

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48980 and 49063,
as amended by Statutes of 1998, Chapters 846
and 1031, Statutes of 1999-2000, First
Extraordinary Session, Chapter 1

Filed on May 17, 2000

By San Juan Unified School District, Claimant;

and

Education Code Section 48980 as amended by
Statutes of 2000, Chapter 73

Filed on May 11, 2001

By San Jose Unified School District, Claimant.

No. 99-TC-09/00-TC-12

***Annual Parent Notification – 1998-2000
Statutes***

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 December 12, 2001)

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 December 13, 2001.

Paula Higashi, Executive Director

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STATEMENT OF DECISION

On October 25, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing.

At the hearing, Mr. Keith Petersen appeared on behalf of claimants San Jose Unified School District and San Juan Unified School District. Ms. Carol Berg appeared on behalf of Education Mandated Cost Network. Mr. Mohammad Wardak and Mr. Michael Wilkening appeared on behalf of 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 Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission approved this test claim by a 6-0 vote.

BACKGROUND

Claimants, San Juan Unified School District (San Juan) and San Jose Unified School District (San Jose), each submitted a test claim alleging reimbursable state mandated costs for activities performed by school districts to meet new and additional annual parent notification requirements. San Juan's claims arise from amendments to Education Code sections 48980 and 49063 by Statutes of 1998, chapters 846 and 1031, and Statutes of 1999-2000, chapter 1, First Extraordinary Session. San Jose's claims arise from an amendment to Education Code section

48980 by Statutes of 2000, chapter 73. Due to the similarity and overlap between the two test claims, including shared prior law and history, these two claims were consolidated for hearing.¹

Claimants allege that amendments to section 48980 by Statutes of 1998, chapter 846, Statutes of 1999-2000, First Extraordinary Session, chapter 1, and Statutes of 2000, chapter 73, result in a reimbursable state mandate. The Commission approved previous test claims on annual parent notification requirements: CSM-4445, *Interdistrict Transfer Requests: Parent's Employment*; CSM-4453, *Notification to Parents: Pupil Attendance Alternatives*; CSM-4461, *Annual Parent Notification*; 97-TC-24, *Annual Parent Notification: Staff Development*. For all of these earlier test claims, the Commission found that additions to Education Code section 48980 annual parent notification requirements resulted in a reimbursable state mandate.

In addition, similar annual parent notification requirements are set out in Education Code section 49063. San Juan alleges a reimbursable state mandate for the amendment to section 49063 by Statutes of 1998, chapter 1031.

Claimants' Position

Claimants allege reimbursable costs mandated by the state were imposed by amendments to Education Code section 48980 and Education Code section 49063, directing school districts to engage in new and additional annual parent notification requirements. Specifically, claimants allege that school districts must add the following items to annual parent notifications:

- Notice that no pupil may have his or her grade reduced or lose academic credit for any excused absences if the pupil makes up any missed assignments and tests.
- Complete text of Education Code section 48205.
- Notice of the availability of the prospectus of curriculum, including titles, descriptions and instructional aims of every course offered by the school district.
- Notice that pupils will be required to pass a high school exit examination as a condition of graduation.
- Notice of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Education Code section 52244.

Claimants assert that none of the statutory exceptions to finding a reimbursable state mandate provided for in Government Code section 17556 apply to these test claims.

State Agency Position

Department of Finance filed initial comments on the San Jose test claim, which only includes the addition of subdivision (m) to Education Code section 48980 by Statutes of 2000, chapter 73. Department of Finance "concluded that the statute at issue in this test claim requires a higher level of service of the claimant to include a new notification within the existing Annual Notification letter." Although they agreed with claimant that the statute imposes a higher level of service, Department of Finance stipulated that the program discussed in the notification has a sunset date of January 1, 2005. Therefore, Department of Finance requested that any

¹ Consolidation was made pursuant to the Executive Director's authority under Government Code section 17554 and Title 2, California Code of Regulations, section 1183.06.

Commission finding of a reimbursable state mandate for Education Code section 48980, subdivision (m) be “time-limited.”

Following the issuance of the Draft Staff Analysis, Department of Finance made additional comments, agreeing in part with the staff analysis, and disagreeing in part. For parts in which they agree that a mandate exists, Department of Finance asserts “the cost should be minimal, given that the required additional information is minimal and would be included in the existing annual notification.”

