

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 35704, 35705 .5, 35706, 35707, 35735, 35735.1, 35751, 35753, and 42127.6, as added or amended by Statutes 1976, Chapter 1010; Statutes 1980, Chapter 1192; Statutes 1994, Chapter 1186; and Statutes 1998, Chapter 906; California Code of Regulations, Title 5, Section 18573;

Filed on June 30, 1999;

By Campbell Union High School District, Claimant, and

Amended on July 23, 2002, adding

San Luis Obispo County Office of Education, Co-claimant.

No. 98-TC-24

School District Reorganization

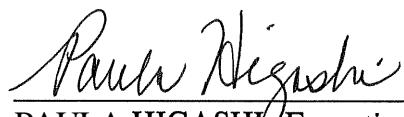
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted on October 24, 2002)

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 October 28, 2002.


PAULA HIGASHI, Executive Director

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COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 35704, 35705 .5, 35706, 35707, 35735, 35735.1, 35751, 35753, and 42127.6, as added or amended by Statutes 1976, Chapter 1010; Statutes 1980, Chapter 1192; Statutes 1994, Chapter 1186; and Statutes 1998, Chapter 906; California Code of Regulations, Title 5, Section 18573;

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during regularly scheduled hearings on June 27, 2002 and September 26, 2002.

At both hearings, David Scribner, of Spector, Middleton, Young and Minney, appeared for claimants Campbell Union High School District and San Luis Obispo County Office of Education. Dan Troy and Susan Geanacou appeared on behalf of the Department of Finance at both hearings.

At each of the hearings, testimony was given, the test claim was submitted, and the vote was taken. The June hearing was limited to the test claim allegations filed on behalf of school districts. The September hearing was limited to the test claim allegations filed on behalf of county offices of education.

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

At the June hearing, the Commission approved the staff analysis and denied the test claim as to school districts on a 6-0 vote. At the September hearing, the Commission partially approved the test claim as to county offices of education on a 4-2 vote.

BACKGROUND

Co-claimants, Campbell Union High School District and San Luis Obispo County Office of Education, (“claimants”) submitted a test claim alleging that the test claim legislation constitutes a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The claim arose from enactments of or amendments to Education Code sections 35704, 35705.5, 35706, 35707, 35735, 35735.1, 35751, 35753, and 42127.6, and California Code of Regulations, title 5, section 18573. , Claimants request reimbursement for the costs of new added duties of districts and/or county superintendents in petition verification, statistical compilation and reporting, petition description requirements, county **committee** report, average daily attendance and base revenue limit reporting requirements, and financial oversight duties of the county superintendent as part of school district reorganization procedures.

Although DOF addresses the claimants’ contentions separately as set forth below, its main assertion is that reorganizations are discretionary actions initiated, pursuant to Education Code section 35700, at the local level by (1) voters within the district or districts, (2) property owners of uninhabited territory, (3) county committees, and (4) school district governing boards. Thus, DOF argues that school districts or county superintendents cannot expect state reimbursement because reorganization is not triggered by a state mandate, but by local discretion. DOF also emphasizes the Department of Education’s observations regarding the similarity of claimants’ assertions to pre-1975 law.

The Department of Education (CDE) also lists its concerns separately for each portion of the claim, as restated below. The thrust of its analysis, however, is there are no significant differences between the current and pre-1975 Education Code provisions. CDE concludes that because the currently mandated activities are comparable to those required before 1975, there is no basis for this **claim**. In other words, the state has not imposed mandated programs on school districts or county **superintendents** that did not exist pre-1975.

California Education Code sections 35500 et seq. and 35700 et seq. contain the law on school district reorganization, including tax rates and other obligations. A reorganization action is defined as:

. . .an action to form, dissolve, or lapse a school district, to annex all or part of the territory of a district to another district, to transfer all or part of a district to another district, the unification or deunification of a school district, or to otherwise alter the boundaries of a school district, or any combination of all such actions.’

Education Code sections 35700 through 35712 provide the procedures and requirements for school district reorganization when initiated by the electorate or school districts (“districts”). Although not part of this test **claim**, Education Code sections 35720 through 35724 outline the procedures and requirements for school district reorganization by a county committee on school district organization (“county committee”),

¹ Education Code section 355.11. Also, former Education Code sections 1602 and 3102.

The county committee is the local coordinator, analyst, facilitator, and arbitrator for the reorganization of school districts. It formulates plans, responds to petitions, conducts public hearings, develops and releases information, and analyzes proposals throughout the approval process of a reorganization. For petitions for transfers of territory, where state approval is not required, the county committee gives final approval or disapproval,² subject only to appeal to the State Board of Education³ (“State Board”).

School district reorganization is typically accomplished through a petition.⁴ The county superintendent of schools (“county superintendent”), who is secretary to the county committee,⁵ must determine the sufficiency of the petition!⁶ The county committee holds one or more public hearings,⁷ and then makes a recommendation on the petition,* which the State Board may approve or deny.⁹ Once the petition is approved, the proposal is placed on the ballot in the following general election” (with some exceptions to an election requirement”). If the proposal is approved by a majority vote, the county board of supervisors orders its implementation.¹²

In addition, Education Code sections 35735 – 35735.2 provide for the creation of a revenue limit that may equalize the differences between high salaried districts and lower salaried districts.¹³

Prior to 1975,¹⁴ the Education Code procedures on reorganization varied depending on the type of reorganization action taken. There were separate statutory procedures for formation of districts,¹⁵ annexation of districts ,¹⁶ transfer of component districts between high school or community college districts,¹⁷ transfers of territory,¹⁸ (with procedures to transfer territory

² Education Code sections 35709 – 35710.

³ Education Code sections 35710.5 and 35711.

⁴ For a detailed description of school district reorganization procedures, including the various petition requirements, see School District Organization Handbook at www.cde.ca.gov/fiscal/dist_org/handbook.htm.

⁵ Education Code section 4012.

⁶ Education Code section 35704.

⁷ Education Code section 35705.

⁸ Education Code section 35706.

⁹ Education Code sections 35753 and 35754.

¹⁰ Education Code section 357 10.

¹¹ Education Code section 35709.

¹² Education Code section 35765.

¹³ School District Organization Handbook, www.cde.ca.gov/fiscal/dist_org/handbook.htm page 144.

¹⁴ Article XIII B, section 6 of the California Constitution, and Government Code section 17514 require, for a mandate to be reimbursable, that the local agency or school district incur the increased costs after July 1, 1980, as a result of any statute enacted on or after January 1, 1975.

¹⁵ Former Education Code section 1972 et seq.

¹⁶ Former Education Code section 209 1 et seq.

¹⁷ Former Education Code section 2 19 1 et seq.

from one elementary or unified district to another¹⁹ listed separately from procedures to transfer part of a component district from one high school or community college district to another district of the same kind”), lapsation²¹ and dissolution²² of districts, optional reorganization by electors ,²³ and reorganization by the county committee.²⁴

Claimants’ test claim differed from the amended cover sheet and conclusion for two of the statutes. The test claim made reference to Education Code section 35700, but the amended cover sheet, discussion and conclusion did not. Additionally, claimants’ amended cover sheet and conclusion included Education Code section 35735, but only section 35735.1 was discussed. This Statement of Decision makes findings on all the statutes mentioned.

COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate or require an activity or task on local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist.

In addition, the legislation must constitute a “program.” The California Supreme Court defined “program” within the meaning of article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.²⁵ Only one of these findings is necessary to trigger article XIII B, section 6.²⁶

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”²⁷

¹⁸ Former Education Code section 230 1 et seq.

¹⁹ Former Education Code section 2361 et seq.

²⁰ Former Education Code section 2391 et seq.

²¹ Former Education Code section 2701 et seq.

²² Former Education Code section 2741 et seq.

²³ Former Education Code section 3 100 et seq.

²⁴ Former Education Code section 3201 et seq.

²⁵ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 5 1, 66.

²⁷ Government Code section 175 14.

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” As mentioned above, the California Supreme Court defined a “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.²⁸ Only one of these findings is necessary to trigger article XIII B, section 6.²⁹

Does the test claim legislation constitute a “program?” In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” As mentioned, the California Supreme Court defined “program” as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger article XIII B, section 6.³⁰

The test claim statutes involve school district reorganization. Public education, or more specifically, school district reorganizations in California are a peculiarly governmental function administered by school districts, county superintendents, and county committees as a service to the public. Moreover, the test claim legislation imposes unique requirements on school districts and county entities that do not apply generally to all residents and entities of the state. Therefore, school district reorganization constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.³¹

Has the state placed a mandate on local entities? Article XIII B, section 6 of the California Constitution provides, with exceptions not relevant here, that “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.” This constitutional provision was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.³²

To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 and following. Government Code section 175 14 defines “costs mandated by the state” as “any increased costs which a local agency or school district is required to incur . . . as a result of any statute. . . .which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” Thus, in order for a statute to be subject to this constitutional provision, the statutory language must direct or

²⁸ County of Los Angeles, *supra*, 43 Cal.3d 46, 56.

