

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA.

IN RE TEST CLAIM ON:

Education Code Sections 5 120 1.5 and 5 1554  
as added or amended by Statutes 1998,  
Chapter 403;

Filed on March 20, 2000, and amended on  
July 13, 2000; to add

Education Code Section 5 1553, subdivision  
(b)(1)(A), as amended by Statutes 1999,  
Chapter 234;

By Sweetwater Union High School District,  
Claimant.

No. 99-TC-07, 00-TC-0 1

*AIDS Prevention Instruction II*

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 October 24, 2002)*

**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 October 28, 2002.

  
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PAULA HIGASHI, Executive Director

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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 October 24, 2002)*

**STATEMENT OF DECISION**

The Commission heard and decided this test claim on September 26, 2002 during a regularly scheduled hearing. The Commission adopted the final staff analysis as amended by the errata sheet, with a modification, finding that providing AIDS prevention courses that are factual and medically accurate, as defined, is not reimbursable. Larry Hendee and Carol Shaw appeared for claimant, Sweetwater Union High School District. Susan Geanacou and Matt Aguilera appeared on behalf of the Department of Finance.

At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

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 approved this test claim by a 6-0 vote.

**BACKGROUND**

Claimant, Sweetwater Union High School District, submitted a test claim alleging that the test claim legislation constitutes a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The claim arose from enactments of or amendments to Education Code Sections 51201.5, 51554 and 51553, Statutes 1998, chapter 403, and Statutes 1999, chapter 234. Section 51201.5 was amended to (1) add instructional content to AIDS prevention instruction; (2) alter the parent/guardian notification requirements; (3) prohibit disciplinary action, academic penalty or sanction against a pupil whose parent or guardian opts the pupil out of the instruction; and (4) require an alternative educational activity for a pupil whose parents opt the pupil out of the instruction. Section

5 1554, enacted by Statutes 1998 chapter 403, requires written notification to a parent or guardian before a pupil receives instructions on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered by an outside organization or guest speakers brought in specifically to provide that instruction. Statutes 1999, chapter 234 amended section 51553 to require all sex education courses to be medically accurate and objective and free of racial, ethnic, and gender biases.

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 175 14. Claimant requests reimbursement for the following activities related to Statutes 1998, chapter 403 :

- (1) Reviewing the statute to determine the new requirements;
- (2) Preparing and/or revising policies, procedures, and forms in order to implement the new requirements in Statutes 1998, chapter 403;
- (3) Providing additional in-service training in the new AIDS prevention instruction topics mandated by Statutes 1998, chapter 403;
- (4) Conducting additional planning and curriculum selection with respect to the new AIDS prevention instruction topics mandated by Statutes 1998, chapter 403;
- (5) Revising and providing notice to parents as part of the annual parent notifications regarding their right to obtain a copy of Education Code sections 5 120 1.5 and 5 1553 from the school district;
- (6) Copying and maintaining file copies of Education Code sections 5 1201.5 and 5 1553 and making these sections available to parents on request;
- (7) Notifying parents by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, and each time that a teacher or administrator employed by the school district delivers AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) information regarding parents of their right to obtain a copy of Education Code sections 5 120 1.5 and 5 153 3 from the school district; and
- (8) Receiving requests from parents or guardians to exclude their children from any AIDS prevention instruction, determining which alternative educational activities will be made available to those pupils, and offering alternative educational activities to those pupils.

In its amended test claim (OO-TC-01) claimant requests reimbursement for the following additional activities related to Statutes 1999, chapter 234:

- (1) 'Reviewing the statute to determine the new requirements;
- (2) Preparing and/or revising policies, procedures, and forms in order to implement the new requirements in new requirements in chapter 234;
- (3) Providing additional in-service training for presenting factual and accurate AIDS prevention instruction topics mandated by chapter 234;
- (4) Conducting additional planning and curriculum selection to ensure presenting factual and accurate AIDS prevention instruction topics mandated by chapter 234;

- (5) Costs of purchasing new materials compliant with the provisions mandated by chapter 234,

Claimant proposes to amend the Parameters and Guidelines for the AIDS Instruction mandate to add these activities. Claimant also proposes that the Commission adopt a uniform cost allowance for some of the activities in the test claim.

In 1993, the Commission determined, in test claim CSM-4422 (AIDS Instruction), that sections 5 1201.5 and 5 1229.8 imposed a reimbursable state mandated program or higher level of service. The Commission found that Statutes 199 1, chapter 8 18 (Ed. Code, §§ 5 120 1.5 and 5 1229.8) require school districts to provide AIDS prevention instruction to all pupils in grades 7 through 12, as specified. This includes the costs of training employees that provide AIDS prevention instruction to district staff and students (with the exception of in-classroom teacher time), costs for school district and county office of education in-service training and planning; costs for employees involved in curriculum planning and selection of instructional materials and the costs for those materials; staff costs and materials for written notification to parents that their children will be receiving AIDS prevention instruction. Costs already reimbursed under test claim' CSM-4422, as outlined in the parameters and guidelines, are not reimbursable under this test claim.