FINDINGS

A test claim statute or executive order may impose a reimbursable state mandated program if it directs or obligates an activity or task upon local governmental entities. In addition, the required activity or task must be new, constituting a “new program,” or create an increased or “higher level of service” over the previously required level of service. The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state. To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.²

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?³

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.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one 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.⁴ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.⁵

The Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a

² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

³ Section 6, article XIII B of the California Constitution provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁴ *County of Los Angeles, supra*, 43 Cal.3d at 56.

⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

program that carries out the governmental function of providing a service to the public. The test claim legislation requires school districts to provide parents of their students with specific written notifications at the beginning of each school year. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.⁶

The test claim legislation also satisfies the second test that triggers article XIII B, section 6 in that the test claim legislation requires local education agencies to engage in specific activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that school district annual parent notification requirements constitute a “program” and, thus, are subject to article XIII B, section 6 of the California Constitution.⁷

Issue 2: Do the subject statutes impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution by requiring new or additional activities related to annual parent notification?

The claimants contend that the test claim legislation imposes a new program or higher level of service upon school districts by requiring additional information be provided to parents in annual written notices.

Under prior law, as addressed in previously approved test claims, school districts were required to engage in annual parent notification activities.⁸ The test claim legislation adds several items to the reporting requirements as compared to prior law. Individual claimed provisions of the Education Code are analyzed below for reimbursable state mandates.

Education Code Section 48980

Education Code section 48980 provides that at the beginning of the regular school year, the governing board of each school district shall notify the parent or guardian of a number of specific rights and responsibilities. Individual claimed subdivisions are analyzed below.

Education Code Section 48980, Subdivision (e):

Statutes of 1999-2000, chapter 1, First Extraordinary Session, added subdivision (e) to Education Code section 48980, effective June 24, 1999. This subdivision provides that the annual parent notification, starting with the 2000-01 school year, shall include the following information:

commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to chapter 8 (commencing with Section

⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172 states “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public.”

⁷ *Id.*

⁸ The Commission approved previous test claims on annual parent notification requirements: CSM-4445, *Interdistrict Transfer Requests: Parent’s Employment*; CSM-4453, *Notification to Parents: Pupil Attendance Alternatives*; CSM-4461, *Annual Parent Notification*; 97-TC-24, *Annual Parent Notification: Staff Development*. For all of these earlier test claims the Commission found that additions to Education Code section 48980 annual parent notification requirements resulted in a reimbursable state mandate.

60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

In its comments on the Draft Staff Analysis, Department of Finance asserts that:

[Although] [n]otice that pupils will be required to pass a high school exit examination as a condition of graduation ... is a higher level of service, funding is provided in the annual Budget Act for any costs associated with the High School Exit Exam through district apportionment. Therefore, this activity should not be included in this claim.

At the October 25, 2001, Commission hearing, Department of Finance representatives maintained this objection, stating “there is funding in the annual Budget Act for the activities associated with notification for High School Exit Exam through an annual apportionment for this test.”⁹ The Commission disagrees. Department of Finance has not provided any evidence that the addition of material to the annual parent notification was funded as part of any appropriation designated for the high school exit exam. The test claim legislation specifically requires annual notification about the date of the examination, the requirements for passing the examination, and information regarding the consequences of not passing the examination, including the fact that it is a requirement of high school graduation. This specific notification requirement was added to Education Code section 48980 by Statutes of 1999-2000, chapter 1, First Extraordinary Session. None of the appropriations made by that bill address Education Code section 48980 or the costs of adding the information to the annual parent notification. Statutes of 1999-2000, chapter 1, First Extraordinary Session requires school districts to use “regularly available resources ... in order to prepare pupils to succeed on the exit examination.”¹⁰ The statute appropriates \$2,000,000 to the state Superintendent of Public Instruction for developing the exam, and \$250,000 to provide support services. These appropriations do not meet the threshold of Government Code section 17556, subdivision (e), which requires that the statute include “additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate,” in order to find an exception to further reimbursement.

Therefore, the Commission finds that the inclusion of specific information about the high school exit examination in the annual parent notification, as required by Education Code section 48980, subdivision (e), is a new, mandatory requirement that school districts did not have to engage in under prior law.

⁹ See attached, Hearing Transcript, p. 16.

