

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Education Code Section 51225.7 as
Added by Statutes 2021, Chapter 144
(AB 132, Section 10), Effective
July 27, 2021

California Code of Regulations, Title 5,
Section 30035, Appendix A and Appendix
B as Added by Register 2022, Number
19, Effective July 1, 2022

Filed on June 23, 2023

Fresno Unified School District, Claimant

Case No.: 22-TC-05

*Free Application for Federal Student Aid
(FAFSA)*

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

(Adopted May 24, 2024)

(Served May 30, 2024)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on
May 24, 2024.



Heather Halsey, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Education Code Section 51225.7 as Added by Statutes 2021, Chapter 144 (AB 132, Section 10), Effective July 27, 2021</p> <p>California Code of Regulations, Title 5, Section 30035, Appendix A and Appendix B as Added by Register 2022, Number 19, Effective July 1, 2022</p> <p>Filed on June 23, 2023</p> <p>Fresno Unified School District, Claimant</p>	<p>Case No.: 22-TC-05</p> <p><i>Free Application for Federal Student Aid (FAFSA)</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 24, 2024)</i></p> <p><i>(Served May 30, 2024)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 24, 2024. Arthur Palkowitz, Kim Kelstrom, and Nancy Witrado, appeared on behalf of the claimant. Chris Ferguson 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 sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 5-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Deborah Gallegos, Representative of the State Controller	Yes
Jennifer Holman, Representative of the Director of the Office of Planning and Research	Yes
Renee Nash, School District Board Member	Absent
William Pahland, Representative of the State Treasurer, Vice Chairperson	Yes
Michelle Perrault, Representative of the Department of Finance, Chairperson	Yes

Summary of the Findings

This Test Claim alleges reimbursable state-mandated activities and increased costs arising from Education Code section 51225.7 (as added by Stats. 2021, ch. 144 (AB 132)) and California Code of Regulations, title 5, section 30035, Appendices A and B (as added by Register 2022, Number 19). The test claim statute requires school districts, including county offices of education, to confirm that each pupil in grade 12 complete at least one of two specified financial aid applications, unless the pupil opts out of the requirement or is deemed exempt by the school district;¹ to direct pupils in grade 12 to services necessary to assist them in completing the appropriate financial aid application;² and to ensure pupil and parent information shared in connection with the requirements of the statute are handled in compliance with applicable federal and state privacy laws.³ It also requires the California Student Aid Commission to adopt regulations that include acceptable use policies to provide guidance to local educational agencies on the requirements relating to state privacy laws governing the handling of pupil and parent information shared under the statute, and to post and make available those policies on its website.⁴ Appendix A to the regulations is the model opt-out form for school district use. Appendix B to the regulations is the model acceptable use policy.

The Commission finds that the Test Claim was timely filed. The potential period of reimbursement for the Test Claim statute begins on the statute's effective date, July 27, 2021.⁵

The Commission finds that Education Code section 51225.7 imposes the following new requirements on school districts, including county offices of education:

- Commencing with the 2022–23 school year, confirm that a pupil in grade 12 completes and submits to the United States Department of Education a Free Application for Federal Student Aid (FAFSA); or, if the pupil is exempt from paying nonresident tuition pursuant to Education Code section 68130.5, the pupil completes and submits to the Student Aid Commission a form established pursuant to Education Code section 69508.5 for purposes of the California Dream Act (also known as the California Dream Act Application), unless the parent or legal guardian of the pupil, or the pupil if the pupil is a legally emancipated minor or 18 years of age or older, elects to opt out of the

¹ Education Code section 51225.7(b), (d).

² Education Code section 51225.7(e)(1).

³ Education Code section 51225.7(e)(2).

⁴ Education Code section 51225.7(f).

⁵ The potential period of reimbursement for the test claim regulation begins on the regulation's effective date, July 1, 2022. However, because the test claim regulation does not impose any requirements on school districts, the regulation's potential reimbursement period is immaterial to the analysis herein.

requirements of this section by filling out and submitting an opt-out form to the school district or county office of education.⁶

- If it is determined that a pupil is unable to complete and submit the FAFSA or California Dream Act Application, or an opt-out form, exempt the pupil or, if applicable, the pupil's parent or legal guardian, and complete and submit an opt-out form on the pupil's behalf.⁷
- Ensure that each pupil in grade 12 and, if applicable, the pupil's parent or legal guardian, is directed to any support and assistance services necessary to comply with the financial aid application requirement described in Education Code section 51225.7(b) that may be available through outreach programs, including, but not limited to, those programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.⁸

Although prior law required school districts to provide a paper copy of the FAFSA or California Dream Act Application each pupil, upon request, and to “ensure that each of its pupils receives information on how to properly complete and submit the Free Application for Federal Student Aid (FAFSA) or the California Dream Act Application, as appropriate, at least once *before the pupil enters grade 12*,”⁹ prior law did not require school districts to confirm that students in grade 12 completed and submitted the FAFSA or California Dream Act Application, opted out of the application submission requirement, or were deemed exempt. Nor were school districts required to direct students in grade 12 to support services to assist them in completing a financial aid application. Thus, the bulleted activities are newly imposed on school districts and are mandated by the state. In addition, the new mandated activities are uniquely imposed on school districts and provide a governmental service to the public by increasing awareness of and access to financial aid resources and higher education.¹⁰ The record also contains substantial evidence that the claimant's costs to comply with the mandated new program or higher level of service exceed \$1,000.¹¹ No state funds have been specifically appropriated to fund this program, nor have any potential sources of offsetting revenues been identified. Additionally, none of the exceptions to reimbursement in Government Code section 17556 apply to deny this Test Claim. Therefore, the Commission finds that the new mandated activities result in increased costs mandated by the state.

⁶ Education Code section 51225.7(b).

⁷ Education Code section 51225.7(d).

⁸ Education Code section 51225.7(e)(1).

⁹ Education Code section 51225.8(a), (b) (as added by Stats. 2018, ch. 533), emphasis added.

¹⁰ Exhibit E (2), Assembly Floor Analysis, Analysis of AB 469, as amended September 3, 2021, page 2.

¹¹ Government Code section 17559(b).

However, the requirement in Education Code section 51225.7(e)(2), to ensure that information shared under the section is handled in compliance with the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) (FERPA) and applicable state laws, including Chapters 493 and 495 of the Statutes of 2017, is *not* new and, therefore does not impose a new program or higher level of service. School districts have a preexisting duty under state and federal law to protect the privacy of the student and familial personal information, including financial and immigration information.¹²

Finally, the Commission finds that California Code of Regulations, title 5, section 30035, Appendices A and B do not impose any requirements on school districts and, thus, do not constitute a reimbursable state-mandated program.

Accordingly, the Commission partially approves this Test Claim for the activities bulleted above, beginning July 27, 2021.

COMMISSION FINDINGS

I. Chronology

07/27/2021	Effective date of Statutes 2021, chapter 588, adding Education Code section 51225.7
07/01/2022	Effective date of Register 2022, number 19, adding California Code of Regulations, title 5, section 30335, Appendices A and B
06/23/2023	The claimant Fresno Unified School District filed the Test Claim. ¹³
10/06/2023	The Department of Finance (Finance) filed comments on the Test Claim. ¹⁴
11/02/2023	The claimant filed rebuttal comments. ¹⁵
03/05/2024	Commission staff issued the Draft Proposed Decision. ¹⁶

¹² 20 United States Code, section 1232g(a)(4), (b); Code of Federal Regulations, title 34, section 99.3; Education Code sections 49060 et seq. and California Code of Regulations, title 5, section 430 et seq. (the California laws that correspond to FERPA); Education Code section 234.7, as added by Statutes 2017, chapter 493 (AB 699); Government Code section 7284 et seq., as added by Statutes 2017, chapter 495 (SB 54); Government Code section 7284.6(a)(1) (Stats. 2017, ch. 495).