DOF originally submitted comments on June 29, 200.0 on each of the activities as follows.

- (1) Reviewing the statute to determine the new requirements does not appear to create a state-mandated cost, since schools must comply with all applicable laws and reviewing the law to 'ensure compliance is within the existing responsibilities of a school.
- (2) Preparing and/or revising policies, procedures, and forms appears to be a reimbursable mandate with minor, one-time costs associated with the new code sections.
- (3) Additional in-service training in the new AIDS prevention instruction topics is not a reimbursable mandate because additional information regarding monogamy, avoidance of multiple partners, and compassion for people suffering from terminal illness is minimal and absorbable.
- (4) Conducting additional planning and curriculum selection in AIDS prevention instruction is not a reimbursable mandate because planning and selecting course curriculum are part of the existing level of services and requirements conducted by school personnel. Since schools are already required to provide AIDS prevention instruction, they are already planning and selecting the curriculum for these courses.
- (5) Revising and providing notice to parents as part of the annual parent notifications regarding the right to obtain a copy of sections 51201.5 and 51553 from the school district is a reimbursable state mandate not previously required. But since districts were already required to provide parents written notice regarding the AIDS prevention instruction, the costs of added notice would be minimal.
- (6) Copying and maintaining file copies of section 51201.5 and 51553 appear to be a reimbursable mandate, but should be minimal due to the brevity of the code sections and limited nature of the task, and should only be copied on request.
- (7) Notifying parents by mail to provide notices regarding AIDS prevention instruction by an outside organization, guest speaker, or teacher specifying the date, name of

organization or affiliation of each guest speaker, and parental rights appears to be a reimbursable mandate.

- (8) Receiving requests from parents or guardians to exclude their children from any AIDS prevention instruction, determining which alternative educational activities will be made available to those pupils, and offering alternative education activities to those pupils is alleged by claimant to be a reimbursable mandate. DOF believes offering alternative education activities is not a reimbursable mandate because the statute does not require the district to create alternative educational activities for students who do not attend AIDS prevention instruction. The law allows flexibility in providing students with existing alternative educational activities, potentially including study hall, physical education, or reading in the school library.

Regarding Statutes 1999, chapter 234, the subject of amended test claim 00-TC-01, DOF repeats that reviewing the statute to determine the new requirements does not appear to create a state-mandated cost, since schools must comply with all applicable laws and reviewing the law to ensure compliance is within the existing responsibilities of a school. As to the other activities pled by claimant under chapter 234, DOF says they are not reimbursable mandates because districts have a preexisting duty to provide factually accurate (Ed. Code, § 60045), nonbiased (Ed. Code, §60044) instructional materials.

On August 22, 2002, DOF submitted new comments partially concurring with the staff analysis. DOF concurs that the following activities result in a reimbursable mandate, but expects that these sections will result in minor costs:

- ⊗ revising the annual parent or guardian notifications regarding the right to obtain a copy of sections 51201.5 and 51553 from the school district;
- ⊗ keeping file copies of sections 51201.5 and 51553 and making them available to parents on request;
- ⊗ notifying parents when an outside organization or guest speaker is scheduled or an assembly is held to deliver AIDS prevention or family life instruction or when a school teacher or district administrator will provide AIDS, family life, sexually transmitted disease, or human sexuality instruction.

DOF also concurs with the staff analysis that the following activities do not constitute reimbursable mandates: (1) providing annual notification pursuant to section 5 1201.5, subdivision (d) , and (2) providing alternative educational activities pursuant to section 5 1201.8, subdivision (g) .

DOF argues that the following activities related to the AIDS prevention instructional requirements are not reimbursable mandates:

- ⊗ emphasizing monogamy and the avoidance of multiple sexual partners;
- ⊗ discussing compassion for persons suffering from debilitating handicaps and terminal diseases;
- ⊗ prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities; and

- requiring the instruction be consistent with sex education course criteria of section 51553. DOF says that information on these subject areas is already readily available in medical journals, existing curriculum, state or federal health websites, or publications and other private HIV/AIDS-related websites or publications. According to DOF, these very basic topics should already be included in existing AIDS prevention instruction for which the state provides reimbursement, so incorporating the material that is not already available or currently used should require little or no additional workload.