²⁹ *Camel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521, 537.

³⁰ *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d at 537.

³¹ *Long Beach Unified School Dist. v. State of California*. (1990) 225 Cal.App.3d 155, 172.

³² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

compel an activity or task on local governmental agencies. If the statutory language does not mandate local governmental agencies to perform a task, then compliance with the test claim statute is within the discretion of the local governmental agency and a reimbursable state mandated program does not exist.

Moreover, the California Supreme Court recognizes that once a local agency or school district performs a permissive act, or has alternatives other than performing the action under the test claim statute, the “downstream” or consequential activities, although statutorily required, are not mandated by the state.³³ The statute at issue in *Lucia Mar* required school districts to contribute part of the cost of educating students from the district at state schools for the severely handicapped. Although payment was required by the Education Code and was a new requirement, the court recognized that school districts have several options in furnishing special education to disabled students, only one of which was sending them to a state school. Thus, the court remanded the case back to the Commission to determine whether the required payment was mandated by the state.³⁴

As mentioned above, DOF’s main assertion is that reorganizations are discretionary actions initiated, pursuant to Education Code section 35700, at the local level by (1) voters within the district or districts, (2) property owners of uninhabited territory, (3) county committees, and (4) school district governing boards. Thus, DOF asserts that school districts cannot expect state reimbursement because reorganization is not triggered by a state-imposed mandate, but by local discretion.

County Superintendent Analysis: A voter or landowner petition, or even a school district petition, that triggers statutory requirements is outside the county’s control or discretion. Upon receipt of a petition, the county office of education has no option except to comply with the statutory requirements. If the Legislature gives a right to voters or landowners or district governing boards to initiate a local program such as school district reorganization, it is not an exercise of local discretion by the county. Rather, it is an exercise of the voter’s or district’s right to petition to effect change.³⁵

The power of voters to effect change is inherent in the state Constitution’s initiative process. In fact, the Legislature can only amend a voter-approved initiative statute with approval of the voters.³⁶ Government Code section 17556, subdivision (f), precludes “costs mandated by the state” for statutes that impose duties included in a voter-approved ballot measure, but this statute only applies in a statewide election. On statewide matters, voters may impose state mandates, but not “reimbursable” ones. Section 17556, subdivision (f), does not affect local actions such as school district reorganizations.

³³ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 837.

³⁴ *Id* at 836.

³⁵ “We recognize that despite the state’s plenary power over the creation, organization and reorganization of school districts, the Legislature has generally provided for elections to approve the organizational structure whether proposed by petition, or by official plans and recommendations.” *Tinsley v. Palo Alto Unified School Dist.*, (1979) 91 Cal.App.3d 871, 909.

³⁶ California Constitution, article II, section 10, subdivision (c).

Under this test claim, citizens, landowners, or district governing boards may trigger the process via petition. The county superintendent has no choice in the matter. Thus, the activities imposed on the county superintendents are not triggered by their own decision, but by the externally imposed petition. Once the petition is received, the county superintendent is required to perform a number of activities³⁷ including those discussed herein.

In summary, as they pertain to county superintendents or county committees, the Commission finds that the new activities related to school district reorganization are subject to article XIII B, section 6, where the voters³⁸ property owners³⁹ or governing boards of school districts,⁴⁰ initiate the reorganization.⁴¹

School district analysis: For school districts, there is a difference between discretion exercised by the local agency or school district, and discretion exercised by the voters or electors. In *City of Merced v. State of California*⁴² the court held that payment of goodwill for property seized in eminent domain is discretionary because “whether a city or county decides to exercise eminent domain is, essentially an option of the city or county, rather than a mandate of the state.”⁴³ The court concluded that payment for loss of goodwill is not state-mandated because the city had discretion in exercising eminent domain. Similarly, in *Lucia Mar* discussed above, the court remanded a decision to the Commission on State Mandates to determine whether the program at issue was “mandated” because the state argued that the school district had other alternatives in providing the service, so that the district’s choice triggered the mandate.

These cases are distinguishable from legislation in which the requirements are triggered by a voter or landowner petition that is outside the county’s or school district’s discretion. Upon receipt of a petition, the local agency or school district has no option except to comply with the statutory requirements. If the Legislature gives a right to voters to effect a local program such as a school district reorganization, it is not an exercise of local discretion by the local agency or school district as in City ~~of~~ Merced, but rather an exercise of the voter’s right to petition and effect or approve change.⁴⁴ Under City ~~of~~ Merced on the other hand, the discretionary actions of government actors (via legislation, regulation or an executive order)⁴⁵ are not reimbursable.

³⁷ Education Code section 35704 requires the county superintendent to examine the petition and transmit it to the county committee and State Board. Education Code section 35705 requires the county committee to hold public hearings on the petition. Education Code section 35706 requires the county committee to recommend approval or disapproval on a petition,

³⁸ Education Code section 35700, subdivision (a) or (b), or Education Code section 35721, subdivision (a) or (b).

³⁹ Education Code section 35700, subdivision (c).

⁴⁰ Education Code, section 35700, subdivision (d).

⁴¹ Staff makes no finding on reorganizations initiated by a county committee on school district reorganization, a city council, county board of supervisors, governing body of a special district, or local agency formation commission because the statutes governing these reorganizations were not pled by claimants.

⁴² *City of Merced v. State of California* (1984) 153 Cal.App.3d. 777.

⁴³ *Id.* at 783.

⁴⁴ *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 909; footnote 37, ante.

⁴⁵ Government Code section 17555, subdivision (a), and Government Code section 17516.

That voters can effect change is inherent in the state constitution's initiative process. In fact, the Legislature can only amend a voter-approved initiative statute with approval of the voters.⁴⁶ Government Code section 17556, subdivision (f), precludes "costs mandated by the state" for statutes that impose duties included in a voter-approved ballot measure. However, this statute only applies in a statewide election. On statewide matters, electors or voters may impose state mandates, but not "reimbursable" ones. Thus, this section does not affect local actions such as school district reorganizations.

Under this test claim, citizens or landowners may trigger the process via petition. The county superintendent or school districts have no choice in the matter. Thus, the activities imposed on the county superintendent or districts are not triggered by their discretionary decision, but by the discretion of others. Once the petition is received, the county superintendent is required to perform a number of activities,⁴⁷ including those discussed below.

A petition process triggered by a school district,⁴⁸ however, is an official discretionary act by a local governmental entity. As such, it falls within the discretionary act rule of City of *Merced*. Thus, any reorganization initiated by the governing boards of school districts is a local discretionary act and not a state mandate subject to article XIII B, section 6.

In summary, as they pertain to school districts, the Commission finds that the new activities related to school district reorganization are subject to article XIII B, section 6, where the voters⁴⁹ or property owner⁵⁰ initiate the reorganization. However, the Commission finds activities initiated by the school district governing board* would be an exercise of local discretion and are not subject to article XIII B, section 6.

From here, the inquiry must continue to determine if the voter or landowner initiated activities are new or impose a higher level of service and if so, whether there are costs mandated by the state.

Issue 2: Does the test claim legislation impose a new program or higher level of service on county superintendents within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately

⁴⁶ California Constitution, article II, section 10, subdivision (c).

⁴⁷ Education Code section 35704 requires the county superintendent to examine the petition and transmit it to the county committee and State Board. Education Code section 35705 requires the county committee to hold public hearings on the petition. Education Code section 35706 requires the county committee to recommend approval or disapproval on a petition.

⁴⁸ Education Code section 35700, subdivision (d).

⁴⁹ Education Code section 35700, subdivision (a) or (b), or Education Code section 35721, subdivision (a) or (b).

⁵⁰ Education Code section 35700, subdivision (c).

⁵¹ Education Code section 35700, subdivision (d). Staff makes no finding on reorganizations initiated by a county committee on school district reorganization, a city council, county board of supervisors, governing body of a special district, or local agency formation commission because the statutes governing these reorganizations were not plead by claimant.

before the enactment of the test claim legislation. Each portion of the test claim is discussed below.

Petition initiation: Education Code section 35700 describes the method by which an action to reorganize one or more school districts is initiated. A petition must be filed with the county superintendent of schools in one of the following ways: (a) for inhabited territory, at least 25 percent of registered voters residing in the territory proposed to be reorganized; (b) for a single district with over 200,000 pupils in ADA to reorganize the district into two or more districts, at least 8 percent of the votes cast for all candidates for Governor at the last gubernatorial election;⁵² (c) for uninhabited property where the owner has made specified filings, the property owner; or (d) a majority of the members of the governing boards of each affected school district.