¹³ Exhibit A, Test Claim, filed June 23, 2023.

¹⁴ Exhibit B, Finance's Comments on the Test Claim, filed October 6, 2023.

¹⁵ Exhibit C, Claimant's Rebuttal Comments, filed November 2, 2023.

¹⁶ Exhibit D, Draft Proposed Decision, issued March 5, 2024.

II. Background

A. Free Application for Federal Student Aid (FAFSA)

The Free Application for Federal Student Aid (FAFSA) is a financial reporting form produced by the U.S. Department of Education to determine the need and eligibility of a student for federal student aid under Title IV of the Higher Education Act of 1965.¹⁷ The FAFSA collects financial and other information used to calculate the expected family contribution (EFC) for college and to determine a student's eligibility for state and institutional financial aid programs.¹⁸ "Because financial aid for college takes into consideration the cost of attendance and a family's ability to pay in determining eligibility for financial aid, the FAFSA asks for personal information such as income and tax information and social security number."¹⁹ To be eligible for federal student aid, a student must be a U.S. citizen or eligible noncitizen.²⁰

Over the years, the form has been simplified to make the application process more accessible. In 2021, the FAFSA Simplification Act was enacted as part of the Consolidated Appropriations Act, which further streamlined the FAFSA form and expanded financial aid eligibility to more students by eliminating limitations on student eligibility.²¹ These changes take effect beginning with the 2024-2025 award year.²²

B. California Dream Act Application

Under the California Dream Act of 2011 (AB 130 and AB 131), undocumented and non-resident students who meet certain non-resident requirements (also known as "AB 540

¹⁷ Higher Education Act of 1965 (Pub.L. No. 89–329 (Nov. 8, 1965) 79 Stat. 1219); see also 20 U.S.C., § 1090.)

¹⁸ Exhibit E (4), California Student Aid Commission, Free Application for Federal Student Aid FAQ, https://www.csac.ca.gov/sites/main/files/file-attachments/all_in_fafsa_faq.pdf (accessed on December 4, 2023), page 1.

¹⁹ Exhibit E (9), Senate Committee on Education, Bill Analysis of AB 469, as amended July 5, 2021, page 5.

²⁰ Exhibit E (11), U.S. Department of Education, Eligibility for Federal Student Aid, <https://studentaid.gov/resources/eligibility-text> (accessed on November 14, 2023), page 1.

²¹ Exhibit E (10), U.S. Department of Education, Dear Colleague Letter GEN-23-11, FAFSA Simplification Act Changes for Implementation in 2024-25 (August 4, 2023), <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-08-04/fafsa-simplification-act-changes-implementation-2024-25> (accessed September 27, 2023), page 1. The FAFSA Simplification Act eliminated limitations on student eligibility related to Selective Service registration and drug convictions and eliminated the ban on federal Pell Grant eligibility for confined or incarcerated individuals, amongst other changes.

²² Exhibit E (8), Excerpt from Congressional Research Service, The FAFSA Simplification Act, updated August 4, 2022, page 2.

students”²³) are eligible to apply for state financial aid, such as private scholarships funded through public universities, state-administered financial aid, university grants, community college fee waivers, and Cal Grants.²⁴ AB 540 students who submit a California Dream Act Application and meet specified requirements are eligible to apply for student loans through the California DREAM Loan Program.²⁵ In addition to establishing the eligibility of AB 540 students for state financial aid, Education Code section 69508.5 required the California Student Aid Commission to establish procedures and forms (i.e., the California Dream Act Application) to enable eligible non-resident students to participate in California student financial aid programs. The California Student Aid Commission processes the California Dream Act Application.²⁶

C. Test Claim Statute (Statutes 2021, Chapter 144) and Regulations Adopted by the California Student Aid Commission (Register 2022, number 19)

Evidence suggests that students who complete a financial aid application are more likely to attend college.²⁷ As a result, at least a dozen states have passed or are

²³ Education Code section 68130.5 (AB 540 [2001]) exempts certain California non-resident students from paying non-resident tuition rates at University of California, California State University, and California Community Colleges, if they meet certain requirements.

²⁴ Exhibit E (3), California Student Aid Commission, California Dream Act FAQ’s for Students and Parents, https://www.csac.ca.gov/sites/main/files/file-attachments/california_dream_act_faq.pdf?1694549553 (accessed on December 4, 2023), pages 1-2; AB 130 (Stats. 2011, ch. 93), which amended Education Code section 68130.7 and added Education Code section 66021.7 (non-resident eligibility for scholarships derived from nonstate funds); AB 131 (Stats. 2011, ch. 604), which amended Education Code section 68130.7 and added Education Code sections 66021.6 (non-resident eligibility for student aid programs administered by the California State University, California Community College, and University of California systems), 69508.5 (non-resident eligibility for student financial aid programs administered by the State of California; Student Aid Commission to establish procedures and forms for eligible non-resident students to apply for state student financial aid programs), and 76300.5 (eligibility of non-resident students for fee waiver by community college districts); and Education Code section 68130.5 (requirements for non-resident tuition exemption).

²⁵ Education Code section 70030 et seq., as added by Statutes 2014, chapter 754 (SB 1210).

²⁶ Exhibit E (3), California Student Aid Commission, California Dream Act FAQ’s for Students and Parents, https://www.csac.ca.gov/sites/main/files/file-attachments/california_dream_act_faq.pdf?1694549553 (accessed on December 4, 2023), page 4.

²⁷ Exhibit E (6), Carns, *More States Require High School Seniors to Fill Out Financial Aid Form*, New York Times (Oct. 14, 2022), page 1.

considering passing laws requiring high school seniors to complete the FAFSA.²⁸ The test claim statute (Education Code section 51225.7, as added by Statutes 2021, chapter 144) was added as part of the higher education trailer bill to the 2021-22 budget (AB 132). While AB 132 is the statute that added Education Code section 51225.7, the requirements of the test claim statute were originally proposed as part of AB 469 (2021).²⁹ The legislative history for AB 469 describes the purpose of the FAFSA and California Dream Act Application filing requirements as follows:

Despite having a higher than average state poverty rate, California in 2018 ranked 30th in the country for FAFSA completion. A recent analysis by EdSource found that, in the year after the outbreak of COVID-19, FAFSA completion rates in California decreased by 11% and CADAA by 45%. These decreases were most significant among low-income students. AB 469 will require LEA's [local educational agencies] to ensure high school seniors complete the FAFSA and CADAA before graduating. The intent of this bill is to improve students' access to financial aid resources that require completion of these forms, such as the Community College Promise program. By connecting students to critical financial aid, AB 469 supports the Governor's and Legislature's vision to increase access to higher education.³⁰

The Assembly Committee on Education reported that “[w]hile the decline has occurred across the board, applications declined at steeper rates for students in schools designated as Title 1, those in town and rural areas, and those enrolling a higher

²⁸ Exhibit E (6), Carns, *More States Require High School Seniors to Fill Out Financial Aid Form*, New York Times (Oct. 14, 2022), page 1.

