizations (Refs & Annos)

17 CCR § 6020

§ 6020. Required Immunizations.

(a) The required immunizations for admission to and attendance at a public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or developmental center shall be those set forth, according to age, in Table 1.

(b) In Table 1 of Section 6020 and in Table 2 of Section 6035, DTP (or DPT) means diphtheria and tetanus toxoids and pertussis vaccine, including DTaP vaccine. Tdap means tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine. DT (or TD) and Td (or dT) means diphtheria and tetanus toxoids.

(c) For pupils who have reached their seventh birthday, a history of any preparations containing diphtheria and tetanus toxoids and pertussis vaccine (DTP, DT, Td, Tdap, etc.) shall be acceptable as meeting the requirement for tetanus and diphtheria toxoids and pertussis vaccine that is set forth in Table 1.

(d) Pupils who have reached their seventh birthday shall be exempt from the mumps immunization requirements.

(e) Combination vaccines that include measles, mumps, and rubella components shall be acceptable as meeting the requirements for these vaccines that are set forth in Table 1.

(f) For pupils entering or advancing to the seventh grade, immunization requirements are set forth in Table 1.

(g) Pupils already admitted to California public and private schools at the Kindergarten level or above before July 1, 2001 are exempt from the Varicella (chickenpox) requirement as set forth in Table 1.

(h) For pupils entering or advancing into the eighth through twelfth grades, the immunization requirement is set forth in Table 1 of Section 6020.

Table 1: Immunization Requirements

<i>Institution</i>	<i>Age</i>	<i>Vaccine</i>	<i>Total Doses Received</i>
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Child care center, day nursery, nursery school, family day care home, development center

Same as above 2-3 months

- 1. Polio¹ 1 dose
- 2. DTP..... 1 dose
- 3. Hib..... 1 dose
- 4. Hepatitis B..... 1 dose

Same as above 4-5 months

- 1. Polio¹ 2 doses
- 2. DTP, or combination of DTP and diphtheria-tetanus toxoids..... 2 doses
- 3. Hib..... 2 doses
- 4. Hepatitis B..... 2 doses

Same as above 6-14 months

- 1. Polio¹ 2 doses
- 2. DTP, or combination of DTP and diphtheria-tetanus toxoids..... 3 doses
- 3. Hib..... 2 doses
- 4. Hepatitis B..... 2 doses

Same as above 15-17 months

- 1. Polio¹ 3 doses
- 2. DTP, or combination of DTP and diphtheria-tetanus toxoids..... 3 doses

- 3. Measles, rubella, and mumps..... 1 dose of each separately
or combined on or after the 1st birthday
- 4. Hib..... 1 dose on or after the 1st birthday
- 5. Hepatitis B..... 2 doses

- Same as above 18 months-5 years
- 1. Polio¹ 3 doses
 - 2. DTP, or combination of DTP and diphtheria-tetanus toxoids..... 4 doses
 - 3. Measles, rubella, and mumps..... 1 dose of each separately
or combined on or after the 1st birthday
 - 4. Hib³ 1 dose on or after the 1st birthday
 - 5. Hepatitis B² 3 doses
 - 6. Varicella..... 1 dose

- Elementary school at 4-6 years
kindergarten level and
above
- 1. Polio¹ 4 doses, except that a total of 3 doses is acceptable if at least one dose was given on or after the 4th birthday
 - 2. DTP, or combination of DTP and diphtheria-tetanus toxoids..... 5 doses, except that a total of 4 doses is acceptable if at least one dose was given on or after the 4th birthday.

3. Measles, rubella, and mumps..... 1 dose of each, separately or combined, on or after the 1st birthday. Pupils entering a kindergarten (or first grade if kindergarten skipped) are required to have 2 doses of measles-containing vaccine, both given on or after the first birthday
4. Hepatitis B ² 3 doses
5. Varicella..... 1 dose

Elementary school, secondary school	7-17 years	1. Polio ¹ 4 doses, except that a total of 3 doses is acceptable if at least one dose was given on or after the 2nd birthday
		2. Diphtheria and tetanus toxoids and pertussis vaccine given as DTP, DT, Td, or Tdap At least 3 doses. One more dose is required if the last dose was given before the 2nd birthday.
		3. Measles and rubella (mumps not required)..... 1 dose of each, separately or combined, on or after the 1st birthday. (See below for additional requirements for 7th grade enrollment, effective 7/1/99.)

4. Varicella⁵ 1 dose aged 7 through 12 years for students not admitted to California schools before July 1, 2001.
 2 doses for students aged 13 through 17 years not admitted to California schools before July 1, 2001.

Seventh Grade Any

1. Tdap^{6,7} 1 dose on or after the 7th birthday

2. Measles⁴ 2 doses of measles -containing vaccine, both given on or after the first birthday.

Eighth through Twelfth Grades⁸ Any pupil under 18 years

1. Tdap^{6,7} 1 dose on or after the 7th birthday

Any 18 years and older None

¹ Oral polio vaccine (OPV) or inactivated polio vaccine (IPV) or any combination of these vaccines is acceptable.

² Applies only to children entering at kindergarten level (or at first grade level if kindergarten skipped) or below on or after August 1, 1997. Applies only to children entering at kindergarten level (or at first grade level if kindergarten skipped) or below on or after August 1, 1997.

³ Required only for children who have not reached the age of 4 years 6 months.

- ⁴ Applies only to children (of any age) entering or advancing to the seventh grade on or after July 1, 1999.
- ⁵ Children admitted to California schools at the Kindergarten level or above before July 1, 2001 are exempt from this requirement.
- ⁶ Pupils must have received at least one dose of Tdap prior to admission or advancement into the 7th through 12th grades.
- ⁷ If DTP was given on or after age 7 years instead of Tdap, this dose may also be counted as a valid dose for this requirement.
- ⁸ This requirement is effective July 1, 2011, through June 30, 2012.

Note: Authority cited: Sections 120330, 120335 and 131200, Health and Safety Code. Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment filed 8-30-79; effective thirtieth day thereafter (Register 79, No. 35).
2. Amendment filed 4-15-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 8-14-80.
3. Certificate of Compliance transmitted to OAL 7-29-80 and filed 8-20-80 (Register 80, No. 34).
4. Amendment of subsections (c), (d), and (e) filed 10-3-80; effective thirtieth day thereafter (Register 80, No. 40).
5. Repealer and new section filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
6. Amendment of subsection (a), repealer of subsection (f) and subsection relettering, and amendment of Table 1 and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).
7. Repealer of subsection (b), subsection relettering, amendment of newly designated subsection (b), and amendment of Table 1 and Note filed 5-22-97 as an emergency; operative 5-22-97 (Register 97, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-97 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of subsection (b) (Register 97, No. 37).
9. Certificate of Compliance as to 5-22-97 order transmitted to OAL 9-5-97 and filed 9-26-97 (Register 97, No. 39).
10. New subsection (f), amendment of Table 1 and amendment of Note filed 2-18-99 as an emergency; operative 2-18-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-18-99 or emergency language will be repealed by operation of law on the following day.
11. Editorial correction of table (Register 99, No. 27).

12. Certificate of Compliance as to 2-18-99 order transmitted to OAL 5-26-99 and filed 6-30-99 (Register 99, No. 27).
13. New subsection (g), amendment of Table 1 and amendment of Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).
15. Amendment of subsections (b)-(d), new subsection (h) and amendment of Table 1 and Note filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsections (b)-(d), new subsection (h) and amendment of Table 1 and Note refiled 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

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17 CCR § 6020, 17 CA ADC § 6020

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Title 17. Public Health

Division 1. State Department of Health Services

Chapter 4. Preventive Medical Service

Subchapter 8. Immunization Against Poliomyelitis, Diphtheria, Pertussis, Tetanus, Measles (Rubeola), Rubella, Haemophilus Influenzae Type B (Hib), Mumps, and Hepatitis B

Article 3. Admission to School, Child Care Center, Day Nursery, Nursery School, Family Day Care Home, or Development Center (Refs & Annos)

17 CCR § 6035

§ 6035. Conditional Admission.

(a) Any pupil seeking admission to a given public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center who lacks documentation of having received all the required vaccine doses against poliomyelitis, diphtheria, tetanus, pertussis, measles, rubella, Haemophilus influenzae type B, mumps, hepatitis B and varicella (chickenpox) as specified in Table 1, Section 6020, and has not obtained a permanent medical exemption or a personal beliefs exemption to immunization in accordance with Section 6051, may be admitted conditionally if:

(1) he or she has not received all the immunizations required for his or her age group but has commenced receiving doses of all the vaccines in accordance with Table 2, is not currently due for any doses at the time of admission (if he or she is due for any doses at this time they must be obtained before admission), and the pupil's parent or guardian is notified of the date by which the pupil must complete all the required immunizations in accordance with Table 2; or

(2) he or she is under age 18 months and has received all the immunizations required for his or her age group but will require additional vaccine doses at an older age, and the pupil's parent or guardian is notified of the date by which the pupil must complete all the remaining doses when they become due in accordance with Table 1, Section 6020; or

(3) he or she has obtained a temporary medical exemption from immunization in accordance with Section 6050, and the pupil's parent or guardian is notified of the date by which the pupil must complete all the required immunizations when the temporary exemption terminates; or

(4) he or she is a pupil entering a child care center governed by Education Code Section 8263(c), where a different deadline for obtaining all required immunizations may apply.

(b) The public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center shall not allow the admission of any pupil seeking entry who does not meet the requirements for admission under Section 6025 or 6035. The principal or administrator shall advise the pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.

Table 2: Conditional Admission Immunization Schedule

<i>Vaccine</i>	<i>Dose</i>	<i>Time Intervals</i>
Polio ¹	1st dose.....	Before admission
	2nd dose.....	As early as 6 weeks but no later than 10 weeks after the 1st dose. Before admission if 10 or more weeks have elapsed since the 1st dose at the time of admission.
	3rd dose.....	As early as 6 weeks but no later than 12 months after the 2nd dose. Before admission if 12 or more months have elapsed since the 2nd dose at the time of admission.
	4th dose (Required only for entry to kindergarten level or above).....	Age 4-6 years: If the 3rd dose was given before the 4th birthday one more dose is required before admission. Age 7-17 years: If the 3rd dose was given before the 2nd birthday, one more dose is required before admission.
.....		
Diphtheria, Tetanus, and Pertussis	1st dose.....	Before admission.
	2nd dose.....	As early as 4 weeks but no later than 8 weeks after the 1st dose. Before admission if 8 or more weeks have elapsed since the 1st dose at the time of admission.
FOR PUPILS UNDER AGE 7 YEARS:		

	3rd dose.....	As early as 4 weeks but no later than 8 weeks after the
Diphtheria-tetanus-pertussis (DTP) or combination of DTP and diphtheria-tetanus toxoids		2nd dose. Before admission if 8 or more weeks have elapsed since the 2nd dose at the time of admission.
	4th dose.....	As early as 6 months but no later than 12 months after the 3rd dose. Before admission if 12 or more months have elapsed since the 3rd dose at the time of admission.
	5th dose (Required only for pupils ages 4-6 years for entry to kindergarten level and above).....	If the 4th dose was given before the 4th birthday, one more dose is required before admission.
OR		
FOR PUPILS AGE 7 YEARS AND OLDER:	1st dose.....	Before admission.
	2nd dose.....	As early as 4 weeks but no later than 8 weeks after the 1st dose. Before admission if 8 or more weeks have elapsed since the 1st dose at the time of admission.
Diphtheria-tetanus-pertussis (DTP, Tdap) and diphtheria-tetanus toxoids	3rd dose.....	As early as 6 months but no later than 12 months after the 2nd dose. Before admission if 12 or more months have elapsed since the 2nd dose at the time of admission.
	4th dose.....	If the 3rd dose was given before the 2nd birthday, one more dose is required before admission.