DOF also argues that providing courses that are factual and medically accurate, as defined in section 5 1553, subdivision (b), paragraph (1), is not a reimbursable mandate. Section 60045 requires instructional materials to meet specific criteria of “accurate, objective, and current.” The omission of a reference to this preexisting definition does not mean that it should be discounted when defining state policy and the level of service required. DOF argues that section 5 1553 simply defines more precisely what section 60045 already required. The claimant should be required to make a showing that it was using materials that met the standard of section 60045 but somehow do not meet the standard of section 5 1553 before any change in materials could be construed as being mandated. DOF argues that the parameters and guidelines require such a showing by every claimant.

On August 22, 2002, the Department of Education (CDE) submitted comments in which it concurs with the bulk of the staff analysis, but comments on two of the findings. First, regarding other parental notification in section 5 1201.5, subdivision (d), paragraph (3), CDE was unable to locate a specific requirement for notification “each time a teacher or administrator employed by the district delivers AIDS prevention instruction.” Second, CDE disagrees that Statutes 1999, chapter 234 that amended section 51553 contains reimbursable mandated costs. Statutory language does not mandate or require school districts to offer sex education; so doing so is at the discretion of the districts. Any activities due to Statutes 1999, chapter 234, are a function of the district’s election to offer sex education classes and are required only after the district’s election to do so. CDE acknowledges, however, that reimbursable costs are present due to the separate requirement that districts make copies of section 5 1553 available to parents.

## COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate or require an activity or task on local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist.

In addition, the legislation must constitute a “program.” The California Supreme Court defined “program” within the meaning of article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not

apply generally to all residents and entities in the state. <sup>1</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>2</sup>

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”<sup>3</sup>

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” As mentioned above, the California Supreme Court defined a “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, **or** laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. <sup>4</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>5</sup>

The test claim legislation amends the AIDS prevention instruction requirements to, among other things, notify parents and give them the opportunity to opt out their children from the instruction. Under the test claim legislation, school districts serve a governmental function of providing education on AIDS prevention, an important public health issue, to pupils as part of the districts’ mission to educate students. Moreover, the test claim legislation imposes unique notification and instructional requirements on school districts that do not apply generally to all residents or entities in the state, thereby satisfying the second prong of the test in *Carmel Valley*.<sup>6</sup> Therefore, the Commission finds that AIDS prevention instruction constitutes a “program” within the meaning of section 6, article XIII B of the California Constitution.

**Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Statutes 1998, chapter 403 amended section 51201.5 and added section 51554.

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<sup>1</sup>Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>2</sup>*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521,537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66.

<sup>3</sup> Government Code section 175 14.

<sup>4</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>5</sup> *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 521, 537.

<sup>6</sup> *Ibid.*

**Instructional requirements:** Section 5 120 1.5, subdivision (b), amends the AIDS prevention instructional requirements to (1) emphasize monogamy and the avoidance of multiple sexual partners, (2) discuss compassion for persons suffering from debilitating handicaps and terminal diseases, (3) prohibit that the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) require the instruction be consistent with sex education course criteria of section 51553.

Preexisting law requires AIDS prevention instruction to emphasize sexual abstinence and abstinence from intravenous drug use as the most effective means for AIDS prevention, in addition to the latest medical statistics on condoms and other contraceptives in preventing infection. Preexisting law also requires instruction on societal views of AIDS to emphasize compassion for persons suffering with AIDS.

In contending the amendment to section 5 1201.5 constitutes a new program or higher level of service, claimant requests reimbursement for new activities related to the new instructional requirements, including reviewing the statute to determine the new requirements, preparing or revising policies, procedures and forms to implement the statute, performing additional in-service training in the new instructional topics, and conducting additional planning and curriculum selection.

DOF originally commented as follows: (1) Reviewing the statute to determine the new requirements does not appear to create a state-mandated cost, since schools must comply with all applicable laws and reviewing the law to ensure compliance is within the existing responsibilities of a school. (2) Preparing and/or revising policies, procedures, and forms appears to be a reimbursable mandate with minor, one-time costs associated with the new code sections. (3) Additional in-service training in the new AIDS prevention instruction topics is not a reimbursable mandate because additional information regarding monogamy, avoidance of multiple partners, and compassion for people suffering from terminal illness is minimal and absorbable. (4) Conducting additional planning and curriculum selection in AIDS prevention instruction is not a reimbursable mandate because planning and selecting course curriculum are part of the existing level of services and requirements conducted by school personnel. Since schools are already required to provide AIDS prevention instruction, they are already planning and selecting the curriculum for these courses. In its August 22, 2002 comments, DOF argues that information on the added subject areas is already readily available in medical journals, existing curriculum, state or federal health websites, or publications and other private HIV/AIDS-related websites or publications. According to DOF, these very basic topics should already be included in existing AIDS prevention instruction for which the state provides reimbursement, so incorporating the material that is not already available or currently used should require little or no additional workload.