The Cornmission finds that section 35700 is not a new program or higher level of service because it does not require an activity of school districts or county superintendents. Even if receipt of the petition could be construed as an activity, it is not a new activity because receipt of petitions was required of county superintendents before 1975.⁵³ In short, Education Code section 35700, subdivisions (a), (c) and (d) is not a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Petition verification and transmittal: Education Code section 35704 requires the county superintendent of schools, within 30 days⁵⁴ after the filing of any petition for reorganization, to examine the petition and, if found to be sufficient and signed as required, to transmit it simultaneously to the county committee on school district organization and the State Board. Claimants contend the following:

1. On December 3 1, 1974, former Education Code section 2503 required a County Superintendent to verify a petition for school district reorganization and to transmit the petition to the governing boards of each affected school district and to the Board of Supervisors along with a recommendation.
2. Under former Education Code section 2501, only a petition to transfer inhabited territory could be initiated by voters. Thus, a county superintendent needed only to verify a petition to transfer inhabited land initiated by 25 percent of the voters living in one of the affected territories.
3. Former Education Code section 35694, enacted by Statutes 1976, chapter 1010, expanded the types of petitions a county superintendent must verify by adding

⁵² Subdivision (b) was added by Statutes 1995, chapter 267, which was not pled by claimant. Therefore, this analysis makes no determination as to subdivision (b).

⁵³ Former Education Code section 1993 (for new district formation); former Education Code section 2023 (for consolidation, i.e., formation of a new elementary, high school, community college or unified district by combining districts of the same kind); former Education Code section 203 1, subdivision (e) (for formation of a consolidated high school district); former Education Code section 2098 (for annexation); former Education Code section 2195 (for transfers of component elementary districts to high school districts, or component high school districts to community college districts); former Education Code section 2364 and 2364.3 (for transfers of territory), former Education Code section 2743 (for dissolution of districts).

⁵⁴ The test claim reads “within 20 days” because this provision was changed from 20 to 30 days by Statutes 2000, chapter 1058 (Assem. Bill No. 2907, sec. 18).

- (1) petitions for transfer of inhabited territory initiated by a majority of members of the affected school districts' governing boards, or (2) transfer of uninhabited territory initiated by a majority of members of the affected school districts' governing boards.
4. Statutes 1980, chapter 1192 renumbered section 35694 as current Education Code section 35704 and removed specific instances of when a county superintendent examines a petition for reorganization, thus requiring a county superintendent to examine all petitions for school district reorganization regardless of the petition's origin.
 5. Statutes 1994, chapter 1186 added the word "any" before "petition," thereby clarifying that a county **superintendent** is responsible for examining any petition for school district reorganization.

The CDE commented that sections of the Education Code that were in effect December 31, 1974 required the same activities that are required by the provisions of current Education Code 35704. CDE provided an analysis that is consistent with the one below. DOF echoed CDE's analysis.

The Commission disagrees with claimants. The former Education Code statutes claimants cite were changed before 1975⁵⁵ so that as of December 31, 1974, county superintendents were required to verify petitions for school district reorganization under the same circumstances as current law.⁵⁶ Verification of petitions to transfer territory were not limited to those initiated by 25 percent of the voters as of December 31, 1974.⁵⁷ Moreover, Statutes 1976, chapter 1010, did not expand the types of petition a county **superintendent** must verify. Both before and after chapter 1010 was enacted, a county superintendent had to verify territory transfer petitions signed⁵⁸ by:

- ✓ For inhabited territory, at least 25 percent of the registered voters residing in the territory to be **reorganized**.⁵⁹
- For uninhabited property, the property owner.⁶⁰
- ✓ For either type of property, a majority of the members of the governing boards of each of the affected school districts.⁶¹

The Commission also finds that Statutes 1980, chapter 1192 did not remove specific instances of when a county superintendent examines a petition for reorganization. According to pre-1975 statutes, and before chapter 1192, a county superintendent was required to examine all

⁵⁵ Former Education Code sections 2503 and 2501 do not appear in the 1973 Education Code.

⁵⁶ Education Code, section 35704, and former Education Code section 2364.

⁵⁷ Former Education Code, section 2362 (b) and 2363.

⁵⁸ Excluding Education Code section 35700, subdivision (b), upon which this analysis makes no determination. See footnote 43, ante.

⁵⁹ Current Education Code, section 35700 (a), and former Education Code, section 2362 (a).

⁶⁰ Current Education Code, section 35700 (c), and former Education Code, section 2363 (b).

⁶¹ Current Education Code, section 35700 (d), and former Education Code, sections 2362, subdivision (b) and 2363, subdivision (a) provided for reorganization in this manner.

petitions for school district reorganization regardless of the petition's origin.⁶² Finally, adding "any" before "petition, under Statutes 1994, chapter 1186 may have clarified existing law, but did not add a new activity for the county superintendents of schools.

Therefore, the Commission finds there is no new activity or higher level of service in Education Code section 35704 for petition examination and verification by a county superintendent due to the existence of the same examination and verification requirements under the pre-1975 statutes. The Commission also finds Education Code section 35704 does not impose a new program or higher level of service on school districts, which are not mentioned in the statute.

However, section 35704 requires transmittal of the petition to both the State Board and the county committee, whereas transmittal requirements varied under the pre-1975 code depending on the type of reorganization, as follows:

- For **new district formation**, former Education Code section 1993 required the county superintendent to transmit the petition to the State Board only.
- For **consolidation**, i.e., formation of a new elementary, high school, community college or unified district by combining districts of the same kind, former section 2023 required the superintendent to order an election. No transmittal requirement is listed.
- For **formation of a consolidated high school district**, former section 203 1, subdivision (e), required the superintendent to transmit the petition to the county committee.
- For **annexation**, former section 2098 required the superintendent to order an election.
- For **transfers of component elementary districts to high school districts, or component high school districts to community college districts**, former section 2195 required the superintendent to transmit the petition to the State Board.
- For **transfers of territory**, former sections 2364 and 2364.3⁶³ required the superintendent to transfer the petition to the county committee.
- For **dissolution of districts**, former section 2743 required the county superintendent to call an election.

Section 35704 was part of a consolidation and streamlining of various types of reorganization procedures into one procedure in which the county committee examines the petition and, if sufficient and signed as required, transmits it to the county committee and the State Board.

Nonetheless, the Commission finds that section 35704's petition transmittal requirement is a new program or higher level of service within the meaning of article XIII B, section 6 for a county superintendent, but the requirement varies depending on the type of reorganization action. Only the new activity, not required under the former codes, constitutes the new program or higher level of service. The Commission finds that the new transmittal activities for section 35704 are as follows: (1) for new district formation, transmittal to the county committee; (2) for consolidation, i.e., formation of a new elementary, high school, community college or unified district by combining districts of the same kind, transmittal to both the State Board and a county committee; (3) for formation of a consolidated high school district,

⁶² See footnote 55, ante.

⁶³ This section was regarding community college district territory transfers.

transmittal to the State Board; (4) for annexation, transmittal to the county committee and State Board; (5) for transfers of component elementary districts to high school districts, or component high school districts to community college districts, transmittal to the county committee; (6) for transfers of territory, transmittal to the State Board; and (7) for dissolutions of districts, transmittal to the county committee and the State Board.

Petition sufficiency: Claimants contend that Education Code section 35704 imposes reimbursable activities on a county superintendent of schools when determining the sufficiency of a petition for school district organization that originates from any source other than one for the transfer of inhabited territory initiated by 25 percent of the voters living in that affected territory. In other words, a county superintendent incurs costs in verifying the sufficiency of any reorganization petition except the type of petition in former Education Code section 2501 (see claimants' second contention above). Claimants also assert that the county superintendent must verify that the component⁶⁴ school district's boundaries are coextensive with the high school district's boundaries, and that any territory in the petition is contiguous.⁶⁵ The superintendent must also ensure that the signatures on the petition comply with the Elections Code section 105, as required under Education Code section 35702. In sum, claimants contend that under Statutes 1976, chapter 1010, and Statutes 1980, chapter 1192, a county superintendent incurs costs in verifying the sufficiency of a petition, notifying designated petitioners of any defects in the petition, and advising the designated petitioners of the necessary measures to make a petition sufficient for submission to the State Board.

CDE argues that the applicable sections that were in effect before the test claim legislation required the same activities as those required by the current section 35704. The current section combined the various types of verifications mandated by several Education Code sections that were effective before 1975, including former sections 1993, 2023, 2098, 2195, and 2364. Thus, before 1975, "the county superintendent, as he or she does now, had to incur costs for verifying the sufficiency of **any** petition initiated as provided for in the Education Code" (emphasis in original). DOF agrees that this activity is the **same** as under preexisting law.