²⁹ Exhibit E (9), Senate Committee on Education, Analysis of AB 469, as amended July 5, 2021, pages 3-5 (describing proposed requirements of AB 469 prior to passage of AB 132 and stating that AB 132 contains provisions that are “nearly identical” to AB 469); Exhibit E (2), Assembly Floor Analysis, Analysis of AB 469, as amended September 3, 2021, page 1. After AB 132 added Education Code section 51225.7, those requirements were deleted from AB 469. Effective January 1, 2022, AB 469 amended Education Code section 51225.7 to require the California Student Aid Commission and Department of Education to facilitate the completion of the FAFSA and California Dream Act Application by sharing the current school year’s roster of pupils and matching the roster with FAFSA and California Dream Act Application pupil application data. AB 469 also added a definition of “outreach program” to mean a non-profit entity that is exempt from taxation under federal law or a public entity with experience in either assisting pupils with completing financial aid applications or serving pupils who are eligible to submit a California Dream Act Application (Education Code section 51225.7, as amended by Statutes 2021, chapter 560 (AB 469)).

³⁰ Exhibit E (1), Assembly Committee on Education, Analysis of AB 469, as amended March 29, 2021, page 4.

percentage of students of color.”³¹ The process of completing a financial aid application “poses a significant barrier to many families, particularly those in which no one has previously attended college or might be unfamiliar with the process of seeking financial aid. Such an application form can be daunting, asking students and families a range of specific questions about their household, finances, and taxes paid.”³² It is estimated that “school districts’ failure to ensure all their students apply for aid meant that as much as \$550 million in federal and state aid was left untapped by eligible California students.”³³

On May 20, 2022, the California Student Aid Commission issued guidance to high school counselors and school superintendents on the requirements of the test claim statute, stating as follows:

Local Educational Agencies (LEAs) are required to confirm that high school seniors complete a Free Application for Federal Student Aid (FAFSA) or California Dream Act Application (CADAA). Students may alternatively complete an opt-out form, which shall be collected and retained by the high school. These requirements apply beginning with the 2022-23 school year for the 2023-2024 FAFSA/CADAA application cycle that starts on October 1, 2022.

The Commission initiated the rulemaking process to establish a model opt-out form and to establish a model acceptable use policy for data collected by the LEAs in compliance with California Education Code Section 51225.7. The Commission’s proposed regulations received final approval from the Office of Administrative Law on May 10, 2022. Approved regulations and model opt-out form are accessible on the Commission’s website.³⁴

The California Student Aid Commission further explained that the regulations it developed in accordance with Education Code section 51225.7 do not require school districts to use the model opt-out form provided by the Student Aid Commission.

³¹ Exhibit E (1), Assembly Committee on Education, Analysis of AB 469, as amended March 29, 2021, page 4.

³² Exhibit E (7), Excerpt from Campaign for College Opportunity, Financial Aid in California, April 2020, page 2.

³³ Exhibit E (7), Excerpt from Campaign for College Opportunity, Financial Aid in California, April 2020, page 2.

³⁴ Exhibit E (5), California Student Aid Commission, Special Alert to High School Counselors and County and District Superintendents, May 20, 2022, page 1. The Special Alert erroneously identifies AB 469 as imposing the requirement under Education Code section 51225.7 for local educational agencies to confirm that high school seniors complete the FAFSA or California Dream Act Application. As discussed herein, that requirement was added by the test claim statute (Stats. 2021, ch. 144 [AB 132]).

Rather, districts are “encouraged to seek guidance from their counsel regarding the statutory requirement relating to use of the model opt-out form.”³⁵

III. Positions of the Parties

A. Fresno Unified School District

The claimant, Fresno Unified School District, alleges that Education Code section 51225.7, as added by the test claim statute and California Code of Regulations, title 5, section 30035, Appendices A and B, as added by the test claim regulation, result in reimbursable increased costs mandated by the state.³⁶ Specifically, the claimant alleges that Education Code section 51225.7 requires school districts, beginning with the 2022-23 school year, to confirm that a pupil either completes and submits a FAFSA or a California Dream Act Application (California Dream Act Application); to provide parents and legal guardians with the option of opting out of the requirement by filling out and submitting an opt-out form to the district; to exempt the pupil from the requirements and submit an opt-out form on the pupil’s behalf if the district determines that the pupil is unable to complete a financial aid application or an opt-out form; to direct pupils and their parents or legal guardians to assistance services for completing the FAFSA or California Dream Act Application; and to ensure that information shared by parents, legal guardians, and pupils in the process of complying with the requirements is handled in compliance with applicable federal and state privacy laws.³⁷

To implement the requirement under Education Code section 51225.7(b) of confirming that a pupil either files the FAFSA or California Dream Act Application, the claimant asserts that school counselors “assist pupils in their senior year of high school and their families to complete the FAFSA starting when application opens in October of the school year until the end of the school year” and “assist undocumented students, DACA recipients, U Visa holders and students under Temporary Protected Status who qualify for a non-resident exemption to apply for the California Dream Act.”³⁸ The claimant alleges that school counselors offer opt-out forms at school sites to implement Education Code section 51225.7(c), which permits parents to opt out of the FAFSA and California Dream Act Application requirements.³⁹ The claimant further asserts that the test claim statutes require it to designate an individual responsible for implementing and ensuring compliance with an acceptable use policy for any student information it collects pertaining to FAFSA and the California Dream Act Application.⁴⁰

³⁵ Exhibit E (5), California Student Aid Commission, Special Alert to High School Counselors and County and District Superintendents, May 20, 2022, page 1.

³⁶ Exhibit A, Test Claim, filed June 23, 2023, pages 6-7.

³⁷ Exhibit A, Test Claim, filed June 23, 2023, pages 9-11.

³⁸ Exhibit A, Test Claim, filed June 23, 2023, pages 11-12.

³⁹ Exhibit A, Test Claim, filed June 23, 2023, page 12.

⁴⁰ Exhibit A, Test Claim, filed June 23, 2023, pages 16, 18.

The claimant further alleges costs to develop and implement internal policies, training, and procedures relating to assisting pupils with completing the FAFSA, but states that the claimant's own counselors received free local training during fiscal years 2022-23 and 2023-24.⁴¹ The claimant alleges that all other costs to comply with the test claim statute are \$1,126,435 for fiscal year 2022-23 and \$1,145,366 for fiscal year 2023-24, calculated as ten percent of the total annual time incurred by 80 high school counselors, with a statewide cost estimate of \$60 million.⁴² The claimant is unaware of any potential offsetting funds.

The claimant objects to comments filed by Finance on the basis that they do not comply with sections 1183.2 and 1187.5 of the Commission's regulations because they include representations of fact that are not signed under penalty of perjury and are not supported by documentary evidence.⁴³ Contrary to what Finance asserts, a test claim is not required to include a fiscal analysis, and the statewide cost estimate may be addressed during the parameters and guidelines process.⁴⁴ The claimant points out that contrary to Finance's assertions, the claimant is not requesting reimbursement for specific training, resources, and parental workshops and did not include those activities in the statewide cost estimate.⁴⁵ Furthermore, Finance's concern that costs are overstated because a more simplified FAFSA beginning in 2024-25 may result in a reduction in required activities "may also be addressed during the parameters and guidelines process or by a request for mandate redeterminations."⁴⁶

The claimant disagrees with Finance's assertion that the activities required by the test claim statute were already required by Education Code section 49600(d), asserting instead that "AB 132 changed discretionary activities to mandated activities":

Requiring a pupil to complete and submit the FAFSA form; or determining if the pupil is exempt; or that a pupil may opt out of the requirements is not the same as the prior law requiring developing pupil knowledge of financial aid planning for postsecondary education by providing pupils with financial aid information on FAFSA.