	One Tdap dose	Before 7th through 12th grade entry.

Measles One dose only..... Before admission. If the pupil is under age 15 months, this dose is required when age 15 months is reached.

Note: For children entering kindergarten (or first grade

1st dose..... Before admission.
 if kindergarten is skipped) on or after August 1, 1997, 2nd dose..... As early as 1 month but no later than 3 months after the 1st dose.
 two doses are required. For children entering 7th grade

on or after July 1, 1999, the series shall be in process or completed.

Rubella One dose only..... Before admission. If the pupil is under age 15 months, this dose is required when age 15 months is reached.

Mumps (Not required for pupils age 7 years and older) One dose only..... Before admission. If the pupil is under age 15 months, this dose is required when age 15 months is reached.

Hib

Children 2-14 months old Two doses..... 1st dose before admission. 2nd dose as early as 2 months but no later than 3 months after the 1st dose.

Children 15 months-4 1/2 years old One dose..... Before admission.

Hepatitis B - For children entering at kindergarten level (or first grade if kindergarten skipped) 1st dose..... Before admission.

2nd dose..... As early as 1 month but no later than 2 months after the first

or below on or after August 1, 1997.

dose.

3rd dose..... Infants and children under age 18 months: As early as 2

months but no later than 12 months after the 2nd dose.

Also, no earlier than 4 months after the 1st dose.

Children age 18 months and older: As early as 2 months but

no later than 6 months after the 2nd dose. Also, no earlier

than 4 months after the 1st dose.

Varicella² - For children aged 13 through 17 years

1st dose..... Before admission

not admitted to California schools before 2nd dose..... As early as 4 weeks but no longer than 3 months after first

dose

¹ Oral polio vaccine (OPV) or inactivated polio vaccine (IPV) or any combination of these vaccines is acceptable.

² Children admitted to California schools at the Kindergarten level or above before July 1, 2001 are exempt from this requirement.

Note: Authority cited: Sections 120330, 120335 and 131200, Health and Safety Code. Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment filed 8-30-79; effective thirtieth day thereafter (Register 79, No. 35).
2. Amendment of subsection (a) filed 4-15-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 8-14-80.
3. Certificate of Compliance transmitted to OAL 7-29-80 and filed 8-20-80 (Register 80, No. 34).
4. Repealer and new section filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
5. Amendment of subsections (a), (b), Table 2 and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).

6. Amendment of subsection (a), Table 2 and Note filed 5-22-97 as an emergency; operative 5-22-97 (Register 97, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-97 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 5-22-97 order transmitted to OAL 9-5-97 and filed 9-26-97 (Register 97, No. 39).

8. Amendment of Table 2 filed 2-18-99 as an emergency; operative 2-18-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-18-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2-18-99 order transmitted to OAL 5-26-99 and filed 6-30-99 (Register 99, No. 27).

10. Editorial correction of Table 2 (Register 99, No. 39).

11. Amendment of subsection (a), Table 2 and Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).

13. Amendment of Table 2 and Note filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.

14. Editorial correction renumbering footnote reference (Register 2011, No. 28).

15. Amendment of Table 2 and Note refiled 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.

16. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

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17 CCR § 6035, 17 CA ADC § 6035

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Article 3. Admission to School, Child Care Center, Day Nursery, Nursery School, Family Day Care Home, or Development Center (Refs & Annos)

17 CCR § 6040

§ 6040. Requirements for Continued Attendance.

An already admitted pupil who is subsequently discovered not to have received all the immunizations which were required before admission or who is subsequently discovered not to have complied with the requirements for conditional admission specified in Section 6035 shall continue in attendance only if he or she receives all vaccine doses for which he or she is currently due and provides documentation of having received such doses no later than 10 school days after he or she or the parent or guardian is notified. The school, child care center, day nursery, nursery school, family day care home, or development center shall notify the pupil or the parent or guardian of the time period (no longer than 10 school days) within which the doses must be received.

Note: Authority cited: Sections 3381(c) (120335(c)), 100275 and 120330, Health and Safety Code. Reference: Sections 3381 (120335), 120340 and 120375 (a) and (b), Health and Safety Code.

HISTORY

1. Amendment filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
2. Amendment of section and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).

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17 CCR § 6040, 17 CA ADC § 6040

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Article 4. Exclusion (Refs & Annos)

17 CCR § 6055

§ 6055. Conditions for Admission Not Fulfilled.

The governing authority of the school, child care center, day nursery, nursery school, family day care home, or development center shall exclude from further attendance any pupil who fails to obtain the required immunizations within no more than 10 school days following receipt of the notice provided pursuant to Section 6040, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received another dose of each required vaccine due at that time. Any pupil so excluded shall be reported to the attendance supervisor or to the building administrator.

Note: Authority cited: Sections 3381(c) (120335(c)), 100275 and 120330, Health and Safety Code. Reference: Sections 3381 (120335), 120340, 120365, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
2. Amendment of section and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).

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Article 3. Admission to School, Child Care Center, Day Nursery, Nursery School, Family Day Care Home, or Development Center (Refs & Annos)

17 CCR § 6051

§ 6051. Unconditional Admission with Permanent Medical Exemption or Personal Beliefs Exemption.

A pupil with a permanent medical exemption or a personal beliefs exemption to immunization shall be admitted unconditionally. A pupil with an exemption which is not based on pre-existing immunity to disease may be subject to exclusion pursuant to Section 6060.

(a) A permanent medical exemption shall be granted upon the filing with the governing authority of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. The fact of the permanent medical exemption shall be recorded on the California School Immunization Record, PM 286 (01/02) as provided in Section 6070. A permanent medical exemption may be provided for one or more vaccines. A physician may provide a written statement that the pupil is medically exempt from the measles (rubeola) and/or varicella (chickenpox) requirements as a result of having had measles (rubeola) and/or varicella (chickenpox) disease, respectively. A physician may provide a written statement that the pupil is medically exempt from the rubella and/or mumps requirement as a result of having had laboratory confirmed illness with the corresponding disease.

(b) A personal beliefs exemption shall be granted upon the filing with the governing authority of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, that such immunization is contrary to his or her beliefs. The fact of the personal beliefs exemption shall be recorded on the California School Immunization Record, PM 286 (01/02). If a personal beliefs exemption letter or affidavit for some or all immunizations was filed with the governing authority prior to July 1, 2011, a personal beliefs exemption letter or affidavit for the pertussis booster immunization must be filed with the governing authority. The Personal Beliefs Exemption form, CDPH 8261 (03/11), hereby incorporated by reference, is to be made available at the school as a means for exercising a personal belief exemption to the pertussis booster immunization requirement in Section 120335(d), Health and Safety Code. The fact of a personal beliefs exemption for the pertussis booster immunization requirement in Section 120335(d), Health and Safety Code, shall be recorded on the Tdap (Pertussis Booster) Requirement sticker, PM 286 S (01/11).

Note: Authority cited: Sections 120330, 120335 and 131200, Health and Safety Code. Reference: Sections 120325, 120335, 120365, 120370 and 120375, Health and Safety Code.

HISTORY

1. Renumbering and amendment of a portion of former Section 6050 to Section 6051 filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
2. Amendment of section and Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).
4. Amendment of section and Note filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and Note refiled 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

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17 CCR § 6051, 17 CA ADC § 6051

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Article 5. Records as Evidence of Immunization (Refs & Annos)

17 CCR § 6065

§ 6065. Documentary Proof.

(a) There shall be a written record given to the person immunized or to his or her parent or guardian, by the physician or agency performing the immunization which shall contain the following information:

- (1) Name of the person.
- (2) Birthdate.
- (3) Type of vaccine administered.
- (4) Month, day, and year of each immunization.
- (5) Name of the physician or agency administering the vaccine.

(b) The written record shall be shown by the parent, guardian or person immunized to the governing authority of the school, child care center, day nursery, nursery school, family day care home, or development center at the time of the pupil's admission and at subsequent times when required by the governing authority to determine the pupil's immunization status. For the pupil to be admitted, the written record shall show at least the month and year of each required vaccine dose. For doses of measles, rubella and mumps vaccine given during the month of the first birthday the record shall also show the specific date (i.e., month, day and year) of immunization. For a dose of Tdap given during the month of the pupil's 7th birthday, the record shall also show the specific date (i.e., month, day and year) of immunization.

(c) When such written records are not available, the pupil shall not be admitted and the parent or guardian shall be referred to a physician or nurse for review of his or her immunization history and provision of immunizations as needed.

Note: Authority cited: Sections 120330, 120335 and 131200, Health and Safety Code. Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).

2. Amendment of subsection (b) and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).
3. Amendment of section and Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).
5. Amendment of subsection (b), repealer of subsection (d) and amendment of Note filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b), repealer of subsection (d) and amendment of Note refiled 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

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Title 17. Public Health

Division 1. State Department of Health Services

Chapter 4. Preventive Medical Service

Subchapter 8. Immunization Against Poliomyelitis, Diphtheria, Pertussis, Tetanus, Measles (Rubeola), Rubella, Haemophilus Influenzae Type B (Hib), Mumps, and Hepatitis B

Article 5. Records as Evidence of Immunization (Refs & Annos)

17 CCR § 6070

§ 6070. School/Child Care Facility Immunization Record.

(a) The governing authority of each school, child care center, day nursery, nursery school, family day care home, or development center shall record each pupil's immunizations on the California School Immunization Record, PM 286 (1/02) and is in its entirety, incorporated by reference which, at kindergarten level and above, shall be part of the mandatory permanent pupil record as defined in Section 430 of Title 5, California Code of Regulations.

(b) Each pupil's immunization record shall contain:

(1) Name of pupil.

(2) Birthdate (month, day and year).

(3) Date of unconditional or conditional admission (month, day, and year).

(4) Type of vaccine and date (month, day, and year) each dose was administered. Although month, day and year of vaccine administration should be recorded, a California Immunization Record, PM 286 (01/02), showing only month and year of vaccine dose(s) shall be allowed, except that for records showing measles, rubella, and/or mumps vaccine doses given during the month of the first birthday or Tdap dose given during the month of the 7th birthday, the date of immunization shall also be recorded.

(5) Date and type of exemption, if any.

(c) The immunization record shall be transferred with the mandatory permanent pupil record.

(d) For pupils at kindergarten level and above transferring between school campuses within California or from a school in another state to a school in California, if the mandatory permanent pupil record or other immunization record has not been received at the time of entry to the new school, the governing authority of the school may admit the pupil for a period of up to 30 school days. If the mandatory permanent record or other immunization record has not arrived by the end of this period, the governing authority shall require the parent or guardian to present a written immunization record, as described in Section 6065, documenting that all currently due required immunizations have been received. If such a record is not presented, the

pupil shall be excluded from further attendance until he or she comes into compliance with the immunization requirements, as outlined in Sections 6020, 6035, and 6065.