The Commission finds that the activities listed in section 5 1201.5, subdivision (b) as amended by Statutes 1998, chapter 403, are new activities or higher levels of service because they increase or alter the content of the AIDS prevention instruction by introducing new topics or discussion points into the curriculum. The availability of the information is not relevant because it was not previously required to be part of the instruction. Specifically, the Commission finds that the following changes to the AIDS prevention instruction are new activities or higher levels of service within the meaning of article XIII B, section 6: (1)



emphasizing monogamy and the avoidance of multiple sexual partners; (2) discussing compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the instruction be consistent with sex education course criteria of section 5 1553 .<sup>7</sup>

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<sup>7</sup> Section 51553 reads as follows: (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b). All sex education courses that discuss sexual intercourse shall also satisfy the following criteria:

(1) (A) Factual information presented in course material and instruction shall be medically accurate and objective.

(B) For purposes of this section, the following definitions apply:

(i) "Factual information" includes, but is not limited to, medical, psychiatric, psychological, empirical, and statistical statements.

(ii) "Medically accurate" means verified or supported by research conducted in compliance with scientific methods and published in peer-review journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the Centers for Disease Control and Prevention.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males or females of any age to have sexual intercourse with males or females under the age of 18 years to whom they are not married, pursuant to Section 26 1.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for oneself and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances, how to say "no" to unwanted sexual advances, and shall include information about sexual assault, verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance, commonly referred to as "date rape." This course material and instruction shall contain methods of preventing sexual assault by an acquaintance, including exercising good judgment and avoiding behavior that impairs good judgment, and shall also encourage youth to resist negative peer pressure. This course material and instruction also shall inform pupils of the potential legal consequences of sexual assault by an acquaintance. Specifically, pupils shall be advised that it is unlawful to touch an intimate part of another person, as specified in subdivision (d) of Section 243.4 of the Penal Code.

(11) Course materials and instruction shall be free of racial, ethnic, and gender biases.

(c) All sex education courses that discuss sexual intercourse shall teach pupils that it is wrong to take advantage of, or to exploit, another person.

The activities pled by claimant related to the instructional content (i.e., reviewing the statute to determine the new requirements, preparing or revising policies, procedures and forms to implement the statute, performing additional in-service training in the new instructional topics, and conducting additional planning and curriculum selection) may be addressed if at all during the adoption of the parameters and guidelines.

**Annual parental notification:** Section 5 1201.5, subdivision (d), was amended to expressly require sending notification regarding AIDS prevention instruction to the pupil's parent or guardian at the beginning of the school year or at the time of the pupil's enrollment, and requires information stating the parent or guardian's right to request a copy of sections 51201.5 and 51553. Subdivision (d) also requires school districts, county boards of education, and county superintendents of schools, as applicable, to keep on file copies of sections 5 1201.5 and 51553.

Preexisting law requires notification to parents or guardians of each pupil in grades 7 through 12 inclusive of the purpose of the AIDS instruction and allowed them to opt their child out of the instruction. Preexisting law requires the instruction be given at least once in junior high or middle school and once in high school.<sup>8</sup> Preexisting law also requires the school district notification on AIDS prevention instruction to "accompany the reporting of rights and responsibilities required by Section 48980."<sup>9</sup> Section 48980 requires sharing specified information "[a]t the beginning of the first semester or quarter of the regular school term."<sup>10</sup>

Claimant asserts that revising and providing notice to parents, as part of the annual parent notifications, or notification upon pupil enrollment, regarding the parents' right to obtain a copy of sections 51201.5 and 51553 is a new activity. Claimant further asserts that copying and maintaining file copies of sections 5 1201.5 and 5 1553 and making these available on request is a new activity.

DOF originally commented that the notice is a state reimbursable mandate since annual notification was not previously required, but that since districts were already required to provide parents written notice explaining the purpose of the AIDS prevention instruction, the notification could be included in the existing notice making the additional associated costs minimal. DOF's August 22, 2002 comments concur with the staff analysis that the annual notification is not a reimbursable state mandate. Regarding revising the annual parent or guardian notifications and copying and maintaining file copies of sections 51201.5 and 51553 and making these available to parents or guardians on request, DOF concurs that this is a new activity or higher level of service, but notes that the costs should be minimal due to the brevity of the code sections and the limited nature of the task, which is only performed on request.

The Commission finds that the annual notification of section 5 1201.5, subdivision (d), is not a new activity or higher level of service. Prior law required written notice to the parent or guardian "of each pupil in grades 7 to 12 inclusive," which is also an annual notice

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<sup>8</sup> Education Code section 5 120 1.5, subdivision (a).

<sup>9</sup> This requirement is now part of Education Code section 51201.5, subdivision (d) (1), but was originally found in section 5 1201.5, subdivision (d).