¹⁰ Education Code section 60853, subdivision (a), as enacted by Statutes of 1999-2000, chapter 1, section 5, 1st Extraordinary Session.

Education Code Section 48980, Subdivision (l):

Statutes of 1998, chapter 846, effective September 25, 1998, added subdivision (l)¹¹ to Education Code section 48980. This subdivision provides that the annual parent notification:

shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 when missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

Education Code section 48205 details the justifiable reasons that a student may have to be excused from school and includes the information that a student shall be given full credit for making up missed school work, including assignments and tests, following an excused absence.¹²

The Commission finds that the inclusion of the text of Education Code section 48205 in the annual parent notification, as required by Education Code section 48980, subdivision (l), is a new, mandatory requirement that school districts did not have to engage in under prior law.

¹¹ Statutes of 1999-2000, chapter 1, section 3, 1st Extraordinary Session, changed the numbering from subdivision (k) to subdivision (l) when adding in new subdivision (e).

¹² The complete text of Education Code section 48205 follows:

(a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:

- (1) Due to his or her illness.
- (2) Due to quarantine under the direction of a county or city health officer.
- (3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.
- (4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.
- (5) For the purpose of jury duty in the manner provided for by law.
- (6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent.
- (7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, or attendance at an employment conference, when the pupil's absence has been requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.
- (8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of any class from which a pupil is absent shall determine the tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, has the same meaning as that set forth in Section 45194, except that references therein to "employee" shall be deemed to be references to "pupil."

Education Code Section 48980, Subdivision (m):

Statutes of 2000, chapter 73 added subdivision (m) to Education Code section 48980, effective July 5, 2000. This subdivision provides that the annual parent notification shall advise parents and guardians of the:

availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

Education Code section 52244¹³ established a grant program to pay advanced placement examination fees for economically disadvantaged students; section 52244 is not alleged by claimant to impose a reimbursable state mandate as part of this test claim. Department of Finance notes that the grant program in section 52244 currently has a repeal date of January 1, 2005. Thus, the Commission finds that this activity is only reimbursable until January 1, 2005. If the sunset date of Education Code section 52244 is postponed or eliminated, the parameters and guidelines may be amended to extend or remove the reimbursement period termination date for this activity.¹⁴

In its comments on the Draft Staff Analysis, Department of Finance also asserts that:

Section 52244 establishes a voluntary pilot grant program for the purpose of awarding grants to cover the costs of advanced placement examination fees. To the extent that a school does not participate in this program, it would not have any reporting requirements pursuant to Section 52244. Given that this activity is a component of a voluntary program, it is not a reimbursable State mandate and should not be included in this claim.

The Commission disagrees with Department of Finance's assessment because the mandate is found in the plain language of Education Code section 48980, subdivision (m), not in Education Code section 52244. Education Code section 48980, subdivision (a) states that "At the beginning of the first semester or quarter of the regular school term, the governing board of each school district *shall notify* the parent or guardian of its minor pupils regarding" specific rights and responsibilities. (Emphasis added.) Subdivision (m) explicitly provides that "*The notification shall* advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244." The statute does not make exceptions for school districts that choose not to participate in the advanced placement exam grant program. At the October 25, 2001, Commission hearing, Department of Finance representatives concurred with this reading of the statute.¹⁵ Therefore, the Commission finds that providing the notice required in Education Code section 48980, subdivision (m) results in a new, mandatory requirement that school districts did not have to engage in under prior law.

Thus, the Commission finds that Education Code section 48980, as amended by Statutes of 1998, chapter 846, Statutes of 1999-2000, First Extraordinary Session, chapter 1, and Statutes of 2000, chapter 73, results in a new program or higher level of service. The amendments require increased activities for districts to add the following content to the annual parent notification:

¹³ Added by Statutes of 1995, chapter 793, amended by Statutes of 1999, chapter 646.

¹⁴ Parameters and Guidelines may be amended pursuant to Government Code section 17557, subdivision (a).

¹⁵ See attached, Hearing Transcript, p. 16.