The requirements prior to AB 132 were not the same for traditional school counselor duties. Even if a school counselor was performing the activities mandated by AB 132 prior to its enactment, it was not required to. AB 132 changed discretionary activities to mandated activities. Furthermore, it is

⁴¹ Exhibit A, Test Claim, filed June 23, 2023, pages 11, 13, 16.

⁴² Exhibit A, Test Claim, filed June 23, 2023, pages 14-18.

⁴³ Exhibit C, Claimant's Rebuttal Comments, filed November 2, 2023, page 1.

⁴⁴ Exhibit C, Claimant's Rebuttal Comments, filed November 2, 2023, page 2.

⁴⁵ Exhibit C, Claimant's Rebuttal Comments, filed November 2, 2023, page 2.

⁴⁶ Exhibit C, Claimant's Rebuttal Comments, filed November 2, 2023, pages 2, 4.

presumed the legislature would not enact a new law that was already required.⁴⁷

The claimant did not file comments on the Draft Proposed Decision.

B. Department of Finance

Finance acknowledges that “AB 132 establishes new responsibilities for LEAs and school districts” but asserts that “Education Code section 51225.7(b) does not require LEAs to provide the specific training, resources, and parental workshops” set forth in the Test Claim.⁴⁸ Finance argues that the requirements established by AB 132 “generally fall within the scope of school counselor duties” under Education Code section 49600(d) and (e), namely, advising and providing information to students on financial aid for postsecondary education programs, including the FAFSA and California Dream Action Application.⁴⁹ Finance also asserts that the claimant has failed to provide sufficient evidence that existing state funding provided or accessible to school districts for financial aid outreach is inadequate and beginning in the 2024-25 school year, a new, streamlined FAFSA form will simplify the financial aid application process and “may reduce the assistance needed to facilitate its completion.”⁵⁰

Finance did not file comments on the Draft Proposed Decision.

IV. Discussion

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

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service....

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁵¹ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]”⁵²

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

⁴⁷ Exhibit C, Claimant’s Rebuttal Comments, filed November 2, 2023, page 3.

⁴⁸ Exhibit B, Finance’s Comments on the Test Claim, filed October 6, 2023, page 2.

⁴⁹ Exhibit B, Finance’s Comments on the Test Claim, filed October 6, 2023, page 2.

⁵⁰ Exhibit B, Finance’s Comments on the Test Claim, filed October 6, 2023, page 3.

⁵¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁵² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁵³
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁵⁴
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁵⁵
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁵⁶

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁵⁷ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁵⁸ 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.”⁵⁹

⁵³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁵⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

⁵⁵ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

⁵⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁵⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

⁵⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁵⁹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days.⁶⁰ Government Code section 17557(e) requires a test claim to be submitted by June 30 following a fiscal year to establish reimbursement eligibility for that fiscal year.

The test claim statute became effective on July 27, 2021, the test claim regulation became effective July 1, 2022, and costs were first incurred on July 1, 2022.⁶¹ The Test Claim was filed on June 23, 2023, within 365 days of the date costs were first incurred. Accordingly, the Test Claim was timely filed.

Because the Test Claim was filed on June 23, 2023, under Government Code 17557, the potential period of reimbursement would begin on July 1, 2021. However, because the test claim statute and regulation have later effective dates, the potential period of reimbursement for the test claim statute begins on the statute’s effective date, July 27, 2021, and the potential period of reimbursement for the test claim regulation begins on the regulation’s effective date, July 1, 2022.

⁶⁰ California Code of Regulations, title 2, section 1183.1(c).

⁶¹ Exhibit A, Test Claim, filed June 23, 2023, page 20 (Declaration of Kim Kelstrom, Chief Executive, Fiscal Services, Fresno Unified School District).

B. Education Code Section 51225.7(b), (d), and (e)(1), as Added by Statutes 2021, Chapter 144, Imposes a Reimbursable State-Mandated New Program or Higher Level of Service on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution. However, California Code of Regulations, Title 5, Section 30035, Appendices A and B, as Added by Register 2022, Number 19, Do Not Impose Any Requirements on School Districts.

1. Education Code Section 51225.7(b), (d), and (e)(1), as Added by Statutes 2021, Chapter 144, Imposes New Requirements on School Districts. However, California Code of Regulations, Title 5, Section 30035, Appendices A and B, as Added by Register 2022, Number 19, Impose Requirements on the California Student Aid Commission, But Not on School Districts.

- a. Education Code section 51225.7(b), (d), (e)(1), and (e)(2) imposes requirements on school districts to confirm that each pupil in grade 12 completes one of two specified financial aid applications, opts out of the requirement, or is deemed exempt; to ensure that pupils in grade 12 are directed to necessary support services to complete the appropriate financial aid application; and to ensure that school districts abide by existing federal and state student privacy laws with respect to these records.

Education Code section 51225.7 requires “local education agencies” to confirm that pupils in grade 12 complete a student financial aid application or an opt-out form.⁶² If the local education agency determines that the pupil cannot complete the application or an opt-out form, it must exempt the pupil and submit an opt-out form on the pupil’s behalf.⁶³ Section 51225.7 also requires local education agencies to ensure that grade 12 pupils and their parents are directed to support services necessary to comply with the financial aid application requirement and that information shared in connection with these requirements is handled in compliance with applicable state and federal privacy laws.⁶⁴

Education Code section 51225.7(a) defines key terms used in the section, including “pupil” as limited to a pupil in grade 12 who attends a local educational agency high school and “local educational agencies” as school districts, county offices of education, and charter schools.⁶⁵ Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district,

⁶² Education Code section 51225.7(b) (as added by Stats. 2021, ch. 144).

⁶³ Education Code section 51225.7(d) (as added by Stats. 2021, ch. 144).

⁶⁴ Education Code section 51225.7(e) (as added by Stats. 2021, ch. 144).

⁶⁵ Education Code section 51225.7(a)(1), (a)(3) (as added by Stats. 2021, ch. 144).

community college district, or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education.⁶⁶ Thus, as described below, the test claim statute imposes requirements on K-12 school districts and county offices of education and, therefore, K-12 school districts and county superintendents of schools are eligible to seek reimbursement for the requirements imposed by the test claim statute, and are hereafter referred to as “school districts”.⁶⁷

Education Code section 51225.7(b) requires that beginning with the 2022–23 school year, except as provided in subdivisions (c) and (d), the school district confirm that a pupil in grade 12 complies with at least one of the following:

(1) The pupil completes and submits to the United States Department of Education a Free Application for Federal Student Aid.

(2) If the pupil is exempt from paying nonresident tuition pursuant to Section 68130.5, the pupil completes and submits to the Student Aid Commission a form established pursuant to Section 69508.5 for purposes of the California Dream Act.⁶⁸

As explained above, a pupil must be a U.S. citizen or eligible noncitizen in order to be eligible for the FAFSA.⁶⁹ Pupils who are not citizens but who meet other eligibility criteria may file the California Dream Act application in lieu of the FAFSA.⁷⁰ Education Code section 68130.5 exempts specified California non-resident students from paying non-resident tuition rates at University of California, California State University, and California Community Colleges, if they meet certain requirements. And Education Code section 69508.5, which established the California Dream Act, provides that students who are exempt from paying nonresident tuition under section 68130.5 are eligible to participate in any student financial aid program administered by the State of California, and required the California Student Aid Commission to establish procedures and forms to enable eligible non-resident students to participate in state financial aid programs.

