

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

No. 97-TC-23

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828;

Title 5, California Code of Regulations, Sections 850-874; and

Filed on March 23, 1998

By the San Diego Unified School District,  
Claimant.

*Standardized Testing and Reporting*

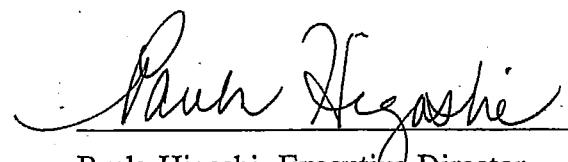
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(*Adopted on August 24, 2000*)

**STATEMENT OF DECISION**

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

This Decision shall become effective on August 25, 2000.



Paula Higashi, Executive Director

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*(Adopted on August 24, 2000)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. James Cunningham, Richard Knott, and Robert Raines appeared for San Diego Unified School District. Jeannie Oropeza and Pete Zervinka appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7-0, approved this test claim.

**BACKGROUND AND FINDINGS**

Background on Statewide Achievement Tests

The test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts are also required to engage in numerous activities related to test administration and reporting.

The state has required school districts to administer achievement tests to pupils for decades. For example, achievement tests were required for pupils in grades 6 and 12 under the California

School Testing Act of 1969.<sup>1</sup> In 1972, the Legislature expressed its intent regarding pupil testing as follows:

“It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils.”<sup>2</sup>

In 1990, the Legislature expressed that the purpose of California’s public school system is to “facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner.”<sup>3</sup> The Legislature stated that: “the current pupil assessment system does not meet [these] purposes.”<sup>4</sup> The Legislature further declared that:

“There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement.”<sup>5</sup>

Statutes of 1990, Chapter 760 modified the state’s achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of 1990, Chapter 760, provided that:

“[Chapter 760] shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute, which is enacted *before* January 1, 1995, deletes or extends that date.” (Emphasis added.)

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act, which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission notes that the achievement-testing program enacted under Chapter 975 was optional. Since the Legislature did not enact a statute by the

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<sup>1</sup> See former Education Code section 12820 cited as Exhibit C in the claimant’s test claim filing.

<sup>2</sup> See former Education Code section 12821 cited as Exhibit C in the claimant’s test claim filing.

<sup>3</sup> Section 1 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant’s test claim filing.

<sup>4</sup> Section 1.3 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant’s test claim filing.

<sup>5</sup> *Ibid.*

requisite deadline set forth in Chapter 760, the Commission found that mandatory achievement testing was repealed by operation of law effective January 1, 1995.

#### Does the Test Claim Legislation Impose a New Program or Higher Level of Service?

The Commission found that the test claim legislation and regulations involve the administration of pupil achievement tests. Public education in California is a peculiarly governmental function administered by school districts as a service to the public. Moreover, the test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission found that administering pupil achievement tests constitutes a “program” within the meaning of section 6, article XIII B of the California Constitution.<sup>6</sup>

#### Prior Law Related to Achievement Tests

The Commission noted that the law in effect immediately before the enactment of the test claim legislation did not require school districts to administer achievement tests to pupils. Rather, prior law set up an incentive program for school districts that administer achievement tests to all pupils in grades 2 through 10.<sup>7</sup> Former Education Code section 60640 provided \$5 per pupil tested to those districts that certified to the Superintendent of Public Instruction that it would administer achievement tests to all pupils in grades 2 through 10. Section 60640 did not require districts to administer achievement tests to those pupils.

#### The Test Claim Legislation: Current Law Related to the Standardized Testing and Reporting (STAR) Program

The Commission found that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program.<sup>8</sup>

The Commission found that the STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education.<sup>9</sup> The Commission found that school districts must also: designate a STAR Program district coordinator and STAR Program test site coordinator at each test site; administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils

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<sup>6</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

<sup>7</sup> See former Education Code section 60640 cited as Exhibit F in the claimant’s test claim filing.

<sup>8</sup> The Commission noted that the original test claim filing included portions of the Education Code that related to the Academic Skills Assessment Program. However, the Department of Education has yet to promulgate regulations to implement the Program. Therefore, the claimant filed a motion to partially sever and withdraw those portions of this test claim that relate to the Academic Skills Assessment Program.

<sup>9</sup> The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. See Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. See Education Code sections 33301-33303, 33111, 33112.

under certain circumstances; include STAR Program test results in the pupil's record or achievement; report STAR Program test results to the district's governing board or county board of education and to the pupil's parent or guardian; submit a report to the Superintendent of Public Instruction; contract with a test publisher to receive the tests; and submit whatever information the State Department of Education deems necessary to permit the State Superintendent of Public Instruction to prepare reports on the results of the STAR Program.<sup>10</sup>

The Commission also found that the state had required school districts to administer achievement tests to pupils since the 1960's, until Statutes of 1991, Chapter 760, repealed the mandatory achievement-testing requirement as of January 1, 1995. Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act (Achievement Act), which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission found that under the Achievement Act, the law in effect between January 1, 1996 and October 10, 1997, the operative date of the test claim legislation, school districts could *voluntarily* administer achievement tests to district pupils. However, the test claim legislation reinstated mandatory achievement testing under the STAR Program beginning on October 10, 1997. Thus, the Commission found that the test claim legislation and regulations have imposed a new program or higher level of service upon school districts since the law in effect prior to the enactment of the test claim legislation did not require the administration of achievement tests.