The Commission finds that, as stated above, Education Code section 35704 requires the same activities of county superintendents as required under prior law. Both before and after 1975, county superintendents were required to verify reorganization petitions that were signed (1) for inhabited territory, by at least 25 percent of the registered voters residing in the territory to be reorganized;⁶⁶ (2) for uninhabited property, by the property owner;⁶⁷ and (3) for either type of property, by a majority of the members of the governing boards of each of the affected school districts?

⁶⁴ A component district means an elementary school district that is included within a high school district. Education Code section 3 55 15.

⁶⁵ Education Code section 3 5543.

⁶⁶ Current Education Code, section 35700 (a), and former Education Code, section 2362 (a).

⁶⁷ Current Education Code, section 35700 (b), and former Education Code, section 2363 (b).

⁶⁸ Current Education Code, section 35700 (c), and former Education Code, sections 2362, subdivision (b) and 2363, subdivision (a) provided for reorganization in this manner.

Moreover, the prohibition on territory from being separated from other portions of the territory of the district under Education Code section 35543⁶⁹ is not new. Before 1975, the same contiguous territory requirement⁷⁰ existed in former Education Code sections 1741 and 1742.

Claimants assert that the county superintendent must determine the signatures on the petition comply with Elections Code section 105⁷¹ “as required by Education Code section 35702.” This is incorrect for two reasons: First, Education Code section 35702 does not impose requirements on the county superintendent, but merely requires petitioners to “attach . . . an affidavit that all persons who signed the petition did so in the presence of the affiant and that each signature” is genuine. Second, Education Code section 35710 says the election is to be conducted “in the manner described in Part 4 (commencing with Section 5000).” Education Code section 5303, in Part 4, reveals that the county clerk or registrar of voters is to perform “the duties incident to the preparation for, and holding of, all district elections.” Thus, a county superintendent is not the “elections official”⁷² of Elections Code section 105 for purposes of school district reorganization.

The Commission does not find, nor do claimants cite, an express requirement for county superintendents to notify designated petitioners of defects in the petition, or to advise the designated petitioners of the necessary measures to make a petition sufficient for submission to the State Board.⁷³ Thus, the Commission finds that Education Code section 35704 is merely a consolidation of former Education Code provisions, (except for the petition transmittal requirement discussed above) and does not constitute a new program or higher level of service for county superintendents or school districts within the meaning of article XIII B, section 6 of the California Constitution. A summary of the analysis is as follows.

\$35704		Prior Law	Current Law
Petition Verification	<ul style="list-style-type: none"> • Former Education Code sections 1993, 2023, 203 1 (e), 2098, 2195, 2364, 2364.3, and 2743 required the county superintendent to examine and determine the sufficiency of a petition for various types of reorganizations. 		Education Code section 35704 requires the county superintendent to examine and determine the sufficiency of a petition for all types of reorganizations.
Petition Transmittal	<ul style="list-style-type: none"> ◦ New district formation, section 1993 required transmittal to the State Board. ◦ Consolidation, i.e., formation of a new elementary, high school, community college or unified district by combining 		Education Code section 35704 requires the county superintendent to transmit a reorganization petition simultaneously to the county committee and the State

⁶⁹ This is subject to the exception in section 35542, subdivision (b), that an elementary school may be exempt in a merger of a new unified district.

⁷⁰ Former section 1743 allowed an exception for territory removed from a district “so that the district is separated into two or more noncontiguous parts.”

⁷¹ Elections Code section 105 requires elections officials, for the purposes of verifying signatures on any initiative, referendum, recall, nomination or other election petition or paper, to determine that the residence address on the petition or paper is the same as the residence address on the affidavit of registration.

⁷² “Elections official” is defined in Elections Code section 320. Subdivision (a) of that section defines it as a “clerk or any person who is charged with the duty of conducting an election.” Thus, without Education Code sections 5303 and 35710, it would be unclear whether Elections Code section 105 applied to county superintendents.

⁷³ There is some authorization for the county superintendent to advise petitioners under Education Code section 35700.1, but it is not mandatory.

<p>districts of the same kind, section 2023 required the superintendent to order an election. No transmittal required.</p> <ul style="list-style-type: none"> - Formation of a consolidated high school district, section 203 1, subdivision (e), required the superintendent to transmit the petition to the county committee. - Annexation, section 2098 required the superintendent to order an election. - Transfers of component elementary districts to high school districts, or component high school districts to community college districts, section 2195 required the superintendent to transmit the petition to the State Board. - Transfers of territory, sections 2364 and 2364.3⁷⁴ required the county superintendent to transfer petition to the county committee and governing boards of affected districts. - Dissolution of districts, section 2743 required the county superintendent to call an election. No transmittal. 	<p>Board.</p>
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Statistical information: Statutes 1977, chapter 36 added section 35513 .5 to the Education Code, which requires county superintendents, any county officer to comply with a CDE request for statistical information in order for CDE to prepare a proposal relating to any petition for school district reorganization. Section 35513.5 was renumbered in 1980 to section 3575 1, the current provision.

Claimants contend that section 35751 constitutes a reimbursable mandate for compiling, organizing, and reporting to the CDE whatever statistical information CDE deems necessary, and that no such mandate existed prior to Statutes 1977, chapter 36.

CDE contends that the requirement existed before 1975 for school district and county superintendents to compile and report statistical information. Former Education Code section 1973 stated that when a petition for a new district was to be heard by the State Board, the State Superintendent of Public Instruction could make a survey of the territory with affected districts bearing the costs. Also former section 3 104 required county superintendents, county officers, and officers and employees of school districts to furnish the county committee with “records, reports, documents, maps or other data pertaining to the survey of the area” to be reorganized. DOF concurs with CDE’s analysis of pre-1975 statutes that there is no new program or higher level of service.

Claimants responded to CDE by arguing that activities required under Education Code section 3575 1 are substantially different than activities required under former section 3 104 because former section 3 104 required county superintendents affected by a petition for reorganization to supply requested information to a county committee, whereas section 35751 requires affected county superintendents to submit certain statistical data to the State Board. Claimants assert that even if the information requested is identical or duplicative, county superintendents should be reimbursed for supplying it as a new activity or higher level of service.

Claimants then assert that Education Code section 35751 requires more activities than former Education Code section 3 104. According to claimants: (1) the only information required under

⁷⁴ This section was about community college district territory transfers.

I former section 3 104 was information concerning any survey made pursuant to former Education Code section 1973; (2) the “survey” contemplated in former section 3104 was a geographical analysis; (3) Education Code section 35751 does not qualify or limit the scope of information as does former section 3 104; (4) Education Code section 3575 1 requires county superintendents to submit any statistical data the CDE deems necessary to complete a study for submission to the State Board to adequately consider a proposal for reorganization.

The Commission finds that claimants’ assertions are unsupported by evidence in the record or in the authorities cited. Under former section 3 104, the county superintendent or school district was required to submit data to the county committee. There is nothing in former section 3 104 that indicates it was limited to information concerning any survey made pursuant to former Education Code section 1973 or geographical survey data. It is noteworthy that under former section 1973, the CDE had authority to request statistical data at its discretion at the school district’s expense, for petitions for “a new district . ..pursuant to this chapter,” i.e., former section 1973 applied only to new district formations and not to all reorganization actions. However, former section 3 104 was not limited to new district formations.⁷⁵

Also, under former section 3296.5, the county superintendent was required to prepare a statement of official information and statistics relating to the proposed new unified area, to include specified items,⁷⁶ for approval by the CDE. Former section 3296.5 is the equivalent of Education Code section 35757, under which the compilation occurs after CDE approval, while 35751 occurs before CDE approval. But even without former sections 1973 and 3 104, the test claim statute merely requires statistical compilation by the county superintendent and others earlier in the process than did former section 3296.5,

The only difference between former section 3 104 and Education Code section 3575 1 is under former section 3104, the statistical data was submitted to the county committee⁷⁷ whereas under the current section, it is submitted to the State Board. Because it is the same information submitted by the same county superintendents, and the statute does not impose new activities, the Commission finds that ‘Education Code section 3575 1 is not a new program or higher level of service on county superintendents or school districts within the meaning of article XIII B, section 6. A summary of the analysis is as follows.

§ 35751	Prior Law	Current Law
Providing statistical information	<ul style="list-style-type: none">« For New Districts: former Education Code section 1973 authorized the Superintendent of Public Instruction to make a survey of the territory with affected districts bearing the costs.« For Reorganizations: former section 3 104 required county superintendents, county officers, and officers and employees	<ul style="list-style-type: none">« Education Code section 35751 requires the county superintendent, county officers and district superintendent to provide statistical information required by the CDE to

⁷⁵ Former section 3 102 defines reorganization as “formation, annexation, transfer, uniting, unification, unionization, merger, division, transfer of territory, or change of boundaries, of school districts.. .” suggesting that section 3 104 applies to all these actions.

