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3 BEFORE THE
4 COMMISSION ON STATE MANDATES
5 STATE OF CALIFORNIA
6

7 Claim of:

8 Kern High School
9 District

10 Claimant


)
)
) No. CSM-4377
) Education Code
) Sections 60602, 60603, 60608
) Chapter 1675, Statutes of 1984
) Department of Education
) Memorandum, January 1989
) School Testins--Physical
) Fitness
)

11
12
13 DECISION
14

15 The attached Proposed Statement of Decision of the Commission
16 on State Mandates is hereby adopted by the Commission on State
17 Mandates as its decision in the above-entitled matter.
18

19 This Decision shall become effective on July 25, 1991.
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21 IT IS SO ORDERED July 25, 1991.
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25 _____
26 Susanne Burton, Chairperson
27 Commission on State Mandates

26 WP0030R
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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Claim of)	No. CSM-4377
Kern High School)	Education Code
District)	Sections 60602, 60603, 60608
Claimant)	Chapter 3675, Statutes of 1984
)	Department of Education
)	Memorandum, January 1989
)	<u>School Testing-Physical</u>
)	<u>Fitness</u>

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on May 30, 1991, in Sacramento, California, during a regularly scheduled hearing.

Ms. **Linda** Sargent and Mr. Ron Valenti, both of Kern High School District, and Ms. Carol Miller, Education Mandated cost Network, appeared on behalf of Kern High School District. Mr. Patrick McCabe appeared on behalf of the Department of Education. Mr. James Apps appeared on behalf of the Department of Finance.

1 Evidence both oral and documentary having been introduced, the ,
2 matter submitted, and vote taken, the Commission finds:

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4

5

ISSUES

6

7 Do the provisions of Education Code sections 60602, 60603, and
8 60608, as amended by Chapter 1675, Statutes of 1984
9 (Chapter 1675/84), require school districts to implement a new
10 program or provide a higher level of service in an existing
11 program, within the meaning of Government Code section 17514
12 and section 6, article XIII B of the California Constitution?

13

14 Do the provisions of the January 27, 1989, memorandum from the
15 California Department of Education, **require** school districts to
16 implement a new program or provide a higher level of service in
17 an existing program, within the meaning of Government Code
18 section 17514 and section 6, article XIII B of the California
19 Constitution?

20

21 If so, are school districts entitled to reimbursement under the
22 provisions of section 6 of article XIII B?

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FINDINGS OF FACT

2

3 The test claim was filed with the Commission on December 29,
4 1989, by Kern High School District.

5

6 The elements for filing a test claim, as specified in
7 section 1183 of Title 2 of the California Code of Regulations,
8 were satisfied.

9

10 The claimant alleged that Education Code sections 60602, 60603,
11 and 60608 of the Education Code, as amended by Chapter 1675/84,
12 and the January 27, 1989; memorandum from the California
13 Department of Education (CDE), impose state requirements
14 regarding physical fitness testing which result in a
15 reimbursable state mandated program.

16

17 The Department of Finance (DOF) argued that the physical
18 education testing program, as enacted by Chapter 1675/84, is
19 only a reimbursable state mandated program if limited to the
20 increased reporting requirements from biennially to annually.

21

22 The CDE asserted that the state has been empowered since 1969
23 to designate the physical -fitness test to be administered by
24 school districts. Therefore, CDE concluded that the subject
25 legislation and its memorandum of January 27, 1989, do not
26 constitute a reimbursable state mandated program by merely

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1 amending Education Code sections and designating the use of the
2 Physical Best test.

3

4 Education Mandated cost Network (EMCN) stated that
5 Chapter 1675/84 contained a reimbursable state mandated program
6 for the reporting requirement and constituted an increased
7 level of service because the testing changes mandate increased
8 costs upon school districts.

9

10 The Commission noted that Education Code section 60602, as
11 amended by Chapter 1675/84, contains definitions of five terms
12 that resemble the definitions which existed prior to 1975,
13 pursuant to former Education Code section 12822 of
14 Chapter 1552, Statutes of 1969 (Chapter 1552/69).

15

16 The Commission had taken notice of the definitions of the terms
17 "physical performance **test**" and Vesting program" contained in
18 former Education Code section 12822, subdivisions (b) and (d),
19 and the definition of Vesting **program**" contained in Education
20 Code section 60602, subdivision (c).

21

22 The Commission observed that the definition of Vesting
23 **program**" pursuant to Education Code section 60602, subdivision
24 (c), is essentially the same as under prior **law** and noted that
25 definitions in and of themselves cannot result in a
26 reimbursable state mandated program.