⁶⁶ Education Code section 1010. County offices of education provide alternative educational programs for students attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

⁶⁷ Because school districts and county superintendents of schools fall within the definition of “school districts” under Government Code section 17519, this Decision uses the term “school districts” to refer to both school districts and county superintendents of schools as eligible claimants.

⁶⁸ Education Code section 51225.7(b) (as added by Stats. 2021, ch. 144).

⁶⁹ Exhibit E (11), U.S. Department of Education, Eligibility for Federal Student Aid, <https://studentaid.gov/resources/eligibility-text> (accessed on November 14, 2023), page 1.

⁷⁰ Education Code section 70030 et seq., as added by Statutes 2014, chapter 754 (SB 1210).

Thus, the “form established pursuant to Section 69508.5” means the California Dream Act Application to be completed by qualifying pupils in lieu of the FAFSA.

Education Code section 51225.7(c) authorizes the “parent or legal guardian of the pupil, or the pupil if the pupil is a legally emancipated minor or 18 years of age or older,” to opt out of the financial aid application requirement in subdivision (b) “by filling out and submitting an opt-out form” to the school district.⁷¹ Section 51225.7(c) further requires the Student Aid Commission to make the opt-out form available “to all local educational agencies pursuant to subdivision (f).”⁷² Subdivision (f) requires the Student Aid Commission, on or before July 1, 2022, to adopt regulations that include a model opt-out form and to post and make available the form on its website.⁷³ California Code of Regulations, title 5, section 30035(a), as added by Register 2022, Number 19, specifies that a model opt-out form for school district use is attached as Appendix A to the regulation.

Education Code section 51225.7(d) requires the school district to exempt the pupil “or, if applicable, the pupil’s parent or legal guardian” from the financial aid application requirement in subdivision (b) if the school district determines that the pupil is unable to complete either a financial aid application or opt-out form.⁷⁴ Section 51225.7(d) further requires the school district to complete and submit an opt-out form on behalf of the exempted student.⁷⁵

Education Code section 51225.7(e)(1) requires the school district to “ensure” that it “directs” each pupil and, if applicable, the pupil’s parent or legal guardian, “to any support and assistance services necessary” to complete and submit either the FAFSA or California Dream Act Application “that may be available through outreach programs, including, but not limited to, those programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.”⁷⁶

Section 51225.7(e)(2) requires that a school district “ensure” that it handles pupil and parent information, including personal data, shared in connection with these requirements in compliance with applicable federal and state privacy laws as follows:

(e) The governing board or body of the local educational agency shall ensure both of the following:

[¶]

⁷¹ Education Code section 51225.7(c) (as added by Stats. 2021, ch. 144).

⁷² Education Code section 51225.7(c) (as added by Stats. 2021, ch. 144).

⁷³ Education Code section 51225.7(f) (as added by Stats. 2021, ch. 144).

⁷⁴ Education Code section 51225.7(d) (as added by Stats. 2021, ch. 144).

⁷⁵ Education Code section 51225.7(d) (as added by Stats. 2021, ch. 144).

⁷⁶ Education Code section 51225.7(e)(1) (as added by Stats. 2021, ch. 144).

(2) Information shared by parents, legal guardians, and pupils under this section is handled in compliance with the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and applicable state laws, including Chapters 493 and 495 of the Statutes of 2017, regardless of any person's immigration status or other personal information, in order to protect all pupil and parent data to the fullest extent possible so that schools and all personal data remain safe.⁷⁷

Section 51225.7(f) requires that the Student Aid Commission, on or before July 1, 2022, adopt regulations that include acceptable use policies to provide guidance on the requirements relating to state law specified in subdivision (e)(2) and post and make available those policies on its website. California Code of Regulations, title 5, section 30035(b), as added by Register 2022, Number 19, specifies that a model acceptable use policy “for the secure handling of parent, guardian, and pupil personal information gathered by local education agencies pursuant to Education Code Section 51225.7(e)(2)” is attached as Appendix B to the regulation.

The claimant asserts that Education Code section 51225.7(e)(2) requires the school district to designate an individual responsible for implementing and ensuring compliance with an acceptable use policy as well as the confidentiality of information pertaining to the financial aid applications for purposes of complying with Education Code section 51225.7.⁷⁸ Section 51225.7(e)(2), however, simply requires school districts to ensure they abide by existing federal and state student privacy laws. To the extent that the claimant relies on California Code of Regulations, title 5, section 30035, Appendix B in asserting that a school district must designate an individual to oversee the acceptable use policy, that argument similarly fails. Appendix B is the model acceptable use policy adopted by the California Student Aid Commission and states in relevant part that “[Local Educational Agency] designates [XXXXXXXX], [Position] as the individual responsible for implementing this policy and ensuring compliance with its provisions.”⁷⁹ There is no language in the test claim statute or regulation, however, requiring a school district to adopt an acceptable use policy, and therefore, the language in the model acceptable use policy (Appendix B) stating that the local educational agency designate an individual responsible for implementing and ensuring compliance with the policy, is not a requirement imposed on school districts by the test claim statute or regulation. Furthermore, school districts have a preexisting duty under other state laws to establish written policies and procedures governing access to, and the confidentiality of, all pupil records and are required to designate an individual to oversee the implementation of such policies.⁸⁰

⁷⁷ Education Code section 51225.7(e)(2) (as added by Stats. 2021, ch. 144).

⁷⁸ Exhibit A, Test Claim, filed June 23, 2023, page 16.

⁷⁹ California Code of Regulations, title 5, section 30035, Appendix B, as added by Register 2022, number 19.

⁸⁰ California Code of Regulations, title 5, sections 431(a) (“Local governing boards shall designate a certificated employee as custodian of records. Such employee shall be

Therefore, the Commission finds that Education Code section 51225.7 requires school districts, including county offices of education, to perform the following activities:

- Commencing with the 2022–23 school year, confirm that a pupil in grade 12 completes and submits to the United States Department of Education a Free Application for Federal Student Aid (FAFSA); or, if the pupil is exempt from paying nonresident tuition pursuant to Education Code section 68130.5, the pupil completes and submits to the Student Aid Commission a form established pursuant to Education Code section 69508.5 for purposes of the California Dream Act (also known as the California Dream Act Application), unless the parent or legal guardian of the pupil, or the pupil if the pupil is a legally emancipated minor or 18 years of age or older, elects to opt out of the requirements of this section by filling out and submitting an opt-out form to the school district or county office of education.⁸¹
- If it is determined that a pupil is unable to complete and submit the FAFSA or California Dream Act Application, or an opt-out form, exempt the pupil or, if applicable, the pupil's parent or legal guardian, and complete and submit an opt-out form on the pupil's behalf.⁸²
- Ensure that each pupil in grade 12 and, if applicable, the pupil's parent or legal guardian, is directed to any support and assistance services necessary to comply with the financial aid application requirement described in Education Code section 51225.7(b) that may be available through outreach programs, including, but not limited to, those programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.⁸³
- Ensure that information shared by parents, legal guardians, and pupils under this section is handled in compliance with the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and applicable state laws, including Chapters 493 and 495 of the Statutes of 2017, regardless of any person's immigration status or other personal information, in order to protect all pupil and parent data to the fullest extent possible so that schools and all personal data remain safe.

charged with districtwide responsibility for implementing board policies relating to pupil records”), 431(c) (“Each district shall establish written policies and procedures for pupil records which implement Education Code Section 49060, and Title 5 regulations relating to pupil records”). “Pupil record” is broadly defined as “information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained.” California Code of Regulations, title 5, section 430(d).