⁷⁶ The statement of official information and statistics was to include the assessed valuation, the tax rate, the rate of growth, the expected enrollment and the support from the state which can be expected if such area maintains an adequate school program.

⁷⁷ Unless the reorganization was a formation of a new district, in which case section 1973 required submittal of the information to the State Board.

of school districts to furnish the county committee with "records, reports, documents, maps or other data pertaining to the survey of the area" to be reorganized.

consider the reorganization petition,

- Under former section 3296.5, the county superintendent was required to prepare a statement of official information and statistics relating to the proposed new unified area.

Petition description: Education Code section 35705.5 was enacted by Statutes 1980, chapter 1192. Subdivision (a)⁷⁸ authorizes a county committee to add to a petition any provisions in Article 3 that were not included in the petition as filed, and authorizes amendment of any included provisions. The Commission finds that Education Code section 35705.5, subdivision (a), is discretionary, not mandatory, and is therefore not a new program or higher level of service under section 6 of article XIII B of the California Constitution.

Education Code section 35705.5, subdivision (b), requires the county committee to make available to the public a description of the petition at least 10 days before the public hearing, including the following: (1) the rights of the employees in the affected districts to continued employment; (2) the revenue limit per unit of ADA for each affected school district and the effect of the petition, if approved, on the revenue limit; (3) whether the districts involved will be governed, in part, by provisions of a city charter and, if so, in what way; (4) whether the governing boards of any proposed new district will have five or seven members; (5) a description of the territory or districts in which the election, if any, will be held; (6) where the proposal is to create two or more districts, whether the proposal will be voted on as a single proposition; (7) whether the governing board of any new district will have trustee areas and, if so, whether the trustees will be elected by only the voters of that trustee area or by the voters of the entire district; (8) a description of how the property, obligations, and bonded indebtedness of existing districts will be divided; (9) a description of when the first governing board of any new district will be elected and how the terms of office for each new trustee will be determined.

Claimants contend that a school district and county superintendent would incur costs in recording, compiling, organizing and reporting to a county committee information the committee deemed necessary to make its recommendation to the CDE, and that no such requirement existed prior to 1980. Claimants also assert, "a school district faced with a request for information from a county committee would be required to comply under the committee's inherent powers... [and] would incur costs in recording, compiling, organizing and reporting to a County Committee information the county committee deemed necessary to make its recommendation..." Claimants interpret Education Code section 35720, which requires county committees to formulate plans and recommendations for the organization of school districts in the county, as giving county committees the authority to require districts to provide this information.

CDE argues that former Education Code sections 3254, 3296 and 3296.5, in effect December 31, 1974, contained requirements for reports, plans and recommendations, and statistical information from the county committee and county superintendent of schools regarding

⁷⁸ The test claim does not distinguish between subdivision (a) and subdivision (b) of section 35705.5, and discussion in the test claim is limited to the content of subdivision (b).

governing board members , trustee areas, assessed valuations, tax rates, rates of growth, expected enrollment and support from the state, trustee areas, and other county committee recommendations. CDE also states that information required by section 35705.5 is already available from the petition, the county superintendent who is secretary to the county committee, the record of the county committee's own actions (if the committee chooses to provide plans and recommendations) or the application of provisions in code. In sum, the information is already available pursuant to:

- Statute: rights of employees in affected districts (no. 1 above); revenue limit calculations and effect of petition on the revenue limit (no. 2); whether district will be governed by a city charter (no. 3); whether the governing board of any new district will have trustee areas and, if so, whether the trustees will be elected by only the voters of that trustee area or by the entire district (no. 7); a description of how the property, obligations, and bonded indebtedness of existing districts will be divided (no. 8); and a description of when the first governing board of a new district will be elected and how the terms of office for each trustee will be determined (no. 9). Some of these may be addressed in the county committee's plan.
- County Committee Decisions: whether the governing boards of any proposed new district will have five or seven members (no. 4); a description of the territory or districts in which the election, if any, will be held (no. 5, this may be a State Board decision for new districts and appeals).
- The petition: whether reorganization affecting two or more districts will be voted on as a single proposition (no. 6).

DOF concurs with CDE's analysis and concludes that section 35705.5 does not constitute a new program or higher level of service, but restates preexisting law or requires providing information already required for collection.

The Commission finds that section 35705.5, subdivision (b), is not a new program or higher level of service for school districts. The Commission also finds that section 35705.5, subdivision (b) is a new program or higher level of service for county committees. The former Education Code statutes cited by CDE are not applicable. Former section 3296 required the county superintendent calling an election to cause to be prepared and distributed to each voter a copy of the recommendations of the county committee. Pursuant to former section 3254, the recommendations were to include, for a proposal for unification or formation of a community college district recommended by a county committee, a provision for a governing board of either five or seven members and may have included a provision for trustee areas subject to specified requirements. Former section 3296.5 required the county superintendent of schools to prepare a statement of official information and statistics relating to the proposed new unified area, to include certain statistical and other information. It also required, upon approval by CDE, the county superintendent to distribute the statement of official information to each registered elector in the proposed new unified area. Except for section 3296, the statutes CDE mentions have equivalent provisions in other sections of the modern Education Code.⁷⁹ Moreover, these former statutes are not on point because the county committee's

⁷⁹ See Education Code, sections 3573 1, 35732, and 35751 respectively.

recommendations and official statement were prepared after approval by the State Board⁸⁰ and 10 days before the election.⁸¹ The test claim legislation, on the other hand, requires the description of the petition, including the nine specified items, to be made available to the public and affected governing board(s) much earlier in the process: at least 10 days before the public hearing, which is to be held within 60 days after receiving the petition.⁸² There is no provision of the pre-1975 Education Code that requires the same activity as section 35705.5.

It is true, as CDE states, that the information in section 35705.5 is available elsewhere (including the petition, the county superintendent of schools who serves as secretary to the county committee, the record of the county committee's own actions regarding the issues, if the county committee chooses to provide plans and recommendations, or the application of provisions in code). But simply because the section 35705.5 information is available (pursuant to another statute, the petition, or decision of county committee) does not negate the new activity in providing it to the public. Even though most of the nine items in section 35705.5 are not required to be in the county committee's plans and recommendations (except for the revenue limit per unit of ADA), they must be compiled and made available to the public and boards of the affected districts.⁸³

The Commission disagrees with claimants' interpretation of section 35720, which requires county committees to formulate plans and recommendations for the organization of school districts in the county. The Commission does not interpret section 35720 as conferring on county committees the authority to require districts to provide this information. Thus, the Commission finds that making available the petition description required by Education Code section 35705.5, subdivision (b), is not a required activity for school districts. Section 35705.5, subdivision (b), confers authority on the county committee with which the subject school district may choose, in its discretion, not to comply. Because under this statute school districts are not required to report information, the Commission finds this activity is not a new program or higher level of service on school districts within the meaning of article XIII B, section 6.

The Commission finds that making a petition description available to the public pursuant to Education Code section 35705.5, subdivision (b), is a new activity or higher level of service for county committees. The table below summarizes the analysis.

§ 35705.5 (b)	Prior Law	Current Law
Making available a description of the petition	No requirement in prior law.	• Education Code section 35705.5, subdivision (b), requires the county committee, at least 10 days before the public hearing, to make available to the public and the governing board(s) affected by the petition a description of the petition, to include nine specified items.

⁸⁰ Former Education Code section 329 1.

⁸¹ Former Education Code section 3296.

⁸² Education Code section 35705.

⁸³ School District Organization Handbook at <www.cde.ca.gov/fiscal/dist_org/handbook.htm> page 51.

Committee recommendation: Education Code section 35706 requires, within 120 days of the first public hearing on the petition, the county committee to recommend approval or disapproval of a petition for unification, division of the territory of an existing school district into two or more separate districts, or to approve or disapprove a petition for transfer of territory.

The Commission finds that the requirement to provide recommendations is not a new program or higher level of service for school districts, which are not mentioned in the statute. The Commission also finds that the requirement to provide recommendations is not a new program or higher level of service for county superintendents or county committees. Former section 2032 and 3209, and 3210 required county committees to make recommendations on a reorganization petition. As for transfers of territory, former section 2365 required a county committee to provide a report and recommendation, whereas section 35706 merely requires the county committee to approve or disapprove the petition. Therefore, Education Code section 35706 is not a new program or higher level of service.