Based on the foregoing, the Commission found that the test claim legislation and regulations impose a new program upon school districts for the administration of the STAR Program.

#### Does the Test Claim Legislation Constitute Costs Mandated by the State?

##### *Testing In General*

The Commission found that in order for the test claim legislation and regulations to impose a reimbursable program under section 6, article XIII B of the California Constitution, the newly required activities must be state mandated.<sup>11</sup> The issue of whether the test claim legislation and regulations imposed costs mandated by the state centers on whether Government Code section 17556, subdivision (e), applies.

The Commission recognized that Government Code section 17556, subdivision (e), provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“.....”

“(e) The statute . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.”

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<sup>10</sup> See Education Code sections 60607, 60615, 60630 60640, 60641, 60643, and Title 5, California Code of Regulations, sections 851-853, 855-860, 865, 867-869, 871, 873.

<sup>11</sup> Lucia Mar Unified School Dist., *supra* 44 Cal.3d 830, 835.

The Commission also noted that section 60640, subdivision (h), provides:

“The Superintendent of Public Instruction shall apportion funds to enable school districts to meet the [STAR Program] requirements. . . . The State Board of Education shall establish the amount of funding to be apportioned. The amount to be apportioned shall be up to eight dollars (\$8) per test administered to a pupil in grades 2 to 11, inclusive.”

The claimant contended that section 17556, subdivision (e), is inapplicable to the present test claim because section 60640, subdivision (h), did not appropriate additional revenue in an amount sufficient to fund the mandate.<sup>12</sup> The claimant further contended that the State Board of Education’s reimbursement rate of \$6.65 per test, with an additional \$0.15 per test for districts requesting preprinted answer sheets, is not enough to cover the cost of administering the STAR Program.<sup>13</sup>

The Commission found that the test claim legislation *authorized* the Superintendent of Public Instruction to apportion funds for administration of the STAR Program as established by the State Board of Education. However, the test claim legislation did not itself include “additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.” Thus, the Commission found that Government Code section 17556, subdivision (e), is inapplicable to this test claim. Accordingly, the Commission found that the test claim legislation imposed costs mandated by the state upon school districts.

The Commission noted that the Legislature has appropriated the following amounts for administration of the STAR Program in the state Budget Act: 1997-98 – \$30,400,000; 1998-99 – \$39,700,000; 1999-00 – \$42,100,000. The Commission noted that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education’s reimbursement rate should be offset against total claim amounts for this test claim.

#### *Testing of Children with Disabilities*

The Commission found that the test claim legislation requires that: (1) children with disabilities be exempted from testing for pupils if the pupil’s individualized education program has an exemption provision; (2) districts determine the appropriate grade level test for each pupil in a special education program; and (3) districts provide appropriate testing adaptation or accommodations to pupils in special education programs.

DOF contended that these activities stem from federal law and therefore, pursuant to Government Code section 17556, subdivision (c), are not reimbursable.<sup>14</sup> The Commission recognized that Government Code section 17556, subdivision (c), provides:

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<sup>12</sup> The Commission noted that the Department of Finance states: “we have concluded that the statute may have resulted in some costs mandated by the State.”

<sup>13</sup> See Claimant’s test claim filing, Exhibit H, Nick Bohl’s declaration. The claimant estimates it would cost San Diego Unified School District \$14.00 per test per fiscal year to administer the STAR Program.

<sup>14</sup> Department of Finance’s July 10, 2000 filing at page 2.

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“.....

“(c) The statute . . . implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute . . . mandates costs which exceed the mandate in that federal law or regulation.”

Specifically, DOF cited to subdivision (a)(16), section 1412 of the United States Code, which provides:

“(16) Performance goals and indicators

“The State—

“(A) has established goals for the performance of children with disabilities in the State that—

“(i) will promote the purposes of this chapter, as stated in section 1400(d) of this title; and

“(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

“(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

“(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

“(D) based on its assessment of that progress, will revise its State improvement plan under part A of subchapter IV of this chapter as may be needed to improve its performance, if the State receives assistance under that part.”

The Commission found that, based on the plain reading of subdivision (a) above, that federal law *does not* require testing exemptions; the determination of appropriate test levels; or the provision of testing accommodations for children with disabilities. Therefore, the Commission found that these activities are reimbursable and that funding received by school districts for administration of the STAR Program shall be offset against reimbursement claims.

## **CONCLUSION**

Based on the foregoing, the Commission concluded that the test claim legislation and regulations for the STAR Program impose a reimbursable state-mandated program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851,

852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.

- Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.
- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Inclusion of STAR Program test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)
- Reporting of individual STAR Program test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)
- Reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)
- Submission of a report on the STAR Program to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)

- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)
- Exemption of pupils from the STAR Program tests upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
- Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
- Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff.
- Implementation of procedures relating the administration of the STAR Program.