(e) The governing authority shall see that the immunization record of each pupil admitted conditionally is reviewed every 30 days until that pupil has received all the required immunizations. Any immunizations received subsequent to conditional admission shall be entered in the pupil's immunization record.

(f) For pupils who are being admitted or are advancing into the 7th through 12th grades beginning July 1, 2011, the governing authority shall record each pupil's Tdap dose, given on or after the 7th birthday, on the supplemental sticker form Tdap (Pertussis Booster) Requirement [PM 286 S (01/11)]. This form is hereby incorporated by reference. The governing authority shall affix the PM 286 S (01/11) to the front of the pupil's California School Immunization Record, PM 286 (01/02).

Note: Authority cited: Sections 120330, 120335 and 131200, Health and Safety Code. Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment filed 2-3-86; effective thirtieth day thereafter (Register 86, No. 6).
2. Amendment of section heading, subsection (a) and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).
3. Amendment of section and Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).
5. Amendment of subsection (b)(4), new subsection (f) and amendment of Note filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b)(4), new subsection (f) and amendment of Note refiled 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of subsection (f) (Register 2012, No. 10).
8. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

This database is current through 3/15/13 Register 2013, No. 11

17 CCR § 6070, 17 CA ADC § 6070

Barclays Official California Code of Regulations Currentness

Title 17. Public Health

Division 1. State Department of Health Services

Chapter 4. Preventive Medical Service

Subchapter 8. Immunization Against Poliomyelitis, Diphtheria, Pertussis, Tetanus, Measles (Rubeola), Rubella, Haemophilus Influenzae Type B (Hib), Mumps, and Hepatitis B

Article 5. Records as Evidence of Immunization (Refs & Annos)

17 CCR § 6075

§ 6075. Reporting.

(a) The governing authority of each school, child care center, day nursery, nursery school, family day care home, or development center shall file a report with the state and local health departments on the immunization status of new entrants annually or when needed to determine immunization status such as during an epidemic or potential epidemic. The forms to be used for these reports are:

(1) Schools with kindergartens: IMMUNIZATION ASSESSMENT OF KINDERGARTEN STUDENTS -ANNUAL REPORT [PM 236 (3/01)] and this form in its entirety is incorporated by reference.

(2) Schools with seventh grades: PERTUSSIS BOOSTER IMMUNIZATION ASSESSMENT OF SEVENTH GRADE STUDENTS [CDPH 8259 (9/11)]. This form is hereby incorporated by reference.

(3) Child care centers, day nurseries, nursery schools and development centers: ANNUAL IMMUNIZATION REPORT ON CHILDREN ENROLLED IN CHILD CARE CENTERS [DHS 8018 (3/01)] and this form is in its entirety incorporated by reference or ANNUAL IMMUNIZATION ASSESSMENT REPORT OF CHILDREN ENROLLED IN CHILD CARE CENTERS -LINE LISTING [DHS 8387 (3/94)]. The Department of Health Services or the local health department will provide the appropriate reporting form.

(4) Family day care homes: ANNUAL FAMILY DAY CARE HOME IMMUNIZATION SURVEY [DHS 8529 (10/00)] and this form is in its entirety incorporated by reference.

(5) Schools with any grade from the 7th through 12th grade shall report data on Tdap immunization: PERTUSSIS (Tdap) ASSESSMENT OF 7-12th GRADE STUDENTS 2011-2012 SCHOOL SUMMARY SHEET [CDPH 8260 (01/11)]. This form is hereby incorporated by reference.

(b) The annual report shall contain at least the following information on new entrants in kindergarten or lower level classes only:

(1) Enrollment as of date of report.

(2) Number of new entrants admitted unconditionally specifying the number who have received all immunizations, the number who are medically exempt and the number who are exempt for personal beliefs.

(3) Number of new entrants admitted conditionally specifying the number of doses received of poliomyelitis, diphtheria, tetanus, pertussis, measles, rubella, Haemophilus influenza type b (Hib), mumps, hepatitis B, and varicella (chickenpox) vaccines.

(4) Other information requested by the State Department of Health Services.

(c) Additional reports which include new entrants in all grades may be requested during an epidemic or potential epidemic.

Note: Authority cited: Sections 120330 and 120335, Health and Safety Code. Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code.

HISTORY

1. Amendment of subsection (b)(3) filed 4-15-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 8-14-80.
2. Certificate of Compliance transmitted to OAL 7-29-80 and filed 8-20-80 (Register 80, No. 34).
3. Amendment of subsection (a), new subsections (a)(1)-(3), and amendment of subsection (b)(3) and Note filed 3-29-96; operative 4-28-96 (Register 96, No. 13).
4. Editorial correction of subsection (b)(3) (Register 97, No. 12).
5. Amendment of subsection (b)(3) and Note filed 5-22-97 as an emergency; operative 5-22-97 (Register 97, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-19-97 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of Note (Register 97, No. 37).
7. Certificate of Compliance as to 5-22-97 order transmitted to OAL 9-5-97 and filed 9-26-97 (Register 97, No. 39).
8. Amendment of subsection (a)(1), new subsection (a)(2) and subsection renumbering filed 2-18-99 as an emergency; operative 2-18-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-18-99 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2-18-99 order transmitted to OAL 5-26-99 and filed 6-30-99 (Register 99, No. 27).
10. Amendment of subsections (a)(1), (a)(3)-(4) and (b)(3) and amendment of Note filed 9-24-2002 as an emergency; operative 9-24-2002 (Register 2002, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-22-2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 9-24-2002 order transmitted to OAL 1-17-2003 and filed 2-27-2003 (Register 2003, No. 9).

12. New subsection (a)(5) filed 6-30-2011 as an emergency; operative 7-1-2011 (Register 2011, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-28-2011 or emergency language will be repealed by operation of law on the following day.

13. New subsection (a)(5) refiled with additional amendment of subsection (a)(2) and Note 12-15-2011 as an emergency; operative 12-28-2011 (Register 2011, No. 50). A Certificate of Compliance must be transmitted to OAL by 3-27-2012 or emergency language will be repealed by operation of law on the following day.

14. Certificate of Compliance as to 12-15-2011 order transmitted to OAL 2-3-2012 and filed 3-15-2012 (Register 2012, No. 11).

This database is current through 3/15/13 Register 2013, No. 11

17 CCR § 6075, 17 CA ADC § 6075

End of Document

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- Adopts Sections 3571, 3582, 3590, 3590.1, 3590.2, and 3590.3, and amends Section 3000 in the California Code of Regulations, Title 15, concerning residence restrictions imposed upon, and parole supervision of, sex offenders while on parole.
- Establishes CDCR Form 1650–D (Rev 7/10) — Record of Supervision in the regulations. This form has been incorporated by reference into the regulations and a copy has been made available for public review.
- Implements regulations to enforce the paroled sex offender residence restrictions established by “Jessica’s Law” which prohibit certain sex offenders from establishing residences within specified distances of schools and parks.
- Makes specific the definitions of terms used in enabling statutes.
- Defines the responsibilities of parole agents responsible for the supervision of paroled sex offenders.
- Establishes processes for the verification and approval of sex offender residence addresses to ensure compliance with residence restrictions.

TITLE 17. DEPARTMENT OF PUBLIC HEALTH

ACTION: Notice of Emergency Rulemaking
Title 17, California Code of Regulations

SUBJECT: School Immunization Requirements:
Grades 7 through 12:
FY 2011–2012, DPH–10–004E

The California Department of Public Health (Department) has adopted the regulations described in this notice on an emergency basis, and they are now in effect.

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Public Health will conduct written public proceedings, during which time any interested person or such person’s duly authorized representative may submit statements, arguments, or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code (HSC), Section 131200, authorizes the Department to adopt and enforce regulations for the execution of its duties. HSC, Section

120330, authorizes the Department to promulgate regulations, in consultation with the California Department of Education (CDE), to carry out Chapter 1, Educational and Child Care Facility Immunization Requirements (commencing with Section 120325 but excluding Section 120380).

The legislative intent as stated in HSC, Sections 120325 and 120335, is to achieve total immunization of appropriate age groups against specific diseases and any other disease deemed appropriate by the Department, taking into consideration national recommendations. HSC, Sections 120325 through 120375, require pupils to provide proof of certain immunizations in order to attend public and private elementary and secondary schools, child care centers, family day care homes, nursery schools, day nurseries and developmental centers. HSC, Sections 120325(c), 120365, and 120370, allow for medical or personal beliefs exemptions and require that the governing authority report on immunization status of new entrants.

California experienced a pertussis (whooping cough) epidemic in 2010. Childhood immunization against pertussis does not provide lasting immunity needed to control the disease. Pertussis remains widespread in the United States despite high levels of immunization in early childhood. Until 2005, there was no licensed pertussis vaccine for persons age seven years or older. Based on recent survey data, many adolescents and adults have not received a recommended pertussis booster. This pool of susceptible persons is likely a major contributor to the spread of pertussis and prolongation of the epidemic throughout the state. Previously, state law prohibited the requirement of pertussis immunization for children seven years of age or older. Because of the urgency of the epidemic, the Legislature enacted AB 354 (Arambula, Chapter 434, Statutes of 2010) and removed the age restriction, requiring full immunization against pertussis for admission or advancement to the 7th through 12th grades. AB 354 also eliminated the requirement for hepatitis B vaccine for admission or advancement to the 7th grade.

These emergency amendments do the following:

Amend Section 6020, Required Immunizations, for consistency with HSC, Section 120335 to remove the requirement for hepatitis B vaccine for admission or advancement to the 7th grade, and specify the requirement for full immunization against pertussis and the immunizing agent, pertussis vaccine (Tdap), to meet the one-year requirement for 7th through 12th grades beginning July 1, 2011, through June 30, 2012.

Amend Section 6035, Conditional Admission, to be consistent with HSC, Section 120335 by specifying the requirement for full immunization against pertussis for admission or advancement to the 7th through 12th grades.

Amend Section 6051, Unconditional Admission with Permanent Medical Exemption or Personal Beliefs Exemption, to require a separate PBE for the pertussis booster, and incorporate by reference the optional form to document personal beliefs exemption (PBE) for Tdap, Personal Beliefs Exemption [CDPH 8261 (03/11)] and to reformat into two subparagraphs to delineate between medical and personal beliefs exemptions.

Amend Section 6065, Documentary Proof, to require documentary proof of immunization for the one-year pertussis immunization requirement and to delete an obsolete immunization requirement.

Amend Section 6070, School/Child Care Facility Immunization Record, to add a recording requirement for Tdap dose given during the month of the 7th birthday and to incorporate by reference the form Tdap (Pertussis Booster) Requirement [PM 286 S (01/11)], for the governing authority to record the pertussis immunization.

Amend Section 6075, Reporting, to incorporate by reference the form Pertussis (Tdap) Assessment of 7–12th Grade Students [(CDPH 8260 (01/11))] for the governing authority to report pertussis immunization status for 7th through 12th grades, for the year beginning July 1, 2011 through June 30, 2012.