Committee report and State Board criteria: Education Code section 35707, subdivision (a)⁸⁴ requires, except for territory transfer petitions, the county committee to expeditiously transmit the petition to the State Board with a recommendation, and to report whether the proposed reorganization would adversely affect the county school district organization. It also requires the county committee to report whether the petition would comply with provisions of section 35753, which lists the State Board approval criteria. Territory transfer petitions, on the other hand, are to be transmitted pursuant to section 35704, which requires no report?

Education Code section 35753,⁸⁵ subdivision (a), lists the following State Board approval criteria for a reorganization petition:

- (1) The new districts will be adequate in terms of number of pupils enrolled.
- (2) The districts are each organized on the basis of a substantial community identity.
- (3) The proposal will result in an equitable division of property and facilities of the original district or districts.
- (4) The reorganization will not promote racial or ethnic discrimination or segregation.
- (5) The proposed reorganization will not result in any substantial increase in costs to the state.
- (6) The proposed reorganization will not significantly disrupt the educational programs in the proposed districts and districts affected by the proposed reorganization and will continue to promote sound education performance in those districts.
- (7) The proposed reorganization will not result in a significant increase in school housing costs.

⁸⁴ Statutes 1980, chapter 1192, as amended by Statutes 1990, chapter 1658, Statutes 1994, chapter 1186, and Statutes 2000, chapter 1058. The 2000 amendment deleted the requirement for the committee to report whether the reorganization is compatible with master plans submitted by the county committee and approved by the State Board.

⁸⁵ Education Code section 35707, subdivision (b).

⁸⁶ Statutes 1980, chapter 1192, as amended by Statutes 1990, chapter 1658 and Statutes 1994, chapter 1186.

- (8) The proposed reorganization is not primarily designed to result in a significant increase in property values causing financial advantage to property owners because territory was transferred from one school district to an adjoining district.
- (9) The proposed reorganization will not cause a substantial negative effect on the fiscal management or fiscal status of the proposed district or any existing district affected by the proposed reorganization.
- (10) Any other criteria as the board may, by regulation, prescribe.

Education Code section 35753, subdivision (b), allows the State Board to approve a proposal for reorganization if it determines that it is **impractical** or impossible to apply the section's criteria literally, and circumstances provide an exceptional situation sufficient to justify approval. Section 18573 of title 5 of the CDE regulations provides more specified criteria regarding the statutory approval conditions for a reorganization petition, including the enrollment each district should have on the date the proposal becomes effective, factors to determine whether the district is organized on the basis of substantial **community** identity, direction for a determination on an equitable division of property and facilities, and guidance on determining whether the proposal would promote racial or ethnic **discrimination** or segregation. In short, the regulations provide criteria used by the CDE and State Board in reviewing the section 35753 criteria.

Claimants submit that the requirements of sections 35707 and 35753 make up an implied mandate on school districts to provide information to allow a county **committee** to make its recommendation to the State Board because the committee must obtain information from the districts in order to review the section 35753 criteria. Claimants say there is no requirement for the original petition to include the information necessary for the State Board (nor the county committee) to satisfy its statutory obligation to review the petition under these criteria, so the State Board is obligated to request it from the affected districts.

CDE contends that the requirements to produce information for review of the section 35753 conditions existed before 1975 in former Education Code section 3100 and 2365, and in former title 5, section 18573 of the regulations. DOF notes that the mandates specified by claimants for school districts are "implied" and not specified in law, and repeats CDE's observations regarding the substantial similarity of pre- 1975 law.

The Commission finds Education Code section 35707, subdivision (a) is not a new program or higher level of service for school districts upon which the statute imposes no requirements. Regarding claimants' assertion that the statute places an implied mandate on school districts, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.⁸⁷ Since the statute does not require school districts to provide information, they may participate at their discretion. Therefore, the Commission finds that this reporting is not a

⁸⁷ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

new activity or higher level of service for school districts. In fact, a county superintendent is authorized to employ personnel for research projects.⁸⁸

The Commission finds Education Code section 35707, subdivision (a), is a new program or higher level of service for county committees. Former Education Code section 2365 required the county committee to prepare a report with its recommendation to the State Board, to include whether or not the territory transfer would adversely affect a county school district organization and how the transfer would affect racial or ethnic integration in the schools of the districts affected. Former section 2365, however, applied only to “a petition.. .pursuant to this article,” meaning transfers of any part of an elementary, unified or community college district to another elementary, unified, or community college district.⁸⁹ It also applied to transfers of parts of an elementary district included in more than one high school district, or parts of a high school or unified district included in more than one community college district.⁹⁰ In short, former section 2365 only applied to transfers of territory. Other reorganization actions did not require the adverse effect and racial information in a report to the State Board. For example, a petition to create a new district from territory of existing districts required only transmittal of the petition to the State Board; no report was required.⁹¹

Education Code section 35707, subdivision (a), on the other hand, only requires a report (to include the adverse effect and racial information) for situations “**except** for petitions for the transfer of territory” (emphasis added). Since prior law required the report for transfers of territory, but current law requires the report for non-transfer reorganizations, the Commission finds that the report of the county committee is a new activity or higher level of service on county committees.

Education Code section 35707, subdivision (b), requires petitions for territory transfers to be transmitted pursuant to Section 35704. The Commission finds that the transmittal requirement of section 35707, subdivision (b), constitutes a new program or higher level of service as discussed above under section 35704. For transfers of territory, the Commission finds the requirement in section 35704 for transmittal to the State Board to be a new program or higher level of service.

The Commission finds that Education Code section 35753 and title 5, section 18573 of the CDE regulations impose requirements on state agencies but do not require a local activity. Therefore, Education Code section 35753 and title 5, section 18573 do not constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The table below summarizes the analysis for this portion of the test claim.

§ 35707 (a)	Prior Law	Current Law
§ 35753		

⁸⁸ Education Code section 1943. The authorization is not limited to research related to district reorganization.

⁸⁹ Former Education Code section 236 1.

⁹⁰ Former Education Code section 2395.

⁹¹ Former Education Code section 1993. A public hearing and election were also required under former sections 1994 - 1996.

<p>county Committee Report</p>	<ul style="list-style-type: none"> • Former Education Code section 2365 • Required for petitions for transfers of territory • Required to include (1) whether proposed transfer would adversely affect the school district organization of the county; (2) compatibility with master plans approved by the State Board; and (3) affect on racial or ethnic integration of schools in affected districts. 	<ul style="list-style-type: none"> • Education Code section 35707, subdivision (a). • Required for petitions “except the transfer of territory” (thus, a new activity). • Required to include (1) whether the proposed organization would adversely affect the school district organization of the county; (2) Whether it would comply with the provisions of section 35753.
<p>State Board Criteria for Consideration</p>	<ul style="list-style-type: none"> • Former section 3100 (applied only to new formations). • No express requirement for a committee report. • Five criteria listed. 	<ul style="list-style-type: none"> • Education Code section 35753 • Requires a committee report via section 35707, for non-transfer reorganizations • Nine specific criteria listed, plus “any other as the board may, by regulation, prescribe.” Five of the criteria listed are the same as under former section 3100. • Title 5 regulations list further criteria for CDE and State Board consideration

Base revenue limit calculation& The Education Code provides for the creation of a revenue limit that may equalize the differences between high salaried districts and lower salaried districts.⁹² Reorganizations ‘result in a recalculation of the revenue limit for the reorganized (new) district. The revenue limits of the existing districts in the area to be reorganized are “blended” into a new revenue limit. The new district’s revenue limit is weighted proportionally to the ADA levels and revenue limits of the existing districts involved, and is adjusted for variances in compensation levels of the districts involved.⁹³

Education Code section 35735, subdivision (a), requires each proposal for school district reorganization to include a computation of the base revenue limit per unit of ADA for the districts, which is to be “an integral part of the proposal and shall not be considered separately from the proposal.” Subdivision (b) requires the county superintendent to compute the base revenue limit per unit of ADA pursuant to section 35735.1 for a district reorganization.⁹⁴

⁹² School District Organization Handbook at <www.cde.ca.gov/fiscal/dist_org/handbook.htm> page 144.

⁹³ Senate Floor Analysis, Assembly Bill No. 2328 (1997 – 1998 Reg. Sess.), page 2.