⁸¹ Education Code section 51225.7(b).

⁸² Education Code section 51225.7(d).

⁸³ Education Code section 51225.7(e)(1).

The claimant also alleges that Education Code section 51225.7 requires school districts to develop and implement internal policies, training, and procedures to assist pupils with completing the FAFSA and California Dream Act Application; train staff to administer the FAFSA; and to provide support and assistance to pupils in grade 12 and their families with completing and submitting the FAFSA and the California Dream Act Application, namely through school counselor assistance and in-person workshops.⁸⁴ The claimant also states that Education Code section 51225.7(c) requires school counselors to offer opt-out forms at school sites.⁸⁵

Developing and implementing internal policies, training, and procedures, training staff on how to assist pupils in grade 12 with completing and submitting the FAFSA and California Dream Act Application, and providing “support and assistance” to pupils in completing the appropriate financial aid application through school counseling sessions and in-person “parent night” workshops are not required by the plain language of Education Code section 51225.7. Rather, the test claim statute requires the school district to “confirm” that a pupil in grade 12 files either the FAFSA or California Dream Act Application or submits an opt-out form, and to direct students to external support services necessary to complete the financial aid application, but does not specify how the school district satisfy these requirements.

Furthermore, while section 51225.7(c) provides that a pupil or parent may opt out of the financial aid application requirement by submitting an opt-out form to the school district, the plain language of that subdivision does not require a school district, either through a school counselor or otherwise, to provide the pupil or parent with an opt-out form. Section 51224.7(c), (f) require the California Student Aid Commission to develop a model opt-out form and make it available to school districts on its website, but the test claim statute does not require the school district to provide an opt-out form to pupils and parents seeking to opt-out of the financial aid application requirement.⁸⁶

- b. The requirements imposed on school districts by Education Code section 51225.7(b), (d), and (e)(1) are new; however, the requirement in Education Code section 51225.7(e)(2) is *not* new.

Education Code section 51225.7(b), (d), and (e)(1) (as added by Stats. 2021, ch. 144) impose new requirements on school districts. Prior law did not require school districts to confirm that students in grade 12 completed and submitted the FAFSA or California Dream Act Application, opted out of the application submission requirement, or were

⁸⁴ Exhibit A, Test Claim, filed June 23, 2023, pages 11-12, 13-14.

⁸⁵ Exhibit A, Test Claim, filed June 23, 2023, page 12.

⁸⁶ Developing policies and procedures, training staff, and offering the opt-out forms at school sites may be proposed for inclusion in the Parameters and Guidelines if they are supported by substantial evidence showing they are “reasonably necessary” to comply with the mandate. Government Code section 17557(a) and California Code of Regulations, title 2, section 1183.7(d) and 1187.5.

deemed exempt. Nor were school districts required to direct students in grade 12 to support services to assist them in completing a financial aid application.

Under prior law, Education Code section 51225.8 (Stats. 2018, ch. 533) required school districts, beginning with the 2020-21 school year, to “ensure that each of its pupils receives information on how to properly complete and submit the Free Application for Federal Student Aid (FAFSA) or the California Dream Act Application, as appropriate, at least once *before the pupil enters grade 12*” and to “ensure that a paper copy of the FAFSA or California Dream Act Application is provided to each pupil, upon request.”⁸⁷ Section 51225.8 gives the school district discretion on how it disseminates this financial aid application information, which may be through in-class instruction, existing programs, family information sessions, or school counseling sessions.

These activities do not overlap with the requirements of the test claim statute. The requirements under Section 51225.8 pertain to activities the district must perform *at least once before the pupil enters grade 12*, whereas the test claim statute activities are limited to *pupils in grade 12*, who are at the stage of completing a financial aid application. Furthermore, unlike the test claim statute, Section 51225.8 does not impose a requirement on the school district to confirm that a pupil either completes and submits the FAFSA or California Dream Act Application or opts out of the requirement, nor does it require the district to submit an opt-out form on behalf of any student it deems unable to comply with the application or out-out requirements. Nor does Section 51225.8 require a school district to direct students to support and assistance services to complete the appropriate financial aid application, such as programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.

Finance argues that the requirements imposed on school districts by the test claim statute fall within the scope of the school counselor duties described in Education Code sections 49600(d)(4) and (e)(5), which provide as follows:

(d) Educational counseling *shall* include academic counseling and postsecondary services, in the following areas... (4) Academic planning for access and success in higher education programs, including advisement on courses needed for admission to colleges and universities, standardized admissions tests, and financial aid.

* * *

(e) Educational counseling *may* also include counseling in any of the following... (5) Developing pupil knowledge of financial aid planning for postsecondary education by providing pupils with financial aid information, including, but not limited to, information on the Free Application for Federal Student Aid (FAFSA), the California Dream Act application (California Dream Act Application), the Cal Grant Program established

⁸⁷ Education Code section 51225.8(a), (b) (as added by Stats. 2018, ch. 533), emphasis added.

pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3, local and national scholarship programs, financial aid programs and resources for foster and homeless youth, fee waiver programs, and other financial aid programs and options, and net college cost.⁸⁸

This argument fails for several reasons. At the time the test claim statute became effective, Section 49600 did not contain subdivision (e)(5) or similar language.⁸⁹ And even if it had, subdivision (e)(5) does not impose any requirements on a school district (“Educational counseling *may* also include...”).⁹⁰ Additionally, Finance has omitted the opening provision in Section 49600 (Stats. 2017, ch. 641), which states that a school district “*may* provide a comprehensive educational counseling program for all pupils enrolled in the school district.”⁹¹ Thus, at the time the test claim statute was enacted, Education Code section 49600 authorized, but did not require, school districts to provide educational counseling, and any requirements imposed on school counselors, including those listed in subdivision (d)(4), stemmed from the voluntary decision of a school district to provide educational counseling.⁹²

More importantly, however, the requirements under Section 49600 are not the same as those under the test claim statute. Under Section 49600(d)(4), when districts elected to provide an educational counseling program, school counselors were required to advise students on financial aid for higher education programs.⁹³ They were not required to “confirm” that students either completed the FAFSA or California Dream Act Application or opted out of the requirement, or to exempt students deemed unable to comply with those requirements. Nor were they required to direct students to external outreach programs for assistance with completing the appropriate financial aid application.

⁸⁸ Exhibit B, Finance’s Comments on the Test Claim, filed October 6, 2023, page 1, citing Education Code section 49600(d)(4), (e)(5), as amended by Statutes 2022, chapter 153.

⁸⁹ Section 49600, as amended by Statutes 2022, chapter 153, added subdivision (e)(5) effective January 1, 2023, *after* the test claim statute’s July 27, 2021 effective date. At the time the test claim statute became effective, Section 49600(d)(4) (Stats. 2017, ch. 641) stated as follows:

(d) Educational counseling shall include academic counseling, in which pupils receive counseling in the following areas... (4) Academic planning for access and success in higher education programs, including advisement on courses needed for admission to public colleges and universities, standardized admissions tests, and financial aid.