<sup>10</sup> Education Code section 48980, subdivision (a). This requirement predated the 1998 test claim statute.

requirement. Prior law also required, via section 48980, that the notice occur at the beginning of the first semester or quarter of the regular school term. The amendment merely specifies that this notice, for those that enroll after the beginning of the school year, is to occur at the time of the pupil's enrollment. Both before and after the test claim amendment, a pupil's parent should receive at least six notifications for each grade from 7 through 12. Moreover, the parameters and guidelines for the AIDS Prevention Instruction program (CSM-4422) already provide for notification costs. Inasmuch as the Legislature merely added a statement regarding pupils who enroll after the beginning of the year, but did not alter the preexisting duty of annual notification, the Commission finds that the annual notification requirement of section 5 120 1.5 is not a new activity or higher level of service.

Conversely, the Commission finds that revising the notice is a new activity or higher level of service. Preexisting law required only that the notice explain the purpose of the AIDS prevention instruction and the parent's right to withdraw the student from instruction. This test claim legislation amended the statute to also include the parent's or guardian's right to request a copy of specific code sections. Therefore, the Commission finds that revising the parental notification to include the right to request copies of sections 51201.5 and 51553 is a new program or higher level of service.

As to the requirement to keep file copies of sections 51201.5 and 51553 and make them available to parents on request, the Commission finds that this is a new activity or higher level of service within the meaning of article XIII B, section 6 because there was no corresponding requirement before the test claim statute.

**Other parental notification:** Section 5 1201.5, subdivision (d), paragraph (3), requires sending notification regarding guest speakers or assemblies on AIDS prevention instruction to the pupil's parent or guardian at the beginning of the school year or at the time of the pupil's enrollment, or if arrangements for the instruction are made thereafter, between 10 and 15 days before the instruction is delivered. The notification is to include the date of instruction, the name of the organization or affiliation of each guest speaker, and information stating the parent/guardian's right to request a copy of education code sections 51201.5 and 51553.

Preexisting law requires notification to parents or guardians of each pupil in grades 7 through 12 inclusive of the purpose of the AIDS instruction and allows them to opt their child out of the instruction.<sup>11</sup> As discussed above, this was an annual requirement.

Claimant claims the following from section 5 1201.5, subdivision (d) , paragraph (3), as a new activity: notifying parents by mail or other method to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, and each time a teacher or administrator employed by the district delivers AIDS prevention instruction. The notification is to include: (1) the date of the instruction, (2) the name of the organization or affiliation of each guest speaker, and (3) information regarding parents' right to obtain a copy of sections 51201.5 and 51533 from the school district.

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<sup>11</sup> Education Code section 51201.5, subdivision (d).

CDE's comments on the staff analysis questioned the notification requirement "each time a teacher or administrator employed by the district delivers AIDS prevention instruction." CDE was unable to locate the requirement in section 5 1201.5, subdivision (d), paragraph (3). This requirement results from section 5 1554 and is discussed below under "further notification."

DOF concurs that this notification is a higher level of service, but notes that districts could minimize costs by advance planning of all AIDS prevention instruction before providing other annual parent notifications. DOF also notes that chapter 403 allows for a single notification to parents of the above information at the beginning of each school year or at the time of student enrollment, so notification could be included along with other parent notifications and allow for cost sharing.

Claimant rebuts DOF's cost sharing idea, saying that this notification is not part of the mandated annual notification because of (1) the significance of the subject area, (2) the importance of parents' right to know who is instructing their student and when, (3) the number of schools involved, and (4) the varying schedules at each school.

In reading a statute, the intent must be gathered from the whole of the statute rather than from isolated parts or words in order to make sense of the entire statutory scheme." There is no requirement for schools or school districts to offer AIDS prevention assemblies or invite guest speakers. There is a requirement to offer the AIDS prevention instruction once in middle or junior high school, and once in high school,<sup>13</sup> but holding assemblies or inviting guest speakers in order to convey that instruction is at the option of the local school district or school. Once the option is chosen by the school or district, it incurs the corresponding notification costs.

Because the test claim legislation potentially increases the frequency of the parental notifications (beyond annually) for districts or schools that plan AIDS prevention instruction after the beginning of the school year, and it specifies the content thereof, the Commission finds that the parent notification of section 5 1201.5, subdivision (d), paragraph (3), is a new program or higher level of service subject to article XIII B, section 6 only if the notification is due to the twice-required AIDS prevention instruction.<sup>14</sup> The Commission finds that assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student are not mandated, so any notice regarding these assemblies is at the option of the school or school district. As to the method of notification, the statute neither prohibits nor requires districts to combine the notification to parents for the regular AIDS prevention instruction with the notification on the assembly or guest speaker AIDS prevention instruction. The method of notification may be addressed, if at all, at the parameters and guidelines phase.