⁹⁴ The calculation to determine the base revenue limit per unit of ADA for newly organized districts is as follows: (See School District Organization Handbook at <www.cde.ca.gov/fiscal/dist_org/handbook.htm> pp. 154 - 155); (1) For each district wholly or partially included in the newly reorganized district, the district’s total base revenue limit per ADA is the total base revenue limit (calculated pursuant to Ed. Code, § 4223.8.) divided by the total revenue limit ADA (calculated pursuant to Ed. Code, § 4223.8.5) (2) To compute the blended revenue limit, for each school district affected by reorganization, multiply the total base revenue limit per ADA by the number of units of average daily attendance for that school district that the county superintendent determines will be included in the proposed school district. (3) Add the amounts calculated to obtain the total base revenue limit for the component districts. (4) Then, calculate the amount to be included in the base revenue limit per unit of ADA for the newly organized districts based on salaries and benefits of full-time equivalent employees by dividing the sum in step (3) by the total ADA in the newly reorganized district. (5) For each affected district (Before chapter 905, this read; “**For each affected school district for which the employment of 25 percent or more of the classified full-time equivalent employees of the district is attributable to average daily attendance that the county superintendent of schools determines will be included in the newly organized school districts, the following computation shall be made...**“) in the newly organized districts, determine the amount to be included in the base revenue limit per unit

Education Code section 35735.2 provides a formula for newly organized districts that cannot provide school facilities necessary to provide instructional services by employees of the district to all of the resident pupils during the fiscal year that the reorganization becomes effective.

Claimants maintain that before Statutes 1998, chapter 906, Education Code section 35735.1 required a county superintendent to calculate the base revenue limits of districts affected by a reorganization only when the superintendent determines that the employment of 25 % or more of either the classified or certificated employees is attributable to ADA that the superintendent determines will be included in the newly organized school district.⁹⁵

The CDE commented that prior to Statutes 1998, chapter 906, the revenue limit for a newly organized district was calculated pursuant to Education Code sections 35735 and 35735.1, which are the same requirements as in current section 35735 and 35735. 1.⁹⁶ CDE argues that the current code presents the calculation in easier to follow, more user-friendly steps. DOF, on the other hand, believes the core issue is the superintendent's obligation to recalculate the revenue limit of reorganized districts, which duty is longstanding and does not constitute a new program or higher level of service. CDE and DOF both conclude there is no substantial change in duties due to Statutes 1998, chapter 906, the test claim statute.

Claimants responded to CDE comments by repeating CDE's description of the second step in calculating base revenue limits, which CDE said was necessary for the reorganized school districts, "if the employment of 25 percent or more of the [newly reorganized] district's full-time equivalent employees was attributable to the ADA that the county superintendent of schools determined was from the district(s) losing territory if the losing district(s) had higher average salaries and benefits." Claimants argue that prior to chapter 906, this step was unnecessary if a county superintendent concluded that less than 25 percent of the district's full-time equivalent employees were attributable to the ADA resulting from the loss of territory or

of ADA based on salaries and benefits of full-time classified employees by adding all salaries and benefits for classified employees of the district, both part-time and full-time. (Note: there is an identical procedure for certificated employees in Ed. Code, § 35735.1, subd. (a) (3).) (6) Divide the amount in (5) by the total number of full-time equivalent classified employees in the district. (7) Among the districts that will make up 25 percent or more of the average daily attendance of the newly organized district, compare the amounts for each of the districts to identify the highest average amount spent for salaries and benefits for classified employees. (8) For each of the districts with salaries and benefits below the highest average amount identified in step (7) and that are wholly or partly in the newly organized district, subtract the amount determined for the district in step (6) from the highest average amount identified in step (7). (9) Multiply this figure in step (8) by the number of full-time equivalent classified employees employed by the district. (10) Then multiply this figure in step (9) by the percentage of the district's average daily attendance to be included in the new district. (11) Add the amounts computed in step (10) for each school district.

⁹⁵ As DOF noted, this is a misstatement of prior law. The calculation was always required, but districts that contributed less than 25% of the employees to the new district were not counted in the computation.

⁹⁶ According to CDE, the base revenue limit was recalculated for all new districts regardless of district size in a two-step process. First, the revenue limits of the new district and district(s) losing students were blended to obtain a weighted average revenue limit for the newly organized district based on the units of ADA in the new district that came from each of the affected districts. In the second step the blended base revenue limit for the new district was increased if the employment of 25 percent or more of the new district's full-time equivalent employees was attributable to the ADA that the county superintendent determined was from the district(s) losing territory if the losing district(s) had higher average salaries and benefits.

a disparity in wages and benefits. Chapter 906 deleted from section 35735.1, subdivision (a), paragraph (2), subparagraph (B), the language “for which the employment of 25 percent or more of the classified full-time equivalent employees of the district is attributable, to the ADA that the county superintendent of schools determines will be included in the newly organized districts.” In so doing, claimants say the second step was made a requirement for all reorganized districts. Claimants also note that the Legislative Counsel concluded that chapter 906 imposed new activities to the extent that the deletion would require a county superintendent to make additional calculations.⁹⁷

The Commission finds that Education Code section 35735 does not constitute a new program or higher level of service.⁹⁸ It requires computation of the base revenue limit per unit of ADA, the same as under former Education Code section 3255.

Before enactment of Statutes 1998, chapter 906, only districts with at least 25 percent of certificated full-time employees in the newly reorganized district were included in the calculation of the adjustment for certificated salaries and benefits, and only those with at least 25 percent of the classified employees were included in the calculation of the adjustment for classified salaries and benefits.⁹⁹ Chapter 906 amended this computation so that the calculation to determine the amount included in the base revenue limit per unit of ADA must now be made for all districts. Due to this change in calculation, the Commission finds that section 35735.1 is a new program or higher level of service for county committees, but not school districts. This analysis for sections 35735 and 35735.1 is summarized in the following table.

§ 35735	Prior Law	Current Law
§ 35735.1		
Base Revenue Limit Calculation	<ul style="list-style-type: none"> ☒ Former Education Code section 3255 required computation of the base revenue limit per unit of ADA. ☒ Before 1999, Education Code section 35735.1 required only districts with at least 25 percent of full-time employees in the newly reorganized district to be included in the calculation of the adjustment for salaries and benefits. 	<ul style="list-style-type: none"> ☒ Education Code section 35735 requires the computation of base revenue limit per unit of ADA. ☒ Education Code section 35735.1 requires the calculation to determine the amount included in the base revenue limit per unit of ADA to be made for all districts.

County superintendent’s financial oversight: Education Code section 42127.6 authorizes a county superintendent to take certain actions upon determining that a school district may be unable to meet its financial obligations for the current or two subsequent years, or if a district

⁹⁷ Claimant is correct regarding the Legislative Counsel’s determination. However, “any legislative findings are irrelevant to the issue of whether a state mandate exists.” *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 819.

⁹⁸ Claimant’s test claim pled Education Code section 35735, but discussion was limited to section 35735.1,

⁹⁹ School District Organization Handbook at <www.cde.ca.gov/fiscal/dist_org/handbook.htm> page 155. The effect was to completely exclude small districts-those with less than 25 percent of the staff in the new district-from the salary and benefit calculation.

has a qualified certification¹⁰⁰ pursuant to Section 4213 1. Statutes 1998, chapter 906 added subdivision (j) to Education Code section 42 127.6, which authorizes the county superintendent to exercise any of the financial oversight duties of section 42127.6 for reorganized school districts.

Education Code section 42127.6, among other sections, was the subject of a former test claim (97-TC-19) “School District Budget Process, Financial Statements, and County Office Oversight.” The Commission approved this test claim.

Claimants assert that even though subdivision (j) grants the county superintendent discretion to use the powers granted in 42127.6 by using the verb “may” instead of “shall,” the superintendent is nonetheless obligated by a fiduciary duty to “superintend the schools of his or her county.”¹⁰¹ A superintendent is obligated to exercise the powers of Education Code section 42127.6 to stop an outgoing school district from wasting state finances. Therefore, according to claimants, the county superintendent should be reimbursed for monitoring finances of districts affected by reorganization, legal and consultation fees in assessing the financial state of an outgoing district, and in determining the appropriate remedial steps to prevent further financial mismanagement.

CDE comments that subdivision (j) did not add a new requirement, but merely clarifies that county superintendents of schools may use whatever remedies are currently available under existing law to prevent outgoing school board or boards of newly organized districts from taking actions that would have a negative impact on the new district’s ability to meet its financial obligations. DOF notes that the plain language of the text is not prescriptive because it states the superintendent “may exercise any of the powers or duties” specified over newly organized districts, serving as little more than a reminder of the superintendent’s powers and duties that are already specified in law. DOF concludes that subdivision (j) imposes no new program or higher level of service.

Claimants responded to CDE’s comments by repeating its assertions regarding the duty of a superintendent under Education Code section 1240, and pointed out that CDE did not rebut claimants argument regarding this duty to exercise the powers of section 42 127, subdivision (j).

In the prior test claim, of which Education Code section 42127.6 was part, the Commission found the existence of a new program or higher level of service in subdivision (a) for

“notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42 13 1.”¹⁰²

The Commission found that other provisions of Education Code section 42 127.6 are only to be imposed “as necessary,” as determined by the county superintendent, not the state. To the extent that the fiscal management activities in section 42127.6 may be necessary to solve the financial problems of the school district, they are undertaken at the discretion of the county superintendent

¹⁰⁰ A qualified certification shall be assigned to any school district that, based upon current projections, may not meet its financial obligations for the current fiscal year and subsequent two fiscal years. (Ed. Code, § 4213 1.)