This emergency action amends CCR, Title 17, Sections 6020, 6035, 6051, 6065, 6070, and 6075 to remove a requirement for the hepatitis B vaccine, define the term Tdap, define age and dose requirements for school-age children receiving the pertussis vaccine, and specify the manner by which schools shall record and report pertussis immunization status. The following newly adopted forms are incorporated by reference:

- Tdap (Pertussis Booster) Requirement (PM 286 S, 01/11)
- Personal Beliefs Exemption (CDPH 8261, 03/11)
- Pertussis (Tdap) Assessment of 7–12th Grade Students (CDPH 8260, 01/11)

AUTHORITY

Sections 120330, 120335, and 131200, Health and Safety Code.

REFERENCE

Sections 120325, 120335, 120370, and 120375, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be

received by the Office of Regulations by 5 p.m. on August 15, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier “DPH–10–004E” in the subject line to facilitate timely identification and review of the comment; or
2. By fax transmission: (916) 440–5747; or
3. By mail to: Office of Regulations, California Department of Public Health, MS 0507, P.O. Box 997377, Sacramento, CA 95899–7377; or hand-delivered to: 1616 Capitol Avenue, Sacramento, CA, 95814. It is requested, but not required, that written comments sent by mail or hand-delivered be submitted in triplicate.

All comments, including email or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the Department to provide copies of any notice for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Alana McKinzie of the Center for Infectious Diseases, at (916) 449–5197.

All other inquiries concerning the action described in this notice may be directed to Miko Sawamura, Office of Regulations, at (916) 440–7733, or to the designated backup contact person, Coleen Keelan, at (916) 440–7439.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH–10–004E.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the ad-

dress previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7439 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

A. Fiscal Effect on Local Government:

Monies allocated annually from federal 317 funding to purchase vaccines for the local health departments have been redirected from non-urgent vaccines to cover the additional vaccines as mandated.

Local health departments that immunize low-income children, who are not enrolled in Medi-Cal or Child Health and Disability Prevention programs, will not receive compensation for administering the vaccine similar to their subsidized counterparts. Depending on the actual number of children immunized per local health department, the maximum state-wide impact is estimated to be \$765,000.

B. Fiscal Effect on State Government:

Department of Health Care Services and the Managed Risk Medical Insurance Board

The one-year vaccine requirement expenditures will be incurred in fiscal year (FY) 2011-12. It is anticipated that in FY 2011-12, Medi-Cal and Healthy Families

costs will total \$4,909,500 (General Fund \$1,826,325; Federal Fund \$3,083,175).

California Department of Education Costs

The estimated FY 2011-12 costs for the CDE associated with the implementation of this immunization requirement is \$27,200 (.2 FTE school nurse consultant at \$26,700; 8 hours analyst time at \$500), these costs will be absorbed by CDE.

State Controller's Office Costs

In the past, public school districts have claimed funds from the State Controller's Office for implementing the immunization requirements for each pupil entering a California school for the first time or being assessed at a newly-required periodic review date. This proposed regulation change to require pertussis immunization for pupils being admitted or advanced to the 7th through 12th grades may be submitted by public schools for mandated cost reimbursement by the State Controller's Office.

C. Fiscal Effect on Federal Funding of State Programs:

The one-year vaccine requirement expenditures will be incurred in FY 2011-12. It is estimated that in FY 2011-12, Medi-Cal and Healthy Families federal costs will total \$3,083,175 and federal 317 grant costs will total \$1,212,950 for total federal funding expenditures of \$4,296,125. Funding for the Vaccines for Children (VFC) program is provided by the federal government and distribution to providers is managed by the state. The VFC program is an entitlement program and funding is not driven by a specific item in the federal budget but rather provider orders and vaccine need.

D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

Private Persons: The cost for private pay individuals is estimated to be \$37.55 for the cost of the vaccine, plus a manufacturer's mark-up and the \$9.00 administration fee per injection. The number of children in this category is unknown, but the Department considers this population to be negligible. Some children with private insurance, entering or advancing into 7th through 12th grades will not have had the required pertussis immunization. There are approximately 1,000,000 unimmunized children in 7th through 12th grades. Of this population, it is estimated that 57% are covered by private insurance and may incur an estimated \$15 co-pay for the office visit for their vaccination, others may have no costs. Thus, the total cost to all persons with third party or private insurance, as a whole, is estimated to be no more than \$8,550,000.

Small Businesses: Private schools are prohibited from submitting requests for reimbursement of state mandated costs; however, they will need to assess their students' records for receipt of the additional required pertussis dose. It is estimated that there are approximately 228,833 private school students in the 7th through 12th grades. The cost to assess each student record is approximately \$1/pupil. Therefore, the maximum total impact to private schools, as a whole, is estimated to be \$228,833.

E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would impose a mandate on local agencies or school districts. There may be costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code. These regulations do impose a mandate on schools. If the Commission on State Mandates determines that this is a reimbursable state-mandated cost, the schools may be reimbursed for up to \$1 per pupil record assessed.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small business.

The Department has determined that the regulations will have no impact on housing costs.

The proposed emergency regulation imposes a reporting requirement for schools with 7th through 12th grades to provide data on pertussis immunization to the California Department of Public Health. The Department finds that it is necessary for the protection of the health, safety, or welfare of the people of the State of California that the regulation applies to businesses.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no

reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

To request such services or copies of materials in an alternate format, please write to Coleen Keelan, Office of Regulations, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 440-7439, or use the California Relay Service by dialing 711.

GENERAL PUBLIC INTEREST

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

ASSEMBLY THIRD READING
AB 354 (Arambula)
As Amended April 28, 2009
Majority vote

HEALTH 19-0 APPROPRIATIONS 11-2

Ayes: Jones, Fletcher, Adams, Ammiano, Block, Carter, Conway, De La Torre, De Leon, Emmerson, Gaines, Hall, Hayashi, Hernandez, Bonnie Lowenthal, Nava, V. Manuel Perez, Salas, Audra Strickland

Ayes: De Leon, Ammiano, Charles Calderon, Davis, Fuentes, Hall, John A. Perez, Price, Skinner, Solorio, Torlakson

Nays: Nielsen, Audra Strickland

SUMMARY: Allows the Department of Public Health (DPH) to update vaccination requirements for children entering schools and child care facilities and adds the American Academy of Family Physicians (AAFP) to the list of entities whose recommendations DPH must consider when updating the list of required vaccinations. Specifically, this bill:

- 1) Deletes the age, grade, and date exemptions from the following vaccination requirements: a) haemophilus influenza type b (Hib) immunization after four years and six months of age; b) mumps immunization after seven years of age; c) pertussis immunization after seven years of age; d) hepatitis B immunization after kindergarten level; and, e) varicella (chickenpox) immunization of pupils who were admitted to California public or private schools at or above the kindergarten level before July 1, 2001.
- 2) Adds AAFP and makes clarifying changes to the list of entities whose recommendations DPH must consider when developing new disease immunization requirements.
- 3) Deletes a provision authorizing DPH to adopt emergency regulations to implement a varicella immunization requirement which was enacted in 2000.

EXISTING LAW prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless he or she has been fully immunized against the following diseases: diphtheria; Hib; measles; mumps; pertussis; poliomyelitis; rubella; tetanus; hepatitis B; varicella; and, any other disease deemed appropriate by DPH, taking into consideration the recommendations of the Advisory Committee on Immunization Practices (ACIP) and the American Academy of Pediatrics (AAP).

FISCAL EFFECT: According to the Assembly Appropriations Committee, net savings to the extent this bill reduces future health costs by increasing immunization rates and prevents future outbreaks.

COMMENTS: According to the author, this bill is needed to allow DPH to require pertussis booster vaccines for students prior to the start of the seventh grade. The author states pertussis is the only vaccine-preventable disease that remains widespread despite high levels of vaccination in early childhood. Although childhood immunization against pertussis does not provide lasting immunity needed to control the disease and protect public health, current law limits the requirement for pertussis vaccination to children seven years old or younger. The author states that also vaccinating children upon entry to the seventh grade will reduce infection rates among adolescents and adults, which will also help protect infants who are too young to receive their first inoculations.

Pertussis is a highly communicable disease that lasts for many weeks and is typically manifested in children with violent spasms of severe coughing that can cause difficulty breathing, eating, and sleeping; as well as vomiting. Children typically get pertussis infections from adults, rather than other children. Adolescents and adults become susceptible and can contract pertussis when immunity from childhood vaccinations wanes. They can then easily infect infants who are not fully vaccinated. In adults, pertussis can appear to be an ordinary upper respiratory tract infection, and is often not diagnosed. In infants, pertussis can be fatal.

In California and nationally, pertussis incidence rises cyclically with peaks every three to five years. Between 2001 and 2006, pertussis incidence rose from 644 cases reported in 2001 to 3,160 cases in 2005, dropping down to 1,661 cases in 2006. CDC states that actual incidence may be many times greater than the reported numbers. The highest pertussis rates occur among infants, who are also at highest risk of complications. In California from 2001 through 2006, 91% of infant cases occurred in the first six months of life, before three doses of the vaccine were administered, and 74% of these infants were hospitalized. During the same period, 24 California infants under two months old died from pertussis. DPH reports that the age distribution of reported pertussis cases has been changing: in 1990, 11% of all reported cases in California were children over nine years old; by 2005, more than half of reported cases were children over nine years old.

According to DPH, hospital charges for treating pertussis in 2005 exceeded \$17 million, of which at least \$12 million was paid by the Medi-Cal Program. DPH further states that the true costs are likely to be far higher, as most outpatient and some hospitalized cases of pertussis are never diagnosed but require services. DPH additionally notes that state funds also pay for the state and local health department response to pertussis cases and outbreaks. The Contra Costa County Health Department calculated that it required over \$50,000 of staff time to respond to a single pertussis outbreak in a school in the spring of 2008. DPH contends that several pertussis outbreaks are likely to occur in California in a given year, and that requiring pertussis boosters would likely nearly eliminate pertussis among adolescents.

Pertussis immunizations are given in combination with tetanus and diphtheria immunizations (called DTaP and DTP), at two months, four months, six months, 15 to 18 months, and four to six years of age. Because immunity from infection by the vaccine only lasts for approximately five to ten years, a booster shot is recommended in early adolescence. ACIP, AAP, and AAFP recommend Tdap booster vaccines at the age of eleven to twelve years for those who have completed the recommended childhood DTaP or DTP series.

CONCURRENCE IN SENATE AMENDMENTS
AB 354 (Arambula and Fletcher)
As Amended August 17, 2010
Majority vote

ASSEMBLY: 74-2 (May 28, 2009) SENATE: 25-5 (August 20, 2010)

Original Committee Reference: HEALTH

SUMMARY: Permits the Department of Public Health (DPH) to update vaccination requirements for children entering schools and child care facilities and adds the American Academy of Family Physicians (AAFP) to the list of entities whose recommendations DPH must consider when updating the list of required vaccinations. Specifically, this bill:

- 1) Deletes the age, grade, and date exemptions from the following vaccination requirements:
 - a) Haemophilus influenzae type b (Hib) immunization after four years and six months of age;
 - b) Mumps immunization after seven years of age;
 - c) Pertussis immunization after seven years of age;
 - d) Hepatitis B immunization after kindergarten level; and,
 - e) Varicella (chickenpox) immunization of pupils who were admitted to California public or private schools at or above the kindergarten level before July 1, 2001.
- 2) Adds AAFP and makes clarifying changes to the list of entities whose recommendations DPH must consider when developing new disease immunization requirements.
- 3) Deletes a provision authorizing DPH to adopt emergency regulations to implement a varicella immunization requirement which was enacted in 2000.

