

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6

Vehicle Code Sections 22112, 22454, 27316, 27316.5

Statutes 1999, Chapter 647 (AB 1573);  
Statutes 1999, Chapter 648 (AB 15);  
Statutes 2001, Chapter 581 (SB 568);  
Statutes 2002, Chapter 360 (AB 2681);  
Statutes 2002, Chapter 397 (SB 1685)

Filed on July 2, 2003,

By San Diego Unified School District,  
Claimant.

Case No.: 03-TC-01

*School Bus Safety III*

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 May 26, 2011)*

**STATEMENT OF DECISION**

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



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Drew Bohan, Executive Director

Dated: May 31, 2011

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*(Adopted on May 26, 2011)*

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Art Palkowitz appeared on behalf of San Diego Unified School District. Donna Ferebee appeared on behalf of the Department of Finance.

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 the staff analysis at the hearing by a vote of 5-1 to deny this test claim.

**Summary of Findings**

This test claim filed by San Diego Unified School District addresses statutes that impose activities on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.

The Commission finds that some of the test claim statutes do not impose any activities on school districts or do not impose new programs or higher levels of service on school districts. In addition, school districts are authorized, but not required, to provide school bus or school pupil activity bus transportation of pupils to and from school under state law. In addition, under federal law districts are not required to provide school bus or school pupil activity bus transportation of pupils with disabilities. As a result, the also Commission finds that the test claim statutes do not impose state-mandated activities on school districts.

The Commission findings are consistent with the court’s judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission’s decision on remand regarding the *School Bus Safety II* (97-TC-22) test claim, and the decision in

*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735 (*Kern High School Dist.*).

The Commission concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.

## BACKGROUND

This test claim filed by San Diego Unified School District alleges reimbursable state-mandated activities imposed on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.<sup>1</sup>

Prior to the filing of this test claim, the Commission heard the *School Bus Safety II* (97-TC-22) test claim, which was filed by Clovis Unified School District in 1997. The *School Bus Safety II* (97-TC-22) test claim addresses prior versions of some of the statutes in the current test claim. Specifically the test claim statutes pled in the *School Bus Safety II* (97-TC-22) test claim were Education Code sections 39831.5 (former section 38048) and 39831.3, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739. In this test claim, the claimant has pled various statutes, including subsequent amendments that occurred in 1999 and 2002 to Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112.<sup>2</sup>

On July 29, 1999, the Commission adopted a statement of decision for *School Bus Safety II* (97-TC-22), which concluded that the test claim legislation imposed the following reimbursable state-mandated activities:

- Instructing all prekindergarten and kindergarten pupils in school bus emergency procedures and passenger safety. (Ed. Code, § 39831.5, subd. (a); Ed. Code, § 38048, subd. (a).)
- Determining which pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, have not been previously transported by a school bus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)

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<sup>1</sup> Education Code section 39830.1 defines “school pupil activity bus” as any motor vehicle, other than a school bus, operated by a carrier in business for the principal purpose of transporting members of the public on a commercial basis, which is used under a contractual agreement between a school and the carrier to transport school pupils at or below the 12th grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent is present to accept the pupil or place the pupil on the bus.

<sup>2</sup> Education Code section 39831.5 and Vehicle Code section 22112, as amended by Statutes 1999, chapter 647; and Vehicle Code section 22112, as amended by Statutes 2002, chapter 397.

- Providing written information on school bus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, who were not previously transported in a school bus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Providing updates to all parents and guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, on new school bus safety procedures as necessary. The information shall include, but is not limited to: (A) a list of school bus stops near each pupil's home; (B) general rules of conduct at school bus loading zones; (C) red light crossing instructions; (D) school bus danger zones; and (E) walking to and from school bus stops. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Preparing and revising a school district transportation safety plan. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Determining which pupils require escort. (Vehicle Code section 22112, subd. (c)(3).)
- Ensuring pupil compliance with school bus boarding and exiting procedures. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Retaining a current copy of the school district's transportation safety plan and making the plan available upon request by an officer of the Department of the California Highway Patrol. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Informing district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms. (Veh. Code, § 22112.)

However, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision in *School Bus Safety II* was challenged in Sacramento County Superior Court. The petitioner, Department of Finance, sought a writ of mandate directing the Commission to set aside the prior decision and to issue a new decision denying the test claim, for the following legal reasons:

- The transportation of pupils to school and on field trips is an optional activity because the State does not require schools to transport pupils to school or to undertake school activity trips.
- Prior to the enactment of the test claim legislation, the courts determined that when schools undertook the responsibility for transporting pupils they were required to provide a reasonably safe transportation program.
- To the extent the test claim legislation requires schools to transport pupils in a safe manner and to develop, revise, and implement transportation safety plans, the test claim legislation does not impose a reimbursable state mandate because these activities are undertaken at the option of the school district and the legislation merely restates existing law, as determined by the courts, that schools that transport students

do so in a reasonably safe manner. Therefore the test claim legislation does not require school districts to implement a new program or higher level of service.<sup>3</sup>

On December 22, 2003, the court entered judgment for Finance. By granting Finance's petition the court agreed that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. On February 3, 2004, the court ordered the Commission to set aside the prior statement of decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. At the March 25, 2004 Commission hearing, the Commission set aside the original *School Bus Safety II* decision and vacated the applicable parameters and guidelines and statewide cost estimate.<sup>4</sup>

However, the court left one issue for remand: the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

On remand, the Commission found that although federal law may require *transportation* of disabled children under certain circumstances, the law does not require school districts to provide a *school bus* transportation program. In addition, the Commission states, "even if school bus transportation is used for [students with disabilities], there is no evidence in the record that the state and federal funding provided for transporting children with disabilities is inadequate to cover any pro rata cost that may result from the test claim statutes."<sup>5</sup> Therefore the Commission found that the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Because the Commission has already made a mandate determination in its decision on *School Bus Safety II* (97-TC-22) regarding Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112, as they existed prior to the 1999 amendments pled in this test claim, the Commission does not have jurisdiction to make a mandate determination on the activities contained in the prior versions of the code sections.<sup>6</sup> As a result, the discussion regarding these

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<sup>3</sup> Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, dated July 9, 2002, pages 4-5.

<sup>4</sup> The original *School Bus Safety* (CSM-4433) statement of decision and parameters and guidelines were not part of the litigation.

<sup>5</sup> Commission statement of decision for *School Bus Safety II* (97-TC-22) (Remand), March 30, 2005, p. 9.

<sup>6</sup> Government Code section 17521 defines "test claim" as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. On April 26, 1994, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1992, chapter 624, which were pled in the *School Bus Safety* (CSM-4433). On March 30, 2005, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1996, chapter 277 and Statutes 1997, chapter 739, which were pled in the *School Bus Safety II* (97-TC-22).

code sections will only address substantive amendments made to the code sections in Statutes 1999, chapters 647 and 648, and Statutes 2002, chapter 397.

The court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), and the Commission's subsequent decision on remand denying the *School Bus Safety II* (97-TC-22) test claim, were made after the filing of this test claim. The claimant has not withdrawn this test claim in light of the court's judgment and the Commission's decision. In addition, neither the claimant nor the Department of Education filed comments regarding the impact of the court's judgment and the Commission's decision on the current test claim.

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

Prior to the court's judgment and the Commission's decision regarding *School Bus Safety II* (97-TC-22), which found that the provision of school bus transportation services is discretionary, the claimant alleged that the test claim statutes impose reimbursable state-mandated activities, which include: providing instruction to pupils in school bus emergency procedures and passenger safety, providing information on school bus safety to parents, requiring the school bus driver to engage in specific activities when approaching specified areas and loading and unloading pupils, and purchasing or leasing buses equipped with pelvic and upper torso passenger restraint systems.<sup>7</sup>

The Commission has not received any comments from the claimant in response to the draft staff analysis.

#### **B. Department of Education**

Prior to the court's judgment and the Commission's decision, which denied the *School Bus Safety II* (97-TC-22) test claim and vacated the applicable parameters and guidelines, the Department of Education argued the following:

In general, we note that because the test claim legislation builds upon existing mandated programs and training, the cost of the activities cited by the claimant would appear to be minimal. Especially, in light of the recent amended consolidated School Bus Safety Parameters and Guidelines, which are expected to substantially reduce the cost of the original mandate.

On Page 17, Section D. Costs Incurred or Expected to be Incurred from Mandate, the claimant states that it will incur costs due to higher costs associated with increased school bus purchase prices due to new passenger restraint systems, additional buses due to decreased capacity as a result of new passenger restraint systems, additional drivers, additional maintenance, and additional storage costs. However, several manufacturers have developed or are developing seating systems that do not reduce school bus capacity and it is unclear what, if any, cost will actually be added to the price of school buses. Furthermore, the new requirements will apply to all school buses manufactured for use in California, not just those purchased by public school districts. Therefore, the requirements will apply equally to both public and private entities, which means that these requirements do not meet the test of imposing a requirement unique to

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<sup>7</sup> Test Claim 03-TC-01, dated July 2, 2003, pgs. 11-17.

government. As a result, these requirements do not constitute a mandated program.<sup>8</sup>

The Commission has not received any comments from the Department of Education in response to the draft staff analysis.

### COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>9</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>10</sup> “It’s purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>11</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or requires a local agency or school district to engage in an activity or task.<sup>12</sup> The required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service under existing programs.<sup>13</sup>

The courts have defined a “program” that is subject to article XIII B, section 6 of the California Constitution as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>14</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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<sup>8</sup> Department of Education Comments in Response to Test Claim 03-TC-01, dated August 11, 2003.

<sup>9</sup> Article XIII B, section 6, subdivision (a) (as amended by Proposition 1A in November 2004), provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

<sup>10</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735 (*Kern High School Dist.*).

<sup>11</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>12</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>13</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>14</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

legislation.<sup>15</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>16</sup> Finally, the newly required activity or higher level of service must impose costs on local agencies as a result of local agencies’ performance of the new activities or higher level of service that were mandated by the state statute or executive order.<sup>17</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>18</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>19</sup>

**A. The test claim statutes do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution**

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the headers impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Adoption of Regulations (Ed. Code, §§ 38047.5 and 38047.6)

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language governs.<sup>20</sup> Education Code sections 38047.5 and 38047.6 require the State Board of Education to adopt regulations requiring passengers of school buses and school pupil activity buses equipped with passenger restraint systems to use the passenger restraint system. The plain language of these code sections does not impose any requirements on school districts. Instead, the code sections address the duties of the State Board of Education. Thus, the Commission finds that Education Code sections 38047.5 and 38047.6 do not impose any reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

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<sup>15</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>16</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>17</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>18</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>19</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>20</sup> *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.



Instruction in School Bus Emergency Procedure and Passenger Safety (Ed. Code, § 39831.5)

Education Code section 39831.5 was amended by Statutes 1999, chapter 648, as indicated by the following underlined provisions:

(a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

(1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:

- (A) A list of schoolbus stops near each pupil's home.
- (B) General rules of conduct at schoolbus loading zones.
- (C) Red light crossing instructions.
- (D) Schoolbus danger zone.
- (E) Walking to and from schoolbus stops.

(2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.

(3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:

- (A) Proper fastening and release of the passenger restraint system.
- (B) Acceptable placement of passenger restraint systems on pupils.
- (C) Times at which the passenger restraint systems should be fastened and released.
- (D) Acceptable placement of the passenger restraint systems when not in use.

(4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

- (1) Name of school district, county office of education, or private school.
- (2) Name and location of school.
- (3) Date of instruction.
- (4) Names of supervising adults.
- (5) Number of pupils participating.
- (6) Grade levels of pupils.
- (7) Subjects covered in instruction.
- (8) Amount of time taken for instruction.
- (9) Bus driver's name.
- (10) Bus number.
- (11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

As relevant to this test claim, Education Code section 39831.5 requires school districts to engage in the following activity:

Include in the annual school bus passenger safety instructions given to pre-kindergarten through eighth grade students that are transported on school buses or school pupil activity buses for home-to-school transportation the following:

- a. how to safely cross the street, highway, or private road; and
- b. instruction on the use of passenger restraint systems, including: (1) proper fastening and release of the passenger restraint system; (2) acceptable placement of passenger restraint systems on pupils; (3) times at which the passenger restraint systems should be fastened and released; and (4) acceptable placement of the passenger restraint systems when not in use. (Ed. Code, § 39831.5 (Stats. 1999, ch. 648, § 2.5)).

In order to determine whether the above activity constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.<sup>21</sup>

The activity of including information in annual school bus passenger safety instructions is triggered by a school district's decision to provide school bus or school pupil activity bus transportation to students. However, under state law, school districts are authorized but not required to provide school bus or school pupil activity bus transportation of pupils to and from

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<sup>21</sup> *Kern High School Dist., supra*, 30 Cal.4th at p. 743.

school.<sup>22</sup> Districts are authorized to “provide for the transportation of pupils to and from school . . .” and are authorized to provide transportation in a variety of ways, including purchasing or renting a vehicle, contracting with a municipally owned transit system, or providing reimbursement to parents for the cost of transportation.<sup>23</sup> In *Arcadia Unified School Dist. v. State Dept. of Education*, a case in which the California Supreme Court found that an Education Code section that authorizes charging a fee for pupil transportation does not violate the free school guarantee or equal protection clause of the California Constitution, the Court confirmed that California schools need not provide bus transportation at all. Specifically, the Court states:

Without doubt, school-provided transportation may enhance or be useful to school activity, but it is not a necessary element which each student must utilize or be denied the opportunity to receive an education.