- Notice that pupils will be required to pass a high school exit examination as a condition of graduation. (Ed. Code, § 48980, subd. (e).)¹⁶
- Notice that no pupil may have his or her grade reduced or lose academic credit for any excused absences if the pupil makes up any missed assignments and tests. (Ed. Code, § 48980, subd. (l)).¹⁷
- Complete text of Education Code section 48205. (Ed. Code, § 48980, subd. (l).)¹⁸
- Notice of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Education Code section 52244. (This activity is only reimbursable until January 1, 2005. If the sunset date of Education Code section 52244 is postponed or eliminated, the parameters and guidelines may be amended to extend or remove the reimbursement period termination date for this activity.) (Ed. Code, § 48980, subd. (m).)¹⁹

Education Code Section 49063

Education Code section 49063 provides that school districts shall provide parents written notice of their rights upon initial enrollment, and then annually with the section 48980 notifications. If feasible, the notice shall be in the home language of the pupil, and reasonably notify parents of specific information, including “(k) The availability of the prospectus prepared pursuant to Section 49091.14.”

Subdivision (k) was added by Statutes of 1998, chapter 1031, effective January 1, 1999. The prospectus referred to in section 49091.14 was also a requirement added by Statutes of 1998, chapter 1031. The activities for preparing the prospectus under section 49091.14 are not included in this test claim -- only the inclusion of information about the prospectus in the annual parent notification. The prospectus requirement states that the titles, descriptions and instructional aims of every course offered by a public school shall be compiled in a prospectus that is to be made available for review at the school, upon request. If a copy is requested, the school must provide it, but they may charge the requester for the cost of duplication.

The Commission finds that the inclusion of the notice specified by Education Code section 49063, subdivision (k), in the annual parent notification is a new, mandatory requirement that school districts did not have to engage in under prior law. The amendment requires increased activities for school districts to add content to the annual parent notification, as follows:

- Notice that the prospectus of school district curriculum is available for review at the school, upon request. (Ed. Code, § 49063, subd. (k).)²⁰

Thus, the Commission finds that Education Code section 48980, as amended by Statutes of 1998, chapter 1031, results in a new program or higher level of service.

¹⁶ Added by Statutes of 1999-2000, First Extraordinary Session, chapter 1, effective June 25, 1999.

¹⁷ Added by Statutes of 1998, chapter 846, effective Sept. 25, 1998.

¹⁸ *Id.*

¹⁹ Added by Statutes of 2000, chapter 73, effective July 5, 2000.

²⁰ Added by Statutes of 1998, chapter 1031, effective January 1, 1999.

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

As indicated above, the test claim legislation constitutes a new program or higher level of service for additional annual parent notification activities. Reimbursement under article XIII B, section 6 for the above activities is required only if the activities impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Additional state-mandated annual parent notification notices requires school districts to incur increased costs related to copying and mailing. In addition, none of the exceptions to finding a reimbursable state mandate under Government Code section 17556 apply here. Accordingly, the Commission finds that the above activities qualify for reimbursement because they impose costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Education Code sections 48980 and 49063 require new annual parent notification activities, as specified, which constitute new programs or higher levels of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and impose costs mandated by the state pursuant to Government Code section 17514. Accordingly, the Commission approves this test claim for the activities necessary to include the following items in the annual parent notification:

- Notice that pupils will be required to pass a high school exit examination as a condition of graduation. (Ed. Code, § 48980, subd. (e).)²¹
- Notice that no pupil may have his or her grade reduced or lose academic credit for any excused absences if the pupil makes up any missed assignments and tests. (Ed. Code, § 48980, subd. (l)).²²
- Complete text of Education Code section 48205. (Ed. Code, § 48980, subd. (l).)²³
- Notice of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Education Code section 52244. (This activity is only reimbursable until January 1, 2005. If the sunset date of Education Code section 52244 is postponed or eliminated, the parameters and guidelines may be amended to extend or remove the reimbursement period termination date for this activity.) (Ed. Code, § 48980, subd. (m).)²⁴
- Notice that the prospectus of school district curriculum is available for review at the school, upon request. (Ed. Code, § 49063, subd. (k).)²⁵

²¹ Added by Statutes of 1999-2000, First Extraordinary Session, chapter 1, effective June 25, 1999.

²² Added by Statutes of 1998, chapter 846, effective Sept. 25, 1998.

²³ *Id.*

²⁴ Added by Statutes of 2000, chapter 73, effective July 5, 2000.

²⁵ Added by Statutes of 1998, chapter 1031, effective January 1, 1999.