**Alternative activity:** Section 5 120 1.5, subdivision (g) , requires an alternative educational activity be made available to pupils not participating in the AIDS prevention instruction.

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<sup>12</sup> *County of Los Angeles v. Commission on State Mandates*, *supra*, 43 Cal.3d at 55.

<sup>13</sup> Education Code section 5 120 1 .5, subdivision (a).

<sup>14</sup> *Ibid.* "Twice-required" refers to the requirement for each student to have the instruction once in junior high or middle school and once in high school.

Claimant submits several new activities based on this requirement, such as receiving requests from parents or guardians to exclude their children from AIDS prevention instruction, determining which alternative educational activities will be made available to those pupils, and offering alternative educational activities to them.

DOF comments that offering alternative education activities is not a **reimbursable** mandate because the statute does not require the district to create alternative educational activities for students who do not attend AIDS prevention instruction. The law allows flexibility in providing students with existing alternative educational activities, potentially including study hall, physical education, or reading in the school library.

The test claim statute expressly requires “an alternative educational activity be made available to pupils, ” making it appear that a mandate exists. On the other hand, schools have a preexisting duty to provide educational activities, including alternative educational activities for students whose parents opt out of optional instruction such as AIDS prevention. For example, under existing law, students may opt out of sex education<sup>15</sup> or venereal disease instruction<sup>16</sup> and would also require an alternative activity even though the statutes do not so specify. The same is true for students withheld by parents or guardians from attending AIDS prevention instruction since 1991 when the original statute was enacted.<sup>17</sup> That students may opt out of these instructional activities, combined with the school district’s general duty to supervise the conduct of children on school grounds during school sessions, school activities, recesses, and lunch periods ,<sup>18</sup> indicates that schools already have a duty to provide educational alternatives to pupils who opt out, or whose parents opt out of any instruction, especially instruction with statutory notification and opt out requirements. Therefore, the Commission finds that providing educational activities to students whose parents opt out of AIDS prevention instruction is a preexisting duty and not a new program or higher level of service.

**Further notification:** Section 51554 forbids pupil instruction on sexually transmitted diseases, AIDS, human sexuality, or family life, that is delivered by an outside organization or guest speaker brought in specifically to provide that instruction, or a teacher, unless a pupil’s parent or guardian has been sent written notification to include the date of the instruction, the organization name or affiliation of each guest speaker, and information stating the parent or guardian’s right to request a copy of sections 51201.5 and 51553 related to AIDS prevention instruction.

Claimant did not address section 51554 separately, but appears to have addressed it in conjunction with the notification requirements discussed above. Nor did DOF address section 51554. CDE’s comments on the staff analysis questioned the notification requirement “each time a teacher or administrator employed by the district delivers AIDS prevention instruction. ” As a requirement of section 51554, subdivision (b), this is discussed below.

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<sup>15</sup> Education Code sections 5 1240 and 5 1550.

<sup>16</sup> Education Code section 5 1820.

<sup>17</sup> Education Code section 51201.5, subdivision (d) allowed parents to opt out of the AIDS prevention instruction.

<sup>18</sup> *Bartell v. Palos Verdes Peninsula School District* (1978) 83 Cal. App. 3d 492,498.

The Commission finds that the notification requirement of section 5 1554, subdivision (a), regarding instruction in AIDS prevention, human sexuality or family life by an outside organization or guest speaker, is not a new requirement or higher level of service because the notification content and 10-15 day notice requirement of section 5 1554 is identical to that in section 5 1201.5, subdivision (d), paragraph (3) discussed above. Preexisting law requires parental notification for classes offered in which human reproductive organs and their functions and processes are described, illustrated, or discussed.<sup>19</sup> Section 5 1554, subdivision (a) appeared to create a new activity by adding “family life” to the notification requirement. However, the record does not indicate that family life instruction is required; rather it is at the option of the school or school district.<sup>20</sup> Therefore, the Commission finds that adding “family life” instruction to the instances in which parents must receive notification of outside speakers does not create a new program or higher level of service.

Section 51554, subdivision (b) prohibits the AIDS prevention instruction in an assembly unless a parent or guardian is notified, but applies only to instruction by a teacher or administrator employed by the district. This adds to the requirements of section 5 1201.5, subdivision (d), paragraph (3) by including assembly AIDS prevention instruction by a teacher or administrator employed by the district. Therefore, the Commission finds that the notification requirement for AIDS prevention instruction offered by a teacher or administrator in an assembly is a new program or higher level of service, but only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. As with the instructional requirements discussed above, the Commission finds that assemblies that occur more frequently than the twice-required instruction per student are not mandated, so any notice regarding these assemblies is at the option of the school or school district.