This conclusion is especially true in this state, since, as the Court of Appeal correctly noted, *school districts are permitted, but not required, to provide bus transportation.* ([Ed. Code,] § 39800.) If they choose, districts may dispense with bus transportation entirely and require students to make their own way to school. Bus transportation is a service which districts may provide at their option, but schools obviously can function without it. (Fns. omitted, emphasis added.)<sup>24</sup>

Likewise, federal law, specifically the Individuals with Disabilities Education Act (IDEA), does not require school districts to provide *school bus* or *school pupil activity bus* transportation for students with disabilities. In *State of California Department of Finance v. Commission on State Mandates* (02CS00994), discussed above, the court raised the issue of whether the IDEA requires school bus transportation for students with disabilities. On remand the Commission, found that the IDEA does not require school bus transportation of students.

The primary purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.”<sup>25</sup> “Free appropriate public education” (FAPE) is defined to mean special education and related services that: (1) have been provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the State educational agency; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with the individualized education program (IEP).<sup>26</sup>

An IEP is a written statement, developed in a meeting between the school, teachers, and the parents of a child with a disability (IEP team), that includes a statement of the special education

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<sup>22</sup> Education Code section 39800.

<sup>23</sup> Education Code sections 39800 and 39806.

<sup>24</sup> *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 264.

<sup>25</sup> Title 20 United States Code section 1400(d)(1)(A) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

<sup>26</sup> Title 20 United States Code sections 1401(9) (as reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004), formerly section 1401(8) (as added by Pub.L. No. 105-17) (June 4, 1997)).

and related services and supplementary aids and services that are to be provided to the child.<sup>27</sup> “Related services” is defined by the IDEA to mean “*transportation*, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education . . . .”<sup>28</sup> As a result, if transportation is included in a child’s IEP, transportation would be a related service that must be provided to the child. However, *school bus* or *school pupil activity bus* transportation is not required in order to comply with the possible requirement to provide transportation under the IDEA.

As defined by the implementing regulations of the IDEA, “transportation” includes: (1) travel to and from school and between schools; (2) travel in and around school buildings; (3) specialized equipment (*such as* special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with disability.<sup>29</sup> Thus, under federal law the provision of bus transportation is a transportation option, but it is not a required option. Similarly guidelines issued by the California Department of Education for use by IEP teams when determining the need for and the provision of transportation services provide:

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent’s driving with a parent’s voluntary participation, or other mode as determined by the IEP team.<sup>30</sup>

In addition, in regard to the provision of transportation in general (i.e. not specifically applicable to students with disabilities), in lieu of providing transportation school districts may pay parents of pupils a sum not to exceed the cost of actual and necessary travel incurred in transporting students to and from schools in the district or the cost of food and lodging of the student at a place convenient to the schools if the cost does not exceed the estimated cost of providing transportation of the student.<sup>31</sup> Thus, although school districts may provide school bus or school pupil activity bus transportation, along with a variety of other possible options, to fulfill the possible transportation requirements under the IDEA, neither state law nor the IDEA require school districts to provide school bus or school pupil activity bus transportation. As a result, consistent with the court’s judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission’s decision on remand regarding the *School Bus Safety II* (97-TC-22) test claim, and the *Kern High School Dist.* case, the Commission finds that Education Code section 39831.5 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

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<sup>27</sup> Title 20 United States Code section 1414(d) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

<sup>28</sup> Title 20 United States Code section 1401(22) (emphasis added).

<sup>29</sup> 34 Code of Federal Regulations part 300.24(b)(15), as amended by 64 FR 12418 (March 12, 1999), and part 300.34(c)(16), as amended by 71 FR 46753 (Aug. 14, 2006).

<sup>30</sup> California Department of Education “Special Education Transportation Guidelines” at <<http://www.cde.ca.gov/sp/se/lr/trnsprtgdlns.asp>> as of February 23, 2011.

<sup>31</sup> Education Code sections 39806 and 39807.

Stopping to Load or Unload Pupils (Veh. Code, § 22112)

Vehicle Code section 22112 was amended by Statutes 1999, chapter 647, as shown by the underlined provisions that indicate additions or changes and ellipses that indicate deletions:

(a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.

(d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(2) Require all pupils to walk in front of the bus as they cross the highway or private road.

(3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the schoolbus and it is safe to move before setting the schoolbus in motion.

(e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the flashing red signal lights and stop signal arm requirements imposed by . . . this section do not apply to a schoolbus driver at any of the following locations . . . :

(1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully parked.