The Senate amendments:

- 1) Delete a requirement that varicella provisions are only operative if funds are appropriated for that purpose in the annual Budget Act.
- 2) Delete, commencing July 1, 2011, the requirement that schools check that all 7th graders have been immunized against Hepatitis B and instead require that schools check that all 7th graders have been immunized against pertussis.
- 3) Make other technical, clarifying changes.

AS PASSED BY THE ASSEMBLY, this bill was substantially similar to the version approved by the Senate.

FISCAL EFFECT: According to the Senate Appropriations Committee:

<u>Major Provisions</u>	<u>Fiscal Impact (in thousands)</u>			<u>Fund</u>
	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	
Medi-Cal vaccination administrative fee	likely \$0	\$300 - \$875	\$300 - \$875	General/* Federal
School reimbursement for vaccine confirmation	likely \$0	up to \$400	up to \$400	General**
Potential increased ADA	likely \$0	\$50 - \$550	\$50 - \$550	General**

*Costs would be shared 50% General Fund and 50% federal funds.

**Counts toward Proposition 98 guarantee

*** Since potential costs to this bill would occur only if DPH made a decision to promulgate regulations to update its immunization requirements, the fiscal years in which potential costs and savings would occur are unknown and would depend on when DPH regulations went into effect.

COMMENTS: According to the author, this bill is needed to allow DPH to require pertussis booster vaccines for students prior to the start of the seventh grade. The author states pertussis is the only vaccine-preventable disease that remains widespread despite high levels of vaccination in early childhood. Although childhood immunization against pertussis does not provide lasting immunity needed to control the disease and protect public health, current law limits the requirement for pertussis vaccination to children seven years old or younger.

Pertussis is a highly communicable disease that lasts for many weeks and is typically manifested in children with violent spasms of severe coughing that can cause difficulty breathing, eating, and sleeping; as well as vomiting. Children typically get pertussis infections from adults, rather than other children. Adolescents and adults become susceptible when immunity from childhood vaccinations wanes. They can then easily infect infants who are not fully vaccinated. In adults, pertussis can appear to be an ordinary undiagnosed upper respiratory tract infection but, in infants, it can be fatal.

Pertussis immunizations are given in combination with tetanus and diphtheria immunizations (called DTaP and DTP), at two months, four months, six months, 15 to 18 months, and four to six years of age. Because immunity from infection by the vaccine only lasts for approximately five to ten years, a booster shot is recommended in early adolescence. ACIP, AAP, and AAFP recommend Tdap booster vaccines at the age of eleven to twelve years for those who have completed the recommended childhood DTaP or DTP series.

According to DPH, as of August 2010 there have been 2,774 reported cases of pertussis in 2010 (7 cases per 100,000). This is a seven-fold increase from the 395 cases reported through the same date in 2009. DPH reports that seven deaths have been reported, all in infants less than 2 months of age at time of disease onset; none of whom had received any doses of pertussis-containing vaccine because of their age. The majority of infant cases in 2010 were 3 months of age or younger. In response to the outbreak, the DPH issued a recommendation for broader use of the Tdap booster vaccine. In addition to the typical series of childhood pertussis

immunizations, DPH now recommends the administration of the Tdap vaccine for children as young as seven years old and for California residents over 64 years of age for the duration of the epidemic.

Analysis Prepared by: Melanie Moreno / HEALTH / (916) 319-2097

FN: 0006579

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



May 8, 2013

Mr. Arthur M. Palkowitz
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

And Affected State Agencies and Interested Parties (See Mailing List)

Re: **Final Staff Analysis and Proposed Statement of Decision,
and Notice of Hearing**
Immunization Records - Pertussis, 11-TC-02
Health & Safety Code Sections 120325 and 120335
Statutes 2010, Chapter 434 (AB 354)
Twin Rivers Unified School District, Claimant

Dear Mr. Palkowitz:

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, May 24, 2013**, 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 4
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Health and Safety Code Sections 120325 and 120335

Statutes 2010, Chapter 434 (AB 354)

Immunization Records - Pertussis

11-TC-02

Twin Rivers Unified School District, Claimant

Attached is the proposed statement of decision for this matter. This proposed statement of decision also functions as the final staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

EXECUTIVE SUMMARY

Overview

This test claim seeks reimbursement for costs incurred by school districts for activities pertaining to a new pertussis (whooping cough) immunization requirement for adolescent students. Claimant, Twin Rivers Unified School District (claimant) seeks reimbursement for the costs of the following activities:

- Informing parents and students of pertussis immunization requirements;
- Training staff regarding immunization requirements;
- Reviewing and maintaining immunization records;
- Excluding students from school if they have not been fully vaccinated against pertussis; and
- Related activities.

The Health and Safety Code sections pled in this test claim were intended to provide a “means for the eventual achievement of total immunization of appropriate age groups against...” diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis, poliomyelitis,

rubella, tetanus, and varicella.¹ The 2010 amendments were “needed to allow [the Department of Public Health (DPH)] to require pertussis booster vaccines for students prior to the start of the seventh grade.”² Accordingly, section 120335 was amended to prohibit school districts from unconditionally admitting or advancing pupils to the 7th through 12th grade levels during the 2011-2012 fiscal year, and to the 7th grade for every school year beginning in fiscal year 2012-2013, unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil’s age.³

In 2011, DPH adopted emergency regulations implementing the test claim statute at issue here.⁴ These regulations became effective on June 30, 2011, three months before the filing of this test claim, but were not pled or identified in the test claim filing.

Procedural History

Claimant filed the test claim on September 26, 2011. Based on the September 26, 2011 filing date, the potential period of reimbursement for this test claim begins on July 1, 2010. On October 5, 2011, Commission staff deemed the filing complete and numbered it 11-TC-02. No state agencies or interested parties have submitted comments on the test claim. On February 13, 2013, Commission staff issued the draft staff analysis and proposed statement of decision. On March 6, 2013, the claimant submitted a request for an extension of time to comment on the draft analysis and for a continuance of the hearing of this matter, both of which were granted for good cause. On March 28, 2013, the claimant submitted comments expressing disagreement with the conclusion in the draft staff analysis that the Commission does not have jurisdiction to make findings on regulations that were adopted to implement the 2010 test claim statute since those regulations were not pled in the test claim. Alternatively, the claimant requests that the test claim be amended to include the regulations on the theory that Government Code section 17554 permits the parties to agree to waive the application of any procedural requirement.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including 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

¹ Health and Safety Code section 120325.

² Assembly Third Reading Bill Analysis, Assembly Bill 354, as amended April 28, 2009.

³ See Health and Safety Code section 120335 operative until July 1, 2012; see also Health and Safety Code section 120335 operative July 1, 2012.

⁴ California Code of Regulations, Title 17 sections 6020, *et seq.* (Register 2011, No. 26, eff. 6/30/11).

actions: 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.

Claims

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

Subject	Description	Staff Recommendation
<u>Health and Safety Code section 120325, as amended by Statutes 2010, chapter 434.</u>	Health and Safety Code section 120325 recites the Legislature's intent to provide a means for the eventual achievement of total immunization of certain childhood diseases, including pertussis. Statutes 2010, chapter 434 amended section 120325 to add the American Academy of Family Physicians to the list of entities whose recommendations DPH should consider when determining whether to update the list of required vaccinations contained in sections 120325 through 120375. The test claim statute did not otherwise amend section 120325.	<i>Deny</i> – the plain language of section 120325 does not impose any state-mandated activities on school districts.
<u>Health and Safety Code section 120335, as amended by Statutes 2010, chapter 434.</u>	Commencing July 1, 2011, Health and Safety Code section 120335(d) prohibits a school district from unconditionally admitting or advancing any pupil to the 7th through 12th grade levels of any private or secondary school unless the pupil has been fully immunized against pertussis. Beginning July 1, 2012, Health and Safety Code section 120335(d) prohibits a school district from unconditionally admitting or advancing any pupil to the 7th grade unless the pupil has been fully immunized against pertussis.	<i>Deny</i> – the plain language of section 120335(d), contains a prohibition, but does not impose any state-mandated activities on school districts.
California Code of Regulations, Title 17, sections 6020,	These regulations were adopted by DPH to implement the 2010 test claim statute.	<i>The Commission does not have jurisdiction over</i>

6035, 6040, 6051, 6055, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11)	The claimant requests that the test claim be amended to include these regulations.	<i>these regulations.</i> These regulations were not properly pled in the test claim, and the claimant’s request to include them in the claim now is not timely.
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Analysis

Staff recommends that the Commission deny this test claim. Health and Safety Code section 120325 is a statement of legislative intent, and does not require school districts to perform any activities. Health and Safety Code section 120335, as amended and replaced by Statutes 2010, chapter 434, adds subdivision (d), which prohibits school districts from “unconditionally admit[ing] or advance[ing]” pupils to grades 7 through 12 unless they are fully immunized against pertussis. Section 120335(d), itself, does not direct or obligate school districts to engage in any activity or task. Although the activities identified by the claimant are addressed in emergency regulations adopted by DPH in June 2011, those regulations were not identified or specifically pled in the test claim as required by Government Code sections 17521, 17551, and 17553. The Commission does not have jurisdiction to make findings on regulations that are not properly pled in a test claim.

In addition, the claimant can no longer amend the test claim to add the DPH regulations. Pursuant to Government Code section 17557(e), a test claim may not be amended once it has been set for hearing. This matter was set for hearing when the draft analysis was issued on February 13, 2013. Moreover, the DPH regulations at issue became effective on June 30, 2011, more than 12 months from the date of the claimant’s March 28, 2013 comments on the draft analysis that requested the amendment. Allowing claimant to add the DPH regulations to the test claim now would improperly allow claimant to circumvent the 1-year statute of limitations for filing test claims.⁵ These time limits in the Government Code establish the Commission’s jurisdiction over test claim amendments, which cannot be waived by an agreement of the parties as suggested by the claimant. Government Code section 17554 allows all parties to a claim to waive *procedural* requirements, including procedural requirements relating to consolidating existing claims or for shortening time periods established in the law. However, section 17554 cannot be used to waive *jurisdictional* requirements.⁶

⁵ Government Code section 17551(c).

⁶ *Harrington v. Superior Court* (1924) 194 Cal. 185, 188; *Western States Petroleum Ass’n v. Department of Health Services* (2002) 99 Cal.App.4th 999, 1006.

Conclusion and Staff Recommendation

Accordingly, staff concludes that the test claim statute, which amended and replaced Health and Safety Code sections 120325 and 120335, does not impose a state-mandated program on school districts.

Staff further finds that the Commission does not have jurisdiction to make any findings on California Code of Regulations, title 17, sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11).

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Health and Safety Code Sections 120325 and 120335, as amended and replaced by Statutes 2010, Chapter 434 (AB 354)

Filed on September 26, 2011

By the Twin Rivers Unified School District,
Claimant.

Case No.: 11-TC-02

Immunization Records - Pertussis

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

(Adopted May 24, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 24, 2013. [Witness list will be included in the final statement of decision.]