**Statutes 1999, chapter 234:** Claimant submitted an amendment to the test claim based on Statutes 1999, chapter 234, which amended section 51553 on sex education as follows:

- Requires that factual information in sex education courses be medically accurate and objective;
- Defines “factual information” and “medically accurate; ”
- Revises course material to include respect for oneself; and
- Requires that course material be free of racial, ethnic, and gender biases.

Claimant submits the following activities are reimbursable mandates pursuant to chapter 234: (1) reviewing the statute to determine the new requirements; (2) preparing and/or revising policies, procedures, and forms in order to implement the new requirements; (3) providing additional in-service training for presenting factual and accurate AIDS prevention instruction topics; (4) conducting additional planning and curriculum selection to ensure presenting factual and accurate AIDS prevention instruction topics; and (5) costs of purchasing new materials that comply with chapter 234.

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<sup>19</sup> Education Code section 5 1550.

<sup>20</sup> *Ibid.*

DOF disagrees that reviewing the statute is a new activity because schools must comply with all applicable laws and reviewing the law to ensure compliance is within the existing responsibilities of a school. Claimant responded that while it must comply with the law, reviewing new laws to ensure compliance is not within the existing responsibilities of a district because if there were no new law, there would be no need to review to ensure compliance. As to the other activities pled by claimant, DOF contends that they do not constitute a new program or higher level of service because school districts are already required, under Education Code sections 60040 – 60048, to provide curriculum that accurately portrays racial and cultural diversity<sup>21</sup> and is free from matter reflecting adversely on persons because of their race, color, creed, national origin, ancestry, sex, handicap, or occupation.<sup>22</sup> Therefore, DOF argues that because school districts have a preexisting duty to provide factually accurate, non-biased instructional materials, it is not a new program or higher level of service. DOF also notes that up to 25 percent of the funds that a district receives in the Instructional Materials Funds may be used to purchase materials that are not included on the state adopted instructional materials list and an additional five percent may be spent on in-service training related to instructional materials. Thus, according to DOF, if a district needs to revise curriculum or if the state revises the materials related to AIDS, the district may use the funds it receives through the Instructional Materials Fund to purchase the new materials. This would normally be considered, if at all, as an offset during the parameters and guidelines phase.

DOF argues that providing sex education courses that are factual and medically accurate, as defined in section 51553, subdivision (b) (1), is not a reimbursable mandate. Section 60045 requires instructional materials to meet specific criteria of “accurate, objective, and current.” The omission of a reference to this preexisting definition does not mean that it should be discounted when defining state policy and the level of service required. DOF argues that section 5 1553 simply defines more precisely what section, 60045 already required. The local education agencies are not required to perform materially costly activities to ensure that materials and instruction meet the standard of section 5 1553, since most if not all materials available would meet that standard. The claimant should be required to make a showing that it was using materials that met the standard of section 60045 but somehow do not meet the standard of section 51553 before any change in materials could be construed as being mandated. DOF argues that the parameters and guidelines require such a showing by every claimant.

CDE argues that Statutes 1999, chapter 234 that amended section 51553 does not contain reimbursable mandated costs. Statutory language does not mandate or require school districts to offer sex education, so doing so is at the discretion of the districts. Any activities due to Statutes 1999, chapter 234 are a function of the district’s election to offer sex education classes and are required only after the district’s election to do so. CDE acknowledges, however, that reimbursable costs are present due to the separate requirement that districts make copies of section 5 1553 available to parents.

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<sup>21</sup> Education Code section 60040.

<sup>22</sup> Education Code section 60044, subdivision (a).

In response to CDE, section 5 1201.5, subdivision (c), which was amended as part of the test claim legislation, requires the AIDS prevention instruction be consistent with section 5 1553. Although sex education may be optional, AIDS prevention instruction is required, making section 51553 required for purposes of AIDS prevention instruction.

The Commission finds that schools have a preexisting duty, under Education Code sections 60044 and 51500,<sup>23</sup> to provide information that is free from bias based on race, ethnicity and gender or sex.

The Commission also finds that the requirement for factual information that is medically accurate and objective is not a new requirement. Chapter 234 defines factual information to include, but not be limited to, “medical, psychiatric, psychological, empirical, and statistical statements.” Chapter 234 further defines “medically accurate” as:

. . .verified or supported by research conducted in compliance with scientific methods and published in peer-review journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the Centers for Disease Control and Prevention, (Ed. Code, § 51553).

The Commission finds that criteria that is “medically accurate” as defined, is essentially the same requirement as in existing law and is being reimbursed under the original AIDS Prevention Instruction test claim. This is because preexisting section 60045 requires instructional materials to be “accurate, objective, and current.” Moreover, section 5 1201.5, subdivision (b) required the AIDS prevention instruction to “accurately reflect the latest information and recommendations from the United States Surgeon General, federal Centers’ for Disease Control, and the National Academy of Sciences...”