- (2) Where the schoolbus is disabled due to mechanical breakdown.
  - (3) Where pupils require assistance to board or leave the schoolbus.
  - (4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.
  - (5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.
  - (6) Any location determined by a school district, . . . with the approval of the Department of the California Highway Patrol, . . . to present a . . . traffic . . . or safety hazard.
- (f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the schoolbus is so equipped, or the flashing red signal light and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

The amendments made to Vehicle Code section 22112 by Statutes 1999, chapter 647, do not add any activities to the code section. Instead, the amendments either reduce the instances in which a school bus driver must engage in an activity (i.e. Veh. Code, § 22112, subd. (d)) or specify when the duty of a school bus driver to use the flashing red signal lights and stop signal arm do not apply. In 2002, Vehicle Code section 22112 was amended again to make clarifying non-substantive changes to the code section.<sup>32</sup> As a result, Vehicle Code section 22112, as amended by Statutes 1999, chapter 647, and Statutes 2002, chapter 397, does not require school districts to engage in any activities.

In addition, even if the 1999 and 2002 amendments to Vehicle Code section 22112 imposed new activities on school districts, these activities are triggered by the underlying decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any new activities required by Vehicle Code section 22112 are triggered by the local decision to provide school bus transportation, and would not be state-mandated activities.

#### Meeting or Overtaking School Buses (Veh. Code, § 22454)

Vehicle Code section 22454 addresses the duty of drivers to stop immediately before passing a school bus and to not pass a school bus if the bus is stopped and displays a flashing red light signal and stop signal arm. Section 22454 authorizes, but does not require, the bus driver to report a violation of section 22454 to the local law enforcement agency that has jurisdiction of the offense. If a school bus driver does report a violation of section 22454 to the local law enforcement agency, the law enforcement agency is required to issue a letter of warning to the registered owner of the vehicle.

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<sup>32</sup> Statutes 2002, chapter 397.

Although the claimant has pled Vehicle Code section 22454, it is unclear from the test claim filing what activities are alleged to be mandated by this code section. As it applies to school districts, Vehicle Code section 22454 does not require school bus drivers to engage in any activities. In addition, the claimant does not have standing to claim for any costs incurred by local law enforcement agencies even if the district employs police officers because, as determined by the court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (*POBRA*), school districts are not required to employ peace officers.<sup>33</sup>

In addition, any activity contained in Vehicle Code section 22454 is triggered by the underlying decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any possible activities required by Vehicle Code section 22454 would not be state-mandated activities. As a result, the Commission finds that Vehicle Code section 22454 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Pelvic and Upper Torso Passenger Restraint Systems for School Buses and School Pupil Activity Buses (Veh. Code, § 27316 and 27316.5)

Vehicle Code section 27316 requires school buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school bus is: (1) designed to carry more than 16 passengers and the driver and is manufactured on or after July 1, 2005; or (2) designed to carry not more than 16 passengers and the driver, and is manufactured on or after July 1, 2004.<sup>34</sup> Similarly, Vehicle Code section 27316.5 requires school pupil activity buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school pupil activity bus is designed to carry not more than 16 passengers and the driver and is manufactured on or after July 1, 2004. In summary, when school districts purchase or lease school buses or school pupil activity buses, the buses must be equipped with passenger restraint systems.

However, the activities required by Vehicle Code sections 27316 and 27316.5 are triggered by the underlying discretionary decision by school districts to provide school bus or school pupil

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<sup>33</sup> *POBRA, supra*, 170 Cal.App.4th at pgs. 1366-1369. Even if school districts had standing to claim reimbursement for requirements imposed on local law enforcement agencies by Vehicle Code section 22454, the activity is directly related to the enforcement of an infraction created by section 22454. Under Government Code section 17556, subdivision (g), activities directly related to the enforcement of an infraction do not impose costs mandated by the state subject to reimbursement under article XIII B, section 6 of the California Constitution. As a result, Vehicle Code section 22454 would not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

<sup>34</sup> Vehicle Code sections 27316 and 27316.5 refer to “Type 1” or “Type 2” school buses or school pupil activity buses when addressing passenger restraint requirements. California Code of Regulations, title 13, section 1201, subdivision (b) (Register 2007, No. 41), defines “Type 1” as a school bus or school pupil activity bus that is designed to carry more than 16 passengers and the driver. As relevant to this test claim, “Type 2” is defined as a school bus or school pupil activity bus designed to carry not more than 16 passengers and the driver.

activity bus transportation. As discussed above in the “Instruction in School Bus Emergency Procedure and Passenger Safety” section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. As a result, the Commission finds that Vehicle Code sections 27316 and 27316.5 do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

### **CONCLUSION**

The Commission concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.