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

The Commission [adopted/modified] the 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 a 2010 test claim statute that responded to a recent pertussis (whooping cough) epidemic in California. The test claim statute prohibits schools from admitting or advancing pupils to the 7th through 12th grade levels during the 2011-2012 fiscal year and, beginning in fiscal year 2012-2013, pupils entering or advancing to the 7th grade level, unless the pupil is fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. Under prior law, immunization against pertussis was, and continues to be required prior to the *first* admission to school, typically in kindergarten.

The Commission denies this test claim. Health and Safety Code section 120325 is a statement of legislative intent, and does not require school districts to perform any activities. Health and Safety Code section 120335, as amended by Statutes 2010, chapter 434, adds subdivision (d), which prohibits school districts from “unconditionally admit[ing] or advance[ing]” pupils to grades 7 through 12 unless they are fully immunized against pertussis. Section 120335(d), itself, does not direct or obligate school districts to engage in any activity or task. Although the activities identified by the claimant are addressed in emergency regulations adopted by the Department of Public Health (DPH) in June 2011, those regulations have not been pled. The Commission does not have jurisdiction to make findings on regulations that are not properly pled in a test claim. In addition, the claimant’s request to amend the test claim to include the regulations has not been timely filed.

Accordingly, the Commission finds that the test claim statute, which amended and replaced Health and Safety Code sections 120325 and 120335, does not impose a state-mandated program on school districts. The Commission further finds that it does not have jurisdiction to make any findings on California Code of Regulations, title 17, sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11). Accordingly, this test claim is denied.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 09/26/2011 | Claimant, Twin Rivers Unified School District, filed the test claim with the Commission. |
| 10/05/2011 | Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments. |
| 02/13/2013 | Commission staff issued the draft staff analysis and proposed statement of decision, setting the matter for the April 19, 2013 hearing. |
| 03/06/2013 | Claimant requested an extension of time to file comments and a postponement of the hearing. |
| 03/08/2013 | Claimant’s request for an extension of time and postponement of hearing was granted and this matter was set for hearing on May 24, 2013. |
| 03/28/2013 | Claimant submitted written comments on the draft staff analysis. |

II. Background

A. Test Claim Statute

This test claim seeks reimbursement for costs incurred by the Twin Rivers Unified School District (claimant) for activities pertaining to immunization against pertussis (whooping cough) for adolescent students. Amendments of sections 120325 and 120335 were “needed to allow [the Department of Public Health] to require pertussis booster vaccines for students prior to the

start of the seventh grade.”⁷ Pertussis is a highly communicable disease that lasts for many weeks and can be fatal in infants. Children, adolescents, and adults alike become susceptible and can contract pertussis when immunity from infection by the vaccine wanes. Therefore, a booster shot against pertussis is recommended in early adolescence to reduce pertussis infection rates.⁸ After the test claim statute was enacted, DPH adopted emergency regulations relating to pertussis vaccination and reported the following information in its statement of reasons:

California is in the midst of a pertussis epidemic. In 2010, there were 10 infant deaths and more than 9,000 cases of pertussis reported to the Department; the most cases reported in one year in California since 1947. The infants who died were too young to begin their immunizations and were most likely infected by adolescents and adults with pertussis disease. Routine childhood immunization against pertussis does not provide lasting immunity. The first pertussis-containing vaccines for adolescents and adults were licensed in 2005 as a combination tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine (Tdap). Tdap vaccine is recommended by ACIP, AAP, and AAFP to protect adolescents and adults against pertussis. Based on recent survey data, many adolescents have not received a recommended pertussis booster. The 7th through 12th grade pupils are at highest risk of waning pertussis immunity and without intervention will continue to prolong the pertussis epidemic.⁹

i. Health and Safety Code Section 120325

Health and Safety Code section 120325 was originally enacted in 1977 and contains the Legislature’s statement of intent regarding Health and Safety Code sections 120325 through 120375. Section 120325 states that sections 120325 through 120375 were enacted to provide “[a] means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases: [diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis (whooping cough), poliomyelitis, rubella, tetanus, and varicella (chickenpox)].” The Legislature also intended the law to provide that:

- Persons required to be immunized be allowed to obtain immunization from whatever medical source they desire, subject only to the condition that the immunization be performed in accordance with the regulations of the DPH and that a record of the immunization is made in accordance with the regulations;
- Exemptions from immunization be available for medical reasons or because of personal beliefs; and that

⁷ Assembly Third Reading Bill Analysis, Assembly Bill 354, as amended April 28, 2009, p. 2.

⁸ *Id.* at pp. 2-3.

⁹ Exhibit B, DPH Initial Statement of Reasons for “School Immunization Requirements: Grades 7 through 12” dated May 19, 2011, pages 2 and 3 (internal citations omitted).

- Adequate records of immunization be kept so that health departments, schools, and other institutions, parents and guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools.¹⁰

The test claim statute did not alter the childhood diseases included in section 120325 or the Legislature's statement of intent contained in section 120325. The code section was amended, however, to add the American Academy of Family Physicians to the list of entities whose recommendations the Department of Public Health must consider when determining whether to update the list of required vaccinations contained in sections 120325 through 120375.

ii. Health and Safety Code Section 120335

Health and Safety Code section 120335 incorporates the list of childhood diseases contained in section 120325 and prohibits school districts from admitting students unless they are fully immunized.¹¹ The test claim statute did not alter the childhood diseases listed in section 120335. However, with respect to pertussis immunization, the test claim statute added subdivision (d) to section 120335, which prohibited school districts, during the period from July 1, 2011 until June 30, 2012, from admitting or advancing any student to the 7th through 12th grade levels unless the pupil was fully immunized, with appropriate boosters for the pupil's age. Subdivision (d) states:

Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.¹²

Section 3 of the bill then replaced section 120325 with a new code section, effective July 1, 2012, to prohibit school districts from admitting or advancing any pupil to the 7th grade unless the pupil is fully immunized against pertussis, including all age appropriate boosters. Section 120325 subdivision (d) as of July 1, 2012 states:

The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

Claimant has alleged that Health and Safety Code sections 120325 and 120335 have caused it to incur reimbursable costs to notify parents of the pertussis vaccination requirements for students

¹⁰ Health and Safety Code section 120325(b)(c)(d).

¹¹ Health and Safety Code section 120335(b).

¹² *Ibid.*

entering the 7th through 12th grades, to perform activities not required by prior law including training staff, notifying parents and students, and reviewing and keeping immunization records.

B. Prior Law and Prior Related Test Claim Decisions

1. Prior Law

Under the law immediately prior to the enactment of the test claim statute, Health and Safety Code section 120335(b) prohibited the “governing authority”¹³ of schools from unconditionally admitting a pupil to “...any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center unless prior to his or her first admission to the institution he or she has been fully immunized.” In determining whether a student is fully immunized, section 120335(b) further required that the following diseases be documented: diphtheria, hepatitis B, haemophilus influenza type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and varicella.

The immunizing agents and age appropriate immunization requirements for each disease are specified by DPH, in consultation with the California Department of Education (CDE), pursuant to Health and Safety Code sections 120330 and 120335, and California Code of Regulations, title 17, sections 6020 *et seq.* (DPH regulations). These regulations lay out the process by which school districts are required to receive documentation that the student was fully immunized. Health and Safety Code section 120345 and section 6065 of the Title 17 regulations, for example, require that a written record be given to the person immunized by the physician or agency performing the immunization that includes the child’s name, birthdate, type of vaccine administered, the date the vaccine was administered, and the name of the physician or agency administering the vaccine. Under existing regulations, school districts are also required to record each student’s immunization information on a form supplied by DPH, which becomes part of each student’s mandatory pupil record. Pursuant to Health and Safety Code section 120375 and section 6070 of the Title 17 regulations, each student’s immunization record shall contain the child’s name, birthdate, date of unconditional or conditional admission, type of vaccine administered, the date the vaccine was administered, date and type of exemption, if any.

The immunizations required by Health and Safety Code sections 120325 *et seq.* may be obtained from any private or public source desired as long as the immunization is administered and records are made in accordance with regulations of DPH.¹⁴ In addition, pursuant to Health and Safety Code section 120365 and section 6051 of the Title 17 regulations, a parent or guardian may exercise the right to refuse required immunizations by asserting either a medical or personal belief exemption, which allows the student to be admitted unconditionally. A permanent

¹³ Health and Safety Code section 120335(a) defines “governing authority” as “the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.”

¹⁴ Health and Safety Code section 120345.

medical exemption shall be granted upon the filing with the school a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated.¹⁵ A personal beliefs exemption shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, that such immunization is contrary to his or her beliefs.¹⁶

Any student who lacked documentation of all immunizations required by prior law, and did not have a permanent medical exemption or personal beliefs exemption to immunization, could be admitted *conditionally* under specified circumstances pursuant to section 6035 of the Title 17 regulations; for example if the student had a temporary medical exemption or was in the process of receiving doses of the required vaccines. However, schools are required to prohibit from further attendance any student admitted conditionally who fails to obtain the required immunizations within the 10 school days time limit set forth in the Title 17 regulations and is not otherwise exempted from immunization requirements.¹⁷ These requirements remain in the law.

2. Prior Test Claim SB 90-120: Immunization Records

Under test claim SB 90-120 regarding immunizations, Statutes of 1977, Chapter 1176, which added former Health and Safety Code section 3380, now renumbered as Health and Safety Code section 120325, required that persons under 18 years of age were immunized against poliomyelitis, measles, diphtheria, pertussis, and tetanus prior to unconditional first admission to a public or private elementary or secondary school, child care center, day nursery, nursery school, or development center. Regulations adopted to implement this act required school districts to maintain records of immunization of all school age children and to report periodically to the state on the immunization status of all new entrants into the schools. The Board of Control, as predecessor to the Commission, found that these requirements constituted a reimbursable state mandate, finding prior law did not require school districts to engage in record keeping, record review, parent notification, or reporting activities related to the specified pupil immunizations.

3. Prior Test Claim 98-TC-05: Immunization Records – Hepatitis B

A second test claim, 98-TC-05, regarding immunizations for Hepatitis B, sought reimbursement for costs incurred as a result of amendments to Health and Safety Code section 120335 and legislation amending other statutes and regulations adopted by DPH relating to monitoring, record keeping, reporting, and parent notification requirements, and enforcement of pupil

¹⁵ California Code of Regulations, title 17, section 6051(a); Health and Safety Code section 120370.

¹⁶ *Id.* at section 6051(b).

¹⁷ Health and Safety Code section 120375; California Code of Regulations, title 17, section 6055.

immunization requirements for Hepatitis B.¹⁸ The Commission found that, as amended, Health and Safety Code section 120335 and other related legislation and regulations imposed new requirements regarding immunizations for Hepatitis B, documentation and reporting of immunizations, mandatory pupil exclusion and parent notification requirements. The Commission found that these activities were not contained in prior law and thus constituted a new program or higher level of service and a reimbursable state mandate.