⁹⁰ Education Code section 49600(d)(4), (e)(5), as amended by Statutes 2022, chapter 153; Education Code section 75 (“‘Shall’ is mandatory and ‘may’ is permissive”).

⁹¹ Education Code section 49600(a), as amended by Statutes 2017, chapter 641.

⁹² Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

⁹³ Section 49600(d)(4), as amended by Statutes 2017, chapter 641.

Furthermore, the test claim statute imposes requirements on “local educational agencies” (including school districts), not school counselors. Therefore, school districts can choose to have any one of their employees perform the required activities under the test claim statute.

Accordingly, the Commission finds that the requirements imposed by Education Code section 51225.7(b), (d), and (e)(1) (as added by Stats. 2021, ch. 144) are new.

However, the requirement in Education Code section 51225.7(e)(2) is *not* new. That section requires school districts to “ensure that information shared by parents, legal guardians, and pupils under this section is handled in compliance with the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and applicable state laws, including Chapters 493 and 495 of the Statutes of 2017, regardless of any person's immigration status or other personal information, in order to protect all pupil and parent data to the fullest extent possible so that schools and all personal data remain safe.” School districts have a preexisting duty under the federal Family Educational Rights and Privacy Act (FERPA) and state law to maintain the confidentiality of student education records, and risk losing federal funding if they disclose “personally identifiable information in education records,” with “education records” broadly defined as records that contain information directly related to a student that are maintained by an educational agency or institution, or by a party acting for the agency or institution.⁹⁴ An educational agency or institution is permitted to disclose personally identifiable information from a student’s education record without prior consent in connection with the student’s application for or receipt of financial aid.⁹⁵

Similarly, “Chapters 493 and 495 of Statutes 2017” refers to AB 699 (2017) and SB 54 (2017), respectively, which are state laws aimed at protecting the immigration and citizenship status of pupils. As relevant here, AB 699 added Education Code section 234.7, which prohibits a school from collecting information regarding the immigration status of pupils or their family members, except as required by law or to administer a state or federal educational program.⁹⁶ SB 54 added Government Code section 7284 et seq., which prohibits state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including providing an individual’s “personal information,” as defined in Civil Code section 1798.3 (“any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual’s name, social security number, physical description, home address, home telephone number, education, financial

⁹⁴ United States Code, title 20, section 1232g(a)(4), (b); Code of Federal Regulations, title 34, section 99.3. Education Code sections 49060 et seq. and California Code of Regulations, title 5, section 430 et seq. are the California laws that correspond to FERPA.

⁹⁵ Code of Federal Regulations, title 34, section 99.31(a)(4).

⁹⁶ Education Code section 234.7, as added by Statutes 2017, chapter 493 (AB 699).

matters, and medical or employment history”).⁹⁷ Thus, under these federal and state laws, school districts were already required to protect the privacy of student and familial personal information, including financial and immigration information.

Furthermore, as stated above, school districts have a preexisting duty under state law to establish written policies and procedures governing access to, and the confidentiality of, all pupil records and are required to designate an individual to oversee the implementation of such policies.⁹⁸

Thus, the requirement in section 51225.7(e)(2), to ensure that school districts comply with FERPA and state student privacy laws when handling information shared in connection with completing the FAFSA or California Dream Action Application, is not new.

- c. California Code of Regulations, title 5, section 30035, Appendices A and B do not impose any requirements on school districts and, thus, do not constitute a reimbursable state-mandated program.

Education Code section 51225.7(f) requires that by July 1, 2022, the Student Aid Commission adopt regulations that include a model opt-out form and acceptable use policy for maintaining the privacy of pupil and parent data as referenced in Section 51225.7(e)(2). As a result, California Code of Regulations, title 5, section 30035 and Appendices A and B were added, effective July 1, 2022 (Register 2022, No. 19). Appendix A is the model opt-out form and Appendix B is the model acceptable use policy.⁹⁹

The claimant cites this regulation and appendices as additional bases for the test claim activities.¹⁰⁰ However, these regulations do not impose any requirements on school districts. Rather, section 30035 states that it “provides” a model opt-out form (Appendix A) for local educational agencies “to document grade 12 pupils who elect not to submit, or are determined to be exempt from submitting” a FAFSA or California Dream Act

⁹⁷ Government Code section 7284 et seq., as added by Statutes 2017, chapter 495 (SB 54); Government Code section 7284.6(a)(1) (Stats. 2017, ch. 495).

⁹⁸ California Code of Regulations, title 5, sections 431(a) (“(a) Local governing boards shall designate a certificated employee as custodian of records. Such employee shall be charged with districtwide responsibility for implementing board policies relating to pupil records”), 431(c) (“(Each district shall establish written policies and procedures for pupil records which implement Education Code Section 49060, and Title 5 regulations relating to pupil records”). “Pupil record” is broadly defined as “information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained.” California Code of Regulations, title 5, section 430(d).

⁹⁹ Exhibit A, Test Claim, filed June 23, 2023, pages 209-215 (California Code of Regulations, title 5, section 30035, Appendices A and B, as added by Reg. 2022, no. 19).

¹⁰⁰ Exhibit A, Test Claim, filed June 23, 2023, pages 2, 6, 7, 9, 10, 12-18.

Application; and a model acceptable use policy (Appendix B) “for the secure handling of parent, guardian, and pupil personal information gathered by local education agencies.”¹⁰¹ Furthermore, guidance issued by the California Student Aid Commission explains that the regulations do not require school districts to use the model opt-out form.¹⁰²

Thus, the plain language of California Code of Regulations, title 5, section 30035, and Appendices A and B do not impose any requirements on school districts.

2. The New Activities Required by Education Code section 51225.7(b), (d), and (e)(1), as Added by Statutes 2021, Chapter 144, Are Mandated by the State on School Districts.

To be reimbursable under article XIII B, section 6 of the California Constitution, the new requirements imposed by Education Code section 51225.7(b), (d), and (e)(1), must be mandated by the state; or ordered, commanded, or legally compelled by state law.¹⁰³ The California Supreme Court defined legal compulsion as follows:

Legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”]. Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey.¹⁰⁴

Here, the plain language of Education Code section 51225.7(b), (d), and (e)(1) states that school districts “shall” perform the activities of confirming that a pupil in grade 12 completes the FAFSA or California Dream Act Application or submits an opt-out form; exempting any pupil that cannot complete a financial aid application or opt-out form and submitting an opt-out form on the pupil’s behalf; and ensuring that pupils in grade 12 are directed to the necessary support services to complete the appropriate financial aid application. Education Code section 75 provides that “[s]hall is mandatory and ‘may’ is permissive.”

¹⁰¹ California Code of Regulations, title 5, section 30035, Appendices A and B, as added by Register 2022, number 19.

¹⁰² Exhibit E (5), California Student Aid Commission, Special Alert to High School Counselors and County and District Superintendents, May 20, 2022, page 1.

¹⁰³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741.