27 //

1 Regarding Education Code section 60603, the Commission found
2 that this section was previously numbered as Education Code
3 section 12823 under Chapter 1552/69. This former Education
4 Code section 12823 provided various powers to the State Board
5 of Education.

6
7 The Commission further observed that Education Code
8 section 60603, as amended by Chapter 1675/84, authorizes the
9 State Board of Education to continue the -physical fitness
10 testing program in all school districts, including the
11 authority of the State Board or the Superintendent of Public
12 Instruction to designate the physical fitness test.

13
14 The Commission found that Education Code section 60603
15 enumerates various powers of the State Board of Education
16 regarding testing programs, which are essentially the same as
17 under pre-1975 statutes,

18
19 With respect to a physical fitness test administered by a
20 school district, the Commission had taken notice of Education
21 Code section 60608, as amended by Chapter 1675/84, and former
22 Education Code section 12827 of Chapter 930, Statutes of 1972
23 (Chapter 930/72).

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1 The Commission noted that in 1972 former Education Code
2 section 12827 **required** school districts to **administer physical**
3 fitness tests to any three grades designated by the **State Board**
4 of Education. Similarly, pursuant to the provisions of
5 Education Code section 60608, Chapter **1675/84**, school districts
6 are still required to administer the same type of tests to any
7 three grades designated by the state.

8
9 The Commission found that the legislation in question merely
10 continues the physical fitness testing program that was
11 originally enacted before 1975.

12

13 The Commission acknowledged that in subdivisions (a) through
14 **(c)** of section 6, article XIII B, of the state Constitution,
15 three exceptions are enumerated where a mandatory subvention of
16 state funds is not **required**.

17

18 Although Chapter **1675/84** slightly amended and re-numbered the
19 Education Code relating to physical fitness testing, the
20 Commission found that the substance of the underlying program,
21 which was enacted and mandated by the Legislature prior to
22 January 1, 1975, has remained unchanged.

23

24 With respect to the reporting schedule for submission of the
25 results of physical fitness testing to a school district's
26 governing board and the CDE, the Commission observed the .

27 //

1 provisions of Education Code section 60608 of Chapter 1010,
2 Statutes of 1976, (Chapter 1010/76) and Education Code
3 section 60608, as amended by Chapter 1675/84.

4

5 The Commission found that prior to Education Code
6 section 60608, as amended by Chapter 1675/84, school districts
7 were not required by the statute nor the CDE to submit the
8 results of physical fitness testing on a biennial basis to its
9 governing board and the CDE.

10

11 The Commission therefore found that under Education Code
12 section 60608, Chapter 1675/84, school districts were required
13 to submit the results of physical fitness testing on an annual
14 basis to its governing board and the CDE.

15

16 Regarding the matter of the January 27, 1989, memorandum from
17 the CDE, the Commission found that this memorandum was issued
18 pursuant to Education Code section 60608 and that the
19 memorandum designated the Physical Best test for school
20 districts to administer.

21

22 The Commission further found that the CDE 1989 memorandum is an
23 executive order as defined in Government Code section 17516.

24

25 The claimant alleged that the revision to the testing dates and
26 the **inclusion** of special education students in testing were
27 administrative changes which caused increased costs to be

1 incurred. Moreover, the claimant alleged that it incurred
2 equipment and administrative costs in implementing the Physical
3 Best fitness test program.

4

5 In its 1989 memorandum, the CDE stated that all of the Physical
6 Best tests were included in the prior physical education test,
7 Also, in response to this test claim, the CDE noted that its
8 memorandum simply implements a statute that was enacted prior
9 to 1975, that the Physical Best test has fewer components than
10 the previous test, and that requiring an updated, improved test
11 does not create a wholly new program or require a higher level
12 of service within the meaning of section 6 of **article XIII B** of
13 the California Constitution.

14

15 The Commission compared the previous physical fitness tests
16 designated in the manual entitled Physical and Health-Related
17 Fitness Test for California with the current test requirements
18 **of the** Physical Best test.

19

20 The Commission found that the components of the Physical Best
21 test are similar to the prior physical fitness test and no new
22 testing program was imposed upon school districts. Moreover,
23 the Commission found that the CDE 1989 memorandum, which
24 designated the Physical Best test, merely implements the same
25 **program** that the Legislature enacted before 1975.

26 //

27 //

1 In further support of its position, Kern submitted that because
2 it incurred increased **costs** in response to the Physical Best
3 test, it therefore follows that a higher level of **service in an**
4 existing program has been imposed by the state. Such increased
5 costs were related to the purchase of **"Sit N Reach"** boxes,
6 small mats, timer watches, skin calipers, the training of
7 teachers and other administration and recording of the physical
8 fitness tests to ninth graders, one of the selected three
9 grades.