III. Position of Claimant and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program or higher level of service within an existing program. Specifically, claimant requests reimbursement for the following activities, which it alleges must be done to comply with Health and Safety Code sections 120325 and 120335:

- (1) Informing parents/students of the immunization requirements regarding pertussis; developing procedures; training staff; obtaining, reviewing, and maintaining student immunization records; and contacting parents and legal guardians for non-compliance;
- (2) Periodically reporting to the state on the immunization status of all entrants into schools;
- (3) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil seeking admission to the school in the state for the first time;
- (4) Recording and maintaining in each pupil's permanent record the pupil's immunization or exemption from immunization against pertussis;
- (5) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil advancing to the seventh grade;
- (6) Periodically reviewing each pupil's immunization record until the pupil is fully immunized against pertussis;
- (7) Documenting vaccine doses on each pupil's immunization record as immunizations are administered;
- (8) Notifying parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;

¹⁸ Test claim 98-TC-05 arose from amendments and additions to Education Code section 48216, Health and Safety Code sections 120325, 120335, 120340, and 120375, and California Code of Regulations, Title 17 sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075.

- (9) Referring the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- (10) Excluding pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and
- (11) Collecting data and preparing reports annually on immunization status for the Department of Health Services, and preparing follow-up or additional reports upon request by county health departments and the state.

In comments submitted in response to the draft staff analysis, claimant objected to the conclusion that the DPH regulations implementing the test claim statute were not properly pled. Although claimant's comments admit that the activities listed above are set forth in the DPH regulations rather than the test claim statute, claimant asserts that the Commission has jurisdiction over the DPH regulations because the test claim noted that the Commission previously issued a decision regarding test claim 98-TC-05, which addressed, among other things, prior versions of the DPH regulations. Claimant further argues that the Commission has jurisdiction over the DPH regulations because the test claim statute specifically stated that DPH is authorized to adopt emergency regulations implementing the test claim statute. Although claimant did not discuss this emergency authorization to adopt regulations in the test claim, claimant believes that including a copy of the test claim statute which includes this emergency authorization is sufficient to meet the Commission's pleading requirements. Claimant further argues that it was not required to specifically cite to any regulations which claimant intended to plead as part of a test claim, nor was it required to attach copies of such regulations to the test claim.

The claimant alternatively requests that its test claim be amended to include the DPH regulations (Cal. Code Regs., tit. 17, §§ 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075; Register 2011, No. 26, eff. 6/30/11) as part of the claim. Pursuant to Government Code section 17554, the claimant further requests that the Commission waive any "procedural requirement" allowing the proposed amendment to be timely filed as part of the original test claim filing.¹⁹

Claimant alleges that the activities listed above caused the claimant to incur \$25,000 in costs during the 2011-2012 fiscal year and will cause the claimant to incur \$25,000 in costs for each year thereafter. Claimant also alleges that the statewide cost estimate to all affected school districts to implement the test claim statutes will be \$6,000,000 per year.

B. Position of State Agencies and Interested Parties

No state agency or other interested party has filed a response to this test claim.

¹⁹ Government Code section 17554 states: "With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods."

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 funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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.”²⁰ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²¹

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.²²
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.²³
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.²⁴

²⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²² *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

²³ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²⁵

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²⁶ The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁸

A. Health and Safety Code Section 120325 Does Not Impose any State-Mandated Activities on School Districts.

Health and Safety Code section 120325 contains the Legislative intent with respect to childhood immunizations. The claimant pled section 120325 in its test claim and appears to suggest, although not directly, that section 120325 directs school districts to engage in a reimbursable state-mandated program or higher level of service relating to immunization against pertussis.²⁹ However, claimant’s written narrative and supporting declaration of Robert Roach, Mandate Analyst for the claimant, fail to specify what, if anything, section 120325 directs school districts to do.

The Commission finds that the plain language of section 120325 does not impose any specific activities on schools regarding immunizations against pertussis. Accordingly, Health and Safety Code section 120325, as amended by Statutes 2010, chapter 434, does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6.

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²⁶ *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

²⁷ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

²⁸ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

²⁹ Exhibit A, test claim, dated September 22, 2011, section 4 (“TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED”), p. 1, and section 5, p. 6.

B. The Plain Language of Health and Safety Code Section 120335 Does Not Impose any State-Mandated Activities on School Districts

In 2010, the test claim statute added subdivision (d) to section 120335 for fiscal year 2011-2012 to state the following:

Commencing July 1, 2011, the governing authority shall not unconditionally admit or advance any pupil to the 7th through 12th grade levels, inclusive, of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. [Emphasis added.]

Statutes of 2010, Chapter 434, section 3 then repealed and replaced section 120335 subdivision (d) with a new section 120335(d), which became operative July 1, 2012 and which states the following:

The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. [Emphasis added.]

The claimant contends that section 120335(d) requires school districts to perform a number of tasks including the following:

- (1) Informing parents/students of the immunization requirements regarding pertussis; developing procedures; training staff; obtaining, reviewing, and maintaining student immunization records; and contacting parents and legal guardians for non-compliance;
- (2) Periodically reporting to the state on the immunization status of all entrants into schools;
- (3) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil seeking admission to the school in the state for the first time;
- (4) Recording and maintaining in each pupil's permanent record the pupil's immunization or exemption from immunization against pertussis;
- (5) Requesting and reviewing lawful exemption or proof of immunization against pertussis from each pupil advancing to the seventh grade;
- (6) Periodically reviewing each pupil's immunization record until the pupil is fully immunized against pertussis;
- (7) Documenting vaccine doses on each pupil's immunization record as immunizations are administered;

- (8) Notifying parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;
- (9) Referring the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- (10) Excluding pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and
- (11) Collecting data and preparing reports annually on immunization status for the Department of Health Services, and preparing follow-up or additional reports upon request by county health departments and the state.

The plain language of section 120335(d), however, does not require school districts to perform any activities. Section 120335(d) states that schools “shall not unconditionally admit or advance” pupils to the 7th through 12th grade levels during the 2011 school year and to the 7th grade thereafter unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil’s age. Section 120335 *prohibits* school districts from doing something; more specifically, from unconditionally admitting or advancing pupils unless the pupil has been fully immunized against pertussis.

This interpretation is supported by the legislative history of the test claim statute. The Assembly Floor analysis on the last amended version of the bill states the following:

Since potential costs to the bill would occur only if DPH made a decision to promulgate regulations to update its immunization requirements, the fiscal years in which potential costs and savings would occur are unknown and would depend on when DPH regulations went into effect.³⁰

Accordingly, Health and Safety Code section 120335 does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

C. The Commission does not have jurisdiction to consider the Title 17 regulations adopted by DPH regarding the pertussis vaccination

As noted in legislative history of the 2010 test claim statute, the activities identified by the claimant are addressed by DPH regulations that exist to implement and interpret Health and Safety Code sections 120325 through 120375. In 2011, DPH adopted emergency regulations implementing the test claim statute at issue here.³¹ These regulations became effective on

³⁰ Assembly Floor Analysis, Concurrence in Senate Amendments to AB 354 on August 17, 2010 (AB 354, 2009-2010 Reg.Sess.)

³¹ California Code of Regulations, Title 17 sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11). (See also, DPH’s Initial Statement of Reasons, dated May 19, 2011.)

June 30, 2011, three months before the filing of this test claim, but have not been pled by the claimant.

The Commission does not have jurisdiction to make findings on statutes and executive orders unless those statutes or executive orders are pled in a test claim. Government Code section 17521 defines test claim to mean “the first claim filed with the commission alleging that *a particular statute or executive order* imposes costs mandated by the state...” An executive order is defined to include regulations.³² Government Code section 17553(b)(1) further requires that all test claims contain at least “a written narrative that *identifies the specific sections of statutes or executive orders* and the effective date *and register number of regulations* alleged to contain a mandate...” In addition, the statutes and executive orders pled for any given test claim are required to be listed in box 4 of the test claim form and are then included in the caption on page one of the Notice of Complete Test Claim Filing, draft staff analysis, final staff analysis and Statement of Decision, as well as on the notice and agenda. Statutes and executive orders not included in box 4 are not pled.³³ The DPH regulations are not included in box 4 and are not discussed in the written narrative of the test claim. Although claimant cites to prior test claims to support reimbursement for the regulations at issue here, prior Commission decisions are not controlling and did not include findings on the 2011 regulations at issue here. In addition, unlike this claim, the prior test claim on *Hepatitis B* (98-TC-05) properly pled the regulations that implemented the school immunization program for hepatitis B.

In addition, the claimant can no longer amend the test claim to add the DPH regulations. Pursuant to Government Code section 17557(e), a test claim may not be amended once it has been set for hearing and this matter was set for hearing when the draft analysis was issued on February 13, 2013.³⁴ Moreover, the DPH regulations at issue became effective on June 30, 2011, more than 12 months from the date of the claimant’s March 28, 2013 comments on the draft analysis that requested the amendment. Allowing claimant to add the DPH regulations to the test claim now would improperly allow claimant to circumvent the 1-year statute of limitations for filing test claims.³⁵ These time limits in the Government Code establish

³² Government Code section 17516.

³³ Sections 1183, subdivision (d) and 1183.02, subdivision (c) of the Commission’s regulations; and, Commission on State Mandates Test Claim Form adopted pursuant to Government Code section 17553, box 4.

³⁴ Government Code section 17557(e) states: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.”

³⁵ Government Code section 17551(c); California Code of Regulations, title 2, section 1183(c) [which requires “any test claim or amendment filed with the commission must be filed not later than 12 months following the effective date of a statute or executive order”].

the Commission's jurisdiction over test claim amendments, which cannot be waived by an agreement of the parties as suggested by the claimant. Government Code section 17554 allows all parties to a claim to waive *procedural* requirements, including procedural requirements relating to consolidating existing claims or for shortening time periods established in the law. However, section 17554 cannot be used to waive *jurisdictional* requirements.³⁶

Based on the foregoing, the Commission finds that it does not have jurisdiction to make findings on DPH regulations that were not pled.

V. Conclusion

Based on the foregoing, the Commission concludes that Health and Safety Code sections 120325 and 120335, as amended by Statutes 2010, chapter 434 do not impose a 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.

The Commission further finds that it does not have jurisdiction to make any findings on California Code of Regulations, title 17, sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075. (Register 2011, No. 26, eff. 6/30/11).

³⁶ *Harrington v. Superior Court* (1924) 194 Cal. 185, 188; *Western States Petroleum Ass'n v. Department of Health Services* (2002) 99 Cal.App.4th 999, 1006.