¹⁰⁴ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815. See also *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

Accordingly, the Commission finds that Education Code section 51225.7 imposes the following state-mandated activities on school districts, including county offices of education, beginning July 27, 2021:

- Commencing with the 2022–23 school year, confirm that a pupil in grade 12 either completes and submits to the United States Department of Education a Free Application for Federal Student Aid (FAFSA); or, if the pupil is exempt from paying nonresident tuition pursuant to Education Code section 68130.5, the pupil completes and submits to the Student Aid Commission a form established pursuant to Education Code section 69508.5 for purposes of the California Dream Act (also known as the California Dream Act Application), unless the parent or legal guardian of the pupil, or the pupil if the pupil is a legally emancipated minor or 18 years of age or older, elects to opt out of the requirements of this section by filling out and submitting an opt-out form to the school district or county office of education.¹⁰⁵
- If it is determined that a pupil is unable to complete and submit the FAFSA or California Dream Act Application, or an opt-out form, exempt the pupil or, if applicable, the pupil's parent or legal guardian, and complete and submit an opt-out form on the pupil's behalf.¹⁰⁶
- Ensure that each pupil in grade 12 and, if applicable, the pupil's parent or legal guardian, is directed to any support and assistance services necessary to comply with the financial aid application requirement described in Education Code section 51225.7(b) that may be available through outreach programs, including, but not limited to, those programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.¹⁰⁷

3. The Activities Mandated by Education Code Section 51225.7(b), (d), and (e)(1), as Added by Statutes 2021, Chapter 144, Constitute a New Program or Higher Level of Service.

State mandate reimbursement is not required for any and all costs that might be incurred by local government as an incident of a change in law or regulation. Alleged costs must also constitute a new program or higher level of service within the meaning of article XIII B, section 6. The California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, that a new program or higher level of service means “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local government and do not apply generally to all residents and entities in the state,” as follows:

¹⁰⁵ Education Code section 51225.7(b).

¹⁰⁶ Education Code section 51225.7(d).

¹⁰⁷ Education Code section 51225.7(e)(1).

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – *programs that carry out the governmental function of providing services 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.*¹⁰⁸

As indicated above, the state-mandated activities are newly imposed on school districts. Furthermore, the requirements are imposed uniquely on school districts. In addition, the courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.¹⁰⁹ Additionally, requiring school districts to confirm that all twelfth grade students either apply for financial aid or complete an opt-out form and ensure students are directed to necessary support services to assist them in completing the appropriate financial aid application provides a service to the public by increasing awareness of and access to financial aid resources and higher education.¹¹⁰

Thus, the Commission finds that the above-listed activities mandated by Education Code section 51225.7(b), (d), and (e)(1), as added by Statutes 2021, chapter 144, impose a new program or higher level of service.

4. Education Code Section 51225.7(b), (d), and (e)(1), as Added by Statutes 2021, Chapter 144, Imposes Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

The final criteria that must be met for the mandated new requirements to constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution is that the mandated activities must result in a school district incurring increased costs mandated by the state within the meaning of Government Code section 17514. That section defines “costs mandated by the state” as any increased costs that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564 also provides that “[n]o claim shall be made pursuant to Sections 17551, . . . , nor shall

¹⁰⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

¹⁰⁹ *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

¹¹⁰ Exhibit E (2), Assembly Floor Analysis, Analysis of AB 469, as amended September 3, 2021, page 2.

any payment be made on claims submitted pursuant to Sections 17551 or 17561, . . . , unless these claims exceed one thousand dollars (\$1,000).” Even if the claims exceed \$1,000, however, the claimed costs are not reimbursable if an exception identified in Government Code section 17556 applies.

The claimant alleges that it has incurred increased costs of \$1,126,435 for fiscal year 2022-23 and \$1,145,366,30 for fiscal year 2023-24.¹¹¹ These figures represent ten percent of the total salary and benefits for eighty high school counselors during the 2022-2023 and 2023-2024 school years, respectively, based on the claimant’s assertion that the test claim statute activities are performed by school counselors.¹¹² The claimant supports these claimed costs with a declaration from Kim Kelstrom, Chief Executive, Fiscal Services, Fresno Unified School District, stating that the test claim statute activities performed by eighty high school counselors involve a total of ten percent of the counselors’ time during the respective school year.¹¹³ The declaration further explains that a high school counselor’s caseload averages 350-400 students, and there are approximately 3,538 high school seniors in the district based on enrollment data as of June 7, 2023.¹¹⁴ The claimant also offers as evidence a spreadsheet showing salary and benefits calculations for high school counselors in the district for fiscal year 2023-2024.¹¹⁵

Thus, the record contains substantial evidence that the claimant’s costs to comply with the mandated new program or higher level of service exceed \$1,000.¹¹⁶ Further, no state funds have been specifically appropriated to fund this program, nor have any potential sources of offsetting revenues been identified. Additionally, none of the exceptions to reimbursement in Government Code section 17556 apply to deny this Test Claim. Therefore, the Commission finds that the test claim statute imposes increased costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Education Code section 51225.7, as added by Statutes 2021, Chapter 144, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on school districts, including county offices of education, to perform the following new state-mandated activities beginning July 27, 2021:

¹¹¹ Exhibit A, Test Claim, filed June 23, 2023, pages 14-18.

¹¹² Exhibit A, Test Claim, filed June 23, 2023, pages 13-18.

¹¹³ Exhibit A, Test Claim, filed June 23, 2023, pages 22, 25 (Declaration of Kim Kelstrom, Chief Executive, Fiscal Services, Fresno Unified School District).

¹¹⁴ Exhibit A, Test Claim, filed June 23, 2023, pages 22, 25.

¹¹⁵ Exhibit A, Test Claim, filed June 23, 2023, pages 29-31.

¹¹⁶ Government Code section 17559(b).

- Commencing with the 2022–23 school year, confirm that a pupil in grade 12 either completes and submits to the United States Department of Education a Free Application for Federal Student Aid (FAFSA); or, if the pupil is exempt from paying nonresident tuition pursuant to Education Code section 68130.5, the pupil completes and submits to the Student Aid Commission a form established pursuant to Education Code section 69508.5 for purposes of the California Dream Act (also known as the California Dream Act Application), unless the parent or legal guardian of the pupil, or the pupil if the pupil is a legally emancipated minor or 18 years of age or older, elects to opt out of the requirements of this section by filling out and submitting an opt-out form to the school district or county office of education.¹¹⁷
- If it is determined that a pupil is unable to complete and submit the FAFSA or California Dream Act Application, or an opt-out form, exempt the pupil or, if applicable, the pupil's parent or legal guardian, and complete and submit an opt-out form on the pupil's behalf.¹¹⁸
- Ensure that each pupil in grade 12 and, if applicable, the pupil's parent or legal guardian, is directed to any support and assistance services necessary to comply with the financial aid application requirement described in Education Code section 51225.7(b) that may be available through outreach programs, including, but not limited to, those programs operated by the Student Aid Commission, postsecondary immigration resource centers, college readiness organizations, community-based organizations, and legal resource organizations.¹¹⁹

The Commission further finds that California Code of Regulations, title 5, section 30035, Appendices A and B, as added by the test claim regulation, do not impose any requirements on school districts and, therefore, do not constitute a reimbursable state-mandated program.

¹¹⁷ Education Code section 51225.7(b).

¹¹⁸ Education Code section 51225.7(d).

¹¹⁹ Education Code section 51225.7(e)(1).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 30, 2024, I served the:

- **Current Mailing List dated May 29, 2024**
- **Decision adopted May 24, 2024**

Free Application for Federal Student Aid (FAFSA), 22-TC-05
Education Code Section 51225.7, as Added by Statutes 2021, Chapter 144
(AB 132, Section 10), Effective July 27, 2021; California Code of Regulations,
Title 5, Section 30035, Appendix A and Appendix B, as Added by Register 2022,
Number 19, Effective July 1, 2022
Fresno Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 30, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/29/24

Claim Number: 22-TC-05

Matter: Free Application for Federal Student Aid (FAFSA)

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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