10

11 The Commission had taken notice of the California Supreme **Court**
12 in its decision in County of Los Angeles v. State of California
13 (1987) 43 **Cal.3d** 46. In this case, the applicable principle
14 handed down by the court was that additional or increased costs
15 alone do not equate to a higher level of service in an existing
16 program pursuant to article XIII B, section 6 of the state
17 Constitution.

18

19 In view of the County of Los Angeles case, the Commission noted
20 that the claimant's contention was erroneous because the mere
21 increase in cost, incurred by the claimant in response to the
22 Physical Best test, does not demonstrate the existence of a
23 higher level of service in an existing program. Rather, an
24 increased or higher level of service must relate to state
25 mandated increases in the services provided by school districts
26 in the existing physical fitness testing program.

27 //

1 The Commission found that the CDE 1989 memorandum, which
2 designated the Physical Best test, is fundamentally the **same**
3 physical. fitness testing program that existed under prior law
4 , and no increased levels of service were provided by the school
5 districts,

6
7 Moreover, the Commission found the increased costs incurred by
8 the claimant, including,, the purchase of "**Sit N Reach**" boxes,
9 small mats, timer watches, skin calipers, the training of
10 teachers and other administration and recording of the physical
11 fitness tests are not reimbursable **because** such costs alone did
12 not demonstrate the existence of a higher level of service in
13 an existing program, as provided under article XIII B, section 6
14 of the state Constitution.

15
16 None of the requisites for denying the existence of costs
17 mandated by the state, as specified in Government Code
18 section 17556, were applicable.

19
20 APPLICABLE LAW RELEVANT TO THE DETERMINATION
21 OF A REIMBURSABLE STATE MANDATED PROGRAM

22
23 Government Code section 17500 states, in pertinent part:

24
25 ". . . . The Legislature finds and declares
26 **that the** failure of the existing process to
27 adequately and consistently resolve the
complex legal questions involved in the
determination of state-mandated costs has

1 led to an increasing reliance by local
2 agencies and school districts on the
3 judiciary and, therefore, in order to
4 relieve unnecessary congestion of the
5 judicial system, it is necessary to create a
6 mechanism which is capable of
7 renderingsound **quasi-judicial** decisions and
8 providing an effective means of resolving
9 disputes over the existence of
10 state-mandated local programs.

11 **"It** is the intent of the Legislature in
12 enacting this part to provide for **the**
13 implementation of Section 6 of
14 Article XIII B of the California
15 Constitution and to consolidate the
16 procedures for reimbursement of statutes
17 specified in the Revenue and Taxation Code
18 with those identified in the Constitution.
19 Further, the Legislature intends that the
20 Commission on State Mandates, as a
21 quasi-judicial **body**, will act in a
22 deliberative manner in accordance with the
23 requirements of Section 6 of Article XIII B
24 of the California Constitution?

25 Government Code section 17514 provides:

26 **"'Costs** mandated by the **state'** means **any**
27 increased costs which a local agency or
28 school district is required to incur after
29 July 1, 1980, as a result of any statute
30 enacted on or after January 1, 1975, or any
31 executive order implementing **any** statute
32 enacted on or after January 1, 1975, which
33 mandates a new program or higher level of
34 service of an existing program within the
35 meaning of Section 6 of Article III B of the
36 California Constitution/

37 Government Code section 17516 **states, in pertinent part:**

38 **"'Executive order'** means **any** order, **plan**,
39 requirement, rule, or regulation issued by
40 any of the following:

41 **"(a)** The Governor.

42 **"(b)** Any officer or official serving at the
43 pleasure of the Governor,

44 **"(c)** Any agency, department, board, or
45 commission of state government.

46 //

1 "Executive order' does not include any
2 order, plan, requirement, rule, or
3 regulation issued by the State Water
4 Resources Control Board or by any regional
5 water quality control board pursuant to
6 Division 7 (commencing with Section 13000)
7 of the Water Code. . . ."

8 Government Code section 17519 provides:

9 "school district' means any school
10 district, community college district, or
11 county superintendent of schools."

12 Government Code section 17551, subdivision (a), provides:

13 "The commission, pursuant to the provisions
14 of this chapter, shall hear and decide upon
15 a claim by a local agency or school district
16 that the local agency or school district is
17 entitled to be reimbursed by the state for
18 costs mandated by the state as required by
19 Section 6 of Article XII B of the California
20 Constitution?

21 Government Code section 17552 reads:

22 "**This** chapter shall provide the sole and
23 exclusive procedure by which a local agency
24 or school district may claim reimbursement
25 for costs mandated by the state as required
26 by Section 6 of Article III B of the
27 California Constitution."