For these reasons, the Commission finds that Statutes 1999, chapter 234, which amended section 51553 on sex education, is not a new program or higher level of service for AIDS prevention instruction. Claimant’s pleading was limited to Education Code section 5 1553, subdivision (b)(1)(A). Therefore, the Commission makes no findings on the remaining portions of Education Code section 51553.

In summary, the Commission finds the following constitutes a new program or higher level of service for school districts within the meaning of article XIII B, section 6:

- Including in the AIDS prevention instruction requirements the following: (1) emphasis on monogamy and the avoidance of multiple sexual partners; (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the instruction be consistent with sex education course criteria of section 51553 (Ed. Code, § 51201.5, subd. (b));
- Revising the annual parent or guardian notifications regarding the right to obtain a copy of Education Code sections 5 1201.5 and 5 1553 from the school district (Ed. Code, § 5 1201.5, subd. (d));

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<sup>23</sup> Before the 1976 reorganization of the Education Code, these were sections 9243 and 900 1, respectively.



- ⚡ Keeping file copies of Education Code sections 5 1201.5 and 5 1553 and making them available to parents on request. (Ed. Code, § 5 120 1.5, subd. (d));
- ⚡ Notifying parents by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) information regarding parents of their right to obtain a copy of Education Code sections 5 120 1.5 and 5 1533 from the district. This activity is a new program or higher level of service only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. The Commission finds that assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student requires are not mandated and are therefore at the option of the school or school district. (Ed. Code, § 5 120 1.5, subd. (d)(3));
- Providing notification to parents, at the beginning of each school year or, for pupils that enroll thereafter, at the time of that pupil's enrollment, instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or district administrator that is employed by the district only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. The Commission finds that assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student requires are not mandated and are therefore at the option of the school or school district. (Ed. Code, § 51554, subd. (b)).

**Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable, state mandated program under section 6, article XIII B of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.<sup>24</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply.

The Commission finds no issues in this test claim related to Government Code sections 175 14 and 17556. Claimant submitted a declaration that its costs exceeded \$200 as a result of the test claim legislation, and there is nothing in the record to refute the assertion.

**CONCLUSION**

Based on the foregoing, the Commission finds that the test claim legislation imposes a partial reimbursable state-mandated program on school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 for the following activities:

- ⚡ Including in the AIDS prevention instruction requirements the following: (1) emphasis on monogamy and the avoidance of multiple sexual partners; (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual

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<sup>24</sup> *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835. Government Code section 175 14.

activities, and (4) requiring that the instruction be consistent with sex education course criteria of section 51553 (Ed. Code, § 51201.5, subd. (b));

- Revising the annual parent or guardian notifications regarding the right to obtain a copy of Education Code sections 5 1201.5 and 51553 from the school district (Ed. Code, § 5 1201.5, subd. (d));
- Keeping file copies of Education Code sections 5 120 1.5 and 5 15 53 and making them available to parents on request (Ed. Code, § 5 1201.5, subd. (d));
- Notifying parents by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) information regarding parents of their right to obtain a copy of Education Code sections 5 120 1.5 and 5 1533 from the district. This activity is a new program or higher level of service only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. The Commission finds that assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student requires are not mandated and are therefore at the option of the school or school district. (Ed. Code, § 5 120 1.5, subd. (d)(3)).
- Providing notification to parents, at the beginning of each school year or, for pupils that enroll thereafter, at the time of that pupil's enrollment, instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or district administrator that is employed by the district only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. The Commission finds that assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student requires are not mandated and are therefore at the option of the school or school district. (Ed. Code, § 51554, subd. (b)).

The Commission finds that the following activities are not reimbursable mandates within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14:

- Providing annual notification to parents or guardians of AIDS Prevention Instruction. (Ed. Code, § 51201.5, subd. (d)).
- Providing alternative educational activities to students whose parents opt out of AIDS prevention instruction. (Ed. Code, § 51201.8, subd. (g)).
- Providing notification to parents, at the beginning of each school year or, for pupils that enroll thereafter, at the time of that pupil's enrollment, instruction on family life that is delivered by an outside organization or guest speaker brought in specifically to provide that instruction. (Ed. Code, § 51554, subd. (a)).
- Providing AIDS Prevention Instruction course material that is factual and medically accurate, as defined, and that is free of racial, ethnic, and gender bias. (Ed. Code, § 51553, subd. (b) (1)).

Regarding Statutes 1999, chapter 234, claimant's pleading was limited to Education Code section 51553, subdivision (b)(1)(A). Therefore, the Commission makes no findings on any issues relating to the remaining portions of Education Code section 5 1553.