Commission on State Mandates

Original List Date: 9/27/2011
Last Updated: 5/8/2013
List Print Date: 05/08/2013
Claim Number: 11-TC-02
Issue: Immunization Records - Pertussis

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Mr. Jay Lal State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 324-0256 Email: JLal@sco.ca.gov Fax: (916) 323-6527
Mr. Paul Golaszewski Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8341 Email: Paul.Golaszewski@lao.ca.gov Fax:
Mr. Robert Roach Twin Rivers Unified School District 3222 Winona Way North Highlands, CA 95660	Tel: (916) 566-1600 Email: rob.roach@twinriversusd.org Fax:
Mr. Nicolas Schweizer Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: (916) 445-0328 Email: nicolas.schweizer@dof.ca.gov Fax: (916) 323-9530
Ms. Jennifer Kuhn Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8332 Email: Jennifer.kuhn@lao.ca.gov Fax: (916) 324-4281
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 322-9891 Email: jkanemasu@sco.ca.gov Fax:

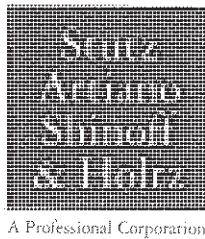
Mr. Jeff Goldstein MAXIMUS 17310 Red Hill Avenue, Suite 340 Irvine, CA 92614	Tel: (949) 440-0845 Email jeffgoldstein@maximus.com Fax: (949) 440-0855
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916) 443-9136 Email jolene_tollenaar@mgtamer.com Fax: (916) 443-1766
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: (209) 834-0556 Email dcichella@cscentral.com Fax: (209) 834-0087
Mr. Keith Nezaam Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916) 445-8913 Email Keith.Nezaam@dof.ca.gov Fax:
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-5849 Email jspano@sco.ca.gov Fax: (916) 327-0832
Mr. Dennis Speciale State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 324-0254 Email DSpeciale@sco.ca.gov Fax:
Mr. Brian Uhler Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8328 Email brian.uhler@lao.ca.gov Fax:
Ms. Yazmin Meza Department of Finance 915 L Street Sacramento, CA 95814	Tel: (916) 445-0328 Email Yazmin.meza@dof.ca.gov Fax:
Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Email donna.ferebee@dof.ca.gov Fax: (916) 323-9584
Ms. Andra Donovan San Diego Unified School District Legal Services Office 4100 Normal Street, Room 2148 San Diego, CA 92103	Tel: (619) 725-5630 Email adonovan@sandi.net Fax:

Mr. Mike Brown School Innovations & Advocacy 5200 Golden Foothill Parkway El Dorado Hills, CA 95762	Tel: (916) 669-5116 Email: mikeb@sia-us.com Fax: (888) 487-6441
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: (916) 324-4728 Email: cbingham@cde.ca.gov Fax: (916) 319-0116
Ms. Juliana F. Gmur 1865 Hernden Avenue, Suite K-44 Clovis, CA 93611	Tel: (559) 960-4507 Email: julianagmur@msn.com Fax:
Mr. Tyler Asmundson Commission on State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814	Tel: (916) 323-3562 Email: Tyler.Asmundson@csm.ca.gov Fax:
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Email: harmeet@calsdrc.com Fax: (916) 727-1734
Mr. Christien Brunette MAXIMUS 625 Coolidge Drive, Suite 100 Folsom, CA 95630	Tel: (916) 471-5510 Email: christienbrunette@maximus.com Fax: (916) 366-4838
Mr. Frank Murphy MAXIMUS 17310 Red Hill Avenue, Suite 340 Irvine, CA 92614	Tel: (949) 440-0845 Email: frankmurphy@maximus.com Fax: (949) 440-0855
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: (951) 303-3034 Email: sandrareynolds_30@msn.com Fax: (951) 303-6607
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Email: susan.geanacou@dof.ca.gov Fax: (916) 449-5252
Mr. Chris Ferguson Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Email: Chris.Ferguson@dof.ca.gov Fax:

Mr. J. Bradley Burgess MGT of America 895 La Sierra Drive Sacramento, CA 95864	Tel: (916)595-2646 Email Bburgess@mgtamer.com Fax:
Mr. Keith B. Petersen SixTen & Associates P.O. Box 340430 Sacramento, CA 95834-0430	Tel: (916)419-7093 Email kbpsixten@aol.com Fax: (916)263-9701
Mr. Mark Ibele Senate Budget & Fiscal Review Committee (E-22) California State Senate State Capitol, Room 5019 Sacramento, CA 95814	Tel: (916)651-4103 Email Mark.Ibele@sen.ca.gov Fax: (916)323-8386
Mr. Mark Rewolinski MAXIMUS 625 Coolidge Drive, Suite 100 Folsom, CA 95630	Tel: (916)471-5516 Email markrewolinski@maximus.com Fax: (916)366-4838
Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819	Tel: (916)455-3939 Email andy@nichols-consulting.com Fax: (916)739-8712
Ms. Elisa Wynne Department of Finance Department of Finance 915 L Street Sacramento, CA 95814	Tel: (916)445-0238 Email elisa.wynne@dof.ca.gov Fax:
Ms. Kathy Rios State Controllers Office Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916)324-5919 Email krios@sco.ca.gov Fax: (916)323-4807
Mr. Allan Burdick CSAC-SB 90 Service 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916)443-9236 Email allan_burdick@mgtamer.com Fax: (916)443-1766
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916)446-7517 Email robertm@sscal.com Fax: (916)446-2011

Ms. Socorro Aquino State Controller's Office Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 322-7522 Email SAquino@sco.ca.gov Fax:
Ms. Keely Bosler Senate Budget and Fiscal Review Committee State Capitol, Room 5019 Sacramento, CA 95814	Tel: (916) 651-4103 Email Keely.Bosler@sen.ca.gov Fax:
Ms. Lacey Baysinger State Controller's Office Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 324-0254 Email LBaysinger@sco.ca.gov Fax:
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: (916) 454-7310 Email steve@shieldscg.com Fax: (916) 454-7312
Mr. Arthur Palkowitz Stutz Artiano Shinoff & Holtz 2488 Historic Decatur Road, Suite 200 San Diego, CA 92106	Tel: (619) 232-3122 Email apalkowitz@stutzartiano.com Fax: (619) 232-3264
Ms. Lehoa Nguyen California Department of Public Health 1501 Capitol Ave., Suite 71.5064 MS 0506, P.O. Box 997377 Sacramento, CA 95899-7377	Tel: (916) 440-7841 Email lehoa.nguyen@cdph.ca.gov Fax: (916) 440-7788
Mr. Christian Osmena Department of Finance 915 L Street Sacramento, CA 95814	Tel: (916) 445-0328 Email christian.osmena@dof.ca.gov Fax:
Ms. Evelyn Calderon-Yee State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-0706 Email eyee@sco.ca.gov Fax: (916) 322-4404
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 240 Gold River, California 95670	Tel: (916) 852-8970 Email dscribner@max8550.com Fax: (916) 852-8978
Ms. Veronica Lanto San Jose Unified School District 855 Lenzen Avenue	Tel: (408) 535-6572 Email Veronica_Lanto@sjsud.org Fax: (408) 535-6692

2488 Historic Decatur Road
Suite 200
San Diego, CA 92106-6113
619.232.3122
Fax 619.232.3264
www.stutzartiano.com



Arthur M. Palkowitz

apalkowitz@stutzartiano.com

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Commission on
State Mandates
May 15, 2013

LATE FILING

May 15, 2013

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

**Re: Health and Safety Code sections 120325 and 120335
Statutes 2010, Chapter 434 (AB 354)
Immunization Records - Pertussis (11-TC-02)**

Dear Ms. Halsey:

The following comments are submitted in response to the Final Staff Analysis for the Immunization Records - Pertussis (11-TC-02) test claim submitted by the claimant, Twin Rivers Unified School District.

1. CLAIMANT HAS COMPLIED WITH TEST CLAIM REQUIREMENTS

On September 26, 2011, claimant, Twin Rivers Unified School District, filed a test claim with the Commission. On October 5, 2011, Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.¹ “No state agency or other interested party has filed a response to this test claim.”²

The test claim (page 9), Section G, identifies a prior mandate determinations, Immunization Records: Hepatitis B test claim, made by the Commission on State Mandates that is *related* to the alleged mandate.(emphasis added) The test claim further references the California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075.³ Section 2 (g) of the test claim statute, attached to the test claim, states emergency regulations may be adopted to

¹ Immunization Records- Pertussis 11-TC-02 (DSA p. 6)

² Immunization Records- Pertussis 11-TC-02 (DSA p. 12)

³ On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Immunization Records: Hepatitis B test claim, finding that Statutes 1978, chapter 325; Statutes 1979, chapter 435; Statutes 1982, chapter 472; Statutes 1991, chapter 984; Statutes 1992, chapter 1300; Statutes 1994, chapter 1172; Statutes 1995, chapters 291 and 415; Statutes 1996, chapter 1023; Statutes 1997, chapters 855 and 882; and California Code of Regulations, title 17, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075. (test claim p. 9-10)(DSA p.10)

Heather Halsey
Executive Director
Commission on State Mandates

May 15, 2013
Page 2

**Health and Safety Code sections 120325 and 120335
Statutes 2010, Chapter 434 (AB 354)
Immunization Records - Pertussis (11-TC-02)**

implement the statute.⁴

Requiring the register number of regulations be attached to the test claim form is not supported by the reading of the “plain language” contained in the regulation (See footnote 29 of the Final Staff Analysis), nor is it included in the requirements of the test claim form.⁵ Accordingly, the Commission has jurisdiction of the Title 17 Regulations referenced above.

2. TEST CLAIM PLED STATE MANDATED ACTIVITIES

As pled by the claimant in the test claim, (test claim, p. 7.) school districts are required, “to inform parents/students of the new immunization requirements and will be required to train staff, obtain, review, maintain student immunization records and contact parents and legal guardians for non-compliance. The law requires school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools.”

Other activities pled in the test claim:

Request and review lawful exemption or proof of immunization from each pupil seeking admission to school in the state for the first time.

- Record each pupil's immunization for, or exemption from immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization from each pupil advancing to the seventh grade.

⁴ Section 2 (g) of the test claim statute states, The department may adopt emergency regulations to implement subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rule making provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

⁵ 7. Documentation support the written narrative with copies of all of the following:
(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
(E) statutes, chapters of original legislatively determined mandate and any amendments.

(<http://www.csm.ca.gov/docs/TCForm.pdf>)

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- Periodically review the pupil's immunization record until the pupil is fully immunized.
- Document vaccine doses on the pupil's immunization record as they are administered.
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented.
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations.
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification.
- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.⁶

The above required activities impose a state-mandated program on school districts.

3. CLAIMANT REQUESTS TEST CLAIM BE AMENDED

The application of Government Code 17554 permits the parties to agree to waive the application of any procedural requirement.⁷ Claimant requests the test claim be amended to include the 17 California Code of Regulations sections 6020, 6035, 6040, 6051, 6055, 6065, 6070, and 6075 and Register of Actions that are attached. The equitable application of Government Code section 17554, provides all parties to the claim, the opportunity to agree that the commission may waive the application of any procedural requirement of attaching the regulation with the test claim.

4. COMMISSION MAY TAKE JUDICIAL NOTICE OF THE REGULATIONS

The Commission need only take judicial notice of the regulations. California Evidence Code Section 452 (b) permits judicial notice with, "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States," (g) "facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute," (h) "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of

⁶ "The activities identified by the claimant are addressed by DPH regulations that exist to implement and interpret Health and Safety Code sections 120325 through 120375." (DSA, p.15)

⁷ Government Code section 17554. With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

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reasonably indisputable accuracy.”⁸ The analysis fails to provide a rational basis, as there is none, for not taking judicial notice of the regulations.

CONCLUSION

Based on the test claim filed timely and complete, no state agency or other interested party filing a response to the test claim, test claim statute referencing regulations along with the application of Government Code 17554 and the doctrine of judicial notice the evidence must be submitted with the findings that the test claim statute is a reimbursable state mandated program.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.


Arthur M. Palkowitz
Attorney for the Claimant

⁸ Cal. Evidence Code Section 452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.