28 Government Code section 17557 provides, in pertinent part:

29 "**If** the commission determines there are
30 costs mandated by the state pursuant to
31 Section 17555, it shall determine the amount
32 to be subvended to local agencies and school
33 districts for reimbursement. In so doing it
34 shall adopt parameters and guidelines for
35 reimbursement of any claims relating to the
36 statute or executive order. . . ."

37 Government Code section 17561, subdivision (a), provides:

38 "The state shall reimburse each local agency
39 and school district for all 'costs mandated
40 by the **state,**' as defined in Section 17514."

1 Section 6, article XIII B of the California Constitution reads:

2 "Whenever the Legislature or any state
3 agency mandates a new program or higher
4 level of service on any local government,
5 the state shall provide a subvention of
6 funds to reimburse such local government for
7 the costs of such program or increased level
8 of service, except that the Legislature may,
9 but need not, provide such subvention of
10 funds for the following mandates:

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

13 The state Supreme Court in County of Los Angeles v. State of
14 California (1987) 43 Cal.3d 46, 55, 56, discussed the term
15 "higher level of **service**" as follows:

17 ". . . If the Legislature had intended to
18 **continue** to **equate** 'increased level of
19 service' with 'additional costs,' then the
20 provision would be circular: 'costs mandated
21 by the **state**' are defined as 'increased
22 costs' due to an 'increased level of
23 service/ which, in turn, would be defined
24 as 'additional costs.' We decline to accept
25 such an interpretation. Under the repealed
26 provision, 'additional costs' may have been
27 deemed tantamount to an 'increased level of
28 service,' but not under the post-1975
29 statutory scheme. . . .

24 ".

25 "**Looking** at the language of section 6 then,
26 it seems clear that by itself the term
27 'higher level of service' is meaningless.
28 It must be read in conjunction with the

27 //

1 predecessor phrase 'new program' to give it
2 meaning. Thus read, it is apparent that the
3 subvention requirement for increased or
4 higher level of service is directed to state
5 mandated increases in the services provided
6 by local agencies in existing 'programs.' "

7
8 CONCLUSION

9 The Commission determines that it has the authority to decide
10 this claim under the provisions of Government Code
11 sections 17500 and 17551, subdivision (a).

12 The Commission concludes that Education Code sections 60602 and
13 60603, as amended by Chapter 1675, Statutes of 1984, do not
14 impose a new program or a higher level of service in an
15 existing program upon school districts within the meaning of
16 Government Code section 17514 and section 6, article XIII B of
17 the California Constitution.

18
19 The Commission concludes that the provisions of Education Code
20 section 60608, as amended by Chapter 1675/84, related to the
21 administration of physical fitness tests, do not impose a new
22 program or a higher level of service in an existing program
23 upon school districts within the meaning of Government Code
24 section 17514 and section 6, article XIII B of the California
25 Constitution.

26 I //

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1 The Commission concludes that the CDE 1989 memorandum, which
2 designated the Physical Best test, does not impose a new ,
3 program or a higher **level** of service in an existing program
4 upon school districts within the meaning of Government Code
5 section **17514** and section 6, article XIIIIB of the California
6 Constitution.

7

8 The Commission concludes that Education Code section 60608, as
9 amended by Chapter **1675/84**, related to the submission of
10 physical fitness test results to a school district% governing
11 board and the CDE, imposes an annual reporting requirement
12 **program**, within the meaning of Government Code section 17514
13 and section 6, article XIIIIB of **the** California Constitution.

14

15 Accordingly, only those costs related to the submission of the
16 annual physical fitness test results, pursuant to Education
17 Code section 60608, Chapter **1675/84**, are costs mandated by the
18 state and are subject to reimbursement within the meaning of
19 section 6, article XIIIIB of the California Constitution.

20 Therefore, the claimant is directed to submit parameters and
21 guidelines, pursuant to Government Code section 17557 and
22 Title 2, California Code of Regulations, section 1183.1, to the
23 Commission for its consideration.

24

25 The foregoing determination pertaining to the submission of
26 physical fitness test results is subject to the following
27 conditions:

1 The determination of a reimbursable state
2 mandated program does not mean that all increased
3 costs claimed will be reimbursed. Reimbursement,
4 if any, is subject to Commission approval of
5 parameters and guidelines for reimbursement of
6 the mandated program: approval of a statewide
7 cost estimate: a specific legislative
8 appropriation for such purpose; a timely-filed
9 claim for reimbursement; and subsequent review of
10 the claim by the State Controller's Office.

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