¹⁰¹ Education Code section 1240, subdivision (a).

¹⁰² Commission on State Mandates, Statement of Decision, 97-TC-19, “School District Budget Process, Financial Statements, and County Office Oversight,” page 16.

of schools. Such activities do not go beyond the traditional duty of the county office of education or county superintendent to “superintend” fiscal management of their school districts. Therefore, the remaining provisions of section 42 127.6 do not impose new programs or higher levels of service, and do not impose costs mandated by the state.¹⁰³ The Statement of Decision also cites Education Code section 1240 and discusses its requirement on the superintendent to superintend the schools of the county.¹⁰⁴

Thus, the only remaining issue is whether Education Code section 42 127.6, subdivision (j) is a new program or higher level of service. It reads:

Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21,

Subdivision (j) confers jurisdiction on the county superintendent for financial oversight duties for the period after tabulation of election results for a new district pursuant to formation by a county committee,¹⁰⁵ until the action to reorganize is complete, i.e., until the “board of supervisors makes the order required pursuant to Section 3 5765 .”¹⁰⁶ Prior to enactment of subdivision (j), the county superintendent would not have had authority to exercise financial oversight duties until the county board of supervisors took final action pursuant to Education Code sections 35530 and 3 5 765 because the reorganized entity was not considered a “school district” until then.

Because the statutory language is permissive,¹⁰⁷ the Commission finds that Education Code section 42127.6, subdivision (j), does not impose a new program or higher level of service on the county superintendent. Nor does it impose a new program or higher level on school districts, which are not mentioned in the statute. The table below summarizes the analysis for this portion of the test claim.

¹⁰³ *Ibid.*

¹⁰⁴ *Id.* at pages 13 and 15.

¹⁰⁵ Education Code section 35763.

¹⁰⁶ Education Code section 35530.

¹⁰⁷ Education Code section 75. “Shall is mandatory and may is permissive.”

§ 42127.6 (j)	Prior Law	Current Law
county Superintendent Financial Oversight	<p>Preexisting Education Code section 42127.6 granted the county superintendent various financial oversight powers for school districts.</p> <ul style="list-style-type: none"> The Commission on State Mandates previously found a reimbursable mandate in section 42127.6, subdivision (a), for notifying the Superintendent of Public Instruction in writing if a county superintendent determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 4213 1. 	<ul style="list-style-type: none"> Education Code section 42127.6, subdivision (j), confers jurisdiction on the county superintendent for financial oversight duties for the period after tabulation of election results for a new district pursuant to formation by a county committee, until the action to reorganize is complete, i.e., until the board of supervisors forms a new district. Because the statute is permissive and not mandatory regarding expansion of the county superintendent's authority to this interim time period, Education Code section 42127.6, subdivision (j), does not impose a new program or higher level of service on the county superintendent.

Conclusion: The Commission finds no new programs or higher levels of service for school districts. The Commission finds, however, the following activities constitute new programs or higher levels of service on county superintendents or county committees within the meaning of article XIII B, section 6 of the California Constitution when a school district reorganization is initiated via petition by the voters, property owners, or school district governing board:

- Petition transmittal:** pursuant to Education Code sections 35704 and 35707, subdivision (b), that requires the county superintendent to transmit a reorganization petition to the county committee and State Board. This requirement varies depending on the type of reorganization action because only the new activity, not required under the former codes, constitutes the higher level of service. The Commission finds the new activities are as follows: (1) for new district formation, it is transmittal to the county committee; (2) for consolidation, i.e., formation of a new elementary, high school, community college or unified district by combining districts of the same kind, it is transmittal to both the State Board and a county committee; (3) for formation of a consolidated high school district, it is transmittal to the State Board; (4) for annexation, it is transmittal to the county committee and State Board; (5) for transfers of component elementary districts to high school districts, or component high school districts to community college districts, it is transmittal to the county committee; (6) for transfers of territory, it is transmittal to the State Board; and (7) for dissolutions of districts, it is transmittal to both the county committee and State Board.
- Petition description:** pursuant to Education Code section 35705.5, subdivision (b), that requires county committees and superintendents to make the petition description, as specified, available to the public.

- ✓ **Committee report:** pursuant to Education Code section 35707, subdivision (a), that requires a report of the county committee to include specified items.
- ✓ **Base revenue limit calculation:** pursuant to Education Code section 3573 5.1 that altered the ADA calculation to include districts with at least 25 percent of the certificated and classified employees.'

Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable, state mandated program under section 6, article XIII B of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.¹⁰⁸ Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

. .any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIIB of the California Constitution. .

The Commission finds there are costs mandated by the state within the meaning of Government Code section 175 14 and further defined by Government Code section 17556 for petition transmittal, making a petition description available to the public, submission of the county committee report, and superintendent financial oversight as discussed above.

Base revenue limit calculation: Education Code section 35735 requires county superintendents to make the base revenue limit calculation. Education Code section 35735.1, subdivision (a), provides the formula and was determined to expand the calculation of adjustment for employee salaries and benefits to include all districts rather than only those with at least 25 percent of full-time employees in the newly reorganized district. The Cornmission found this to be a new program or higher level of service for county superintendents. Subdivision (e) of section 35735 reads, “costs incurred by the county superintendent . .in preparing reports pursuant to this section or Section 3 573 5.1 or 3573 5.2 may be billed to the affected school districts.. .” The statute authorizing county superintendents to bill for the computations is discretionary, not mandatory, but grants the authority nonetheless.

Government Code section 17556, subdivision (d), precludes reimbursement for a local agency that has authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. *In Connell v. Santa Margarita Water District*,¹⁰⁹the court found that a water district with authority to charge fees could not be reimbursed due to the fee authority, even though it was economically impractical to charge the full cost of service.

Since the county superintendent is authorized to bill the affected school districts pursuant to section 3573 5, subdivision. (e), the superintendent has fee authority to pay for the increased level of service of a revised calculation. Therefore, even though Education Code section 3 5 73 5.1,

¹⁰⁸ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835.

¹⁰⁹ *Connell v. Santa Margarita Water District* (1997) 59 Cal. App.4th 382,401.

subdivision (a), is a new program or higher level of service on county superintendents, the Commission finds it does not impose “costs mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission finds that the test claim legislation and regulations do not constitute a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution.

The Commission also finds that the test claim legislation imposes a partially reimbursable state-mandated program for county superintendents within the meaning of article XIII B, section 6 and Government Code section 175.14 for school district reorganizations initiated by voters, landowners or district governing boards for the following activities:

- **Petition transmittal:** pursuant to Education Code sections 35704 and 35707, subdivision (b), that require the county superintendent to transmit a reorganization petition to the county committee and State Board. This requirement varies depending on the type of reorganization action because only the new activity, not required under the former codes, constitutes the higher level of service. The Commission finds the new activities are as follows: (1) for new district formation, it is transmittal to the county committee; (2) for consolidation, i.e., formation of a new elementary, high school, community college or unified district by combining districts of the same kind, it is transmittal to both the State Board and a county committee; (3) for formation of a consolidated high school district, it is transmittal to the State Board; (4) for annexation, it is transmittal to the county committee and State Board; (5) for transfers of component elementary districts to high school districts, or component high school districts to community college districts, it is transmittal to the county committee; (6) for transfers of territory, it is transmittal to the State Board; and (7) for dissolutions of districts, it is transmittal to both the county committee and State Board.
- **Petition description:** pursuant to Education Code section 35705.5, subdivision (b), that requires county committees and superintendents to make the petition description, as specified, available to the public.
- **Committee report:** pursuant to Education Code section 35707, subdivision (a), that requires a report by the county committee to include specified items.

The Commission finds the test claim legislation and executive order do not constitute a new program or higher level of service on county committees or superintendents for the following activities:

- **Petition verification:** pursuant to Education Code section 35704 that requires petition examination, verification, or determination of sufficiency by a county superintendent.
- **Committee recommendation:** pursuant to Education Code section 35706, that requires within 120 days of the first public hearing on the petition, the county committee to recommend approval or disapproval of a petition for unification, division of the territory of an existing school district into two or more separate districts, or to approve or disapprove a petition for transfer of territory.
- **Statistical reporting:** pursuant to Education Code section 35751, that requires county superintendents, any county officer, and every school district to comply with a CDE

request for statistical information in order for CDE to prepare a' proposal relating to any petition for school district reorganization.

- **State board criteria:** pursuant to Education Code section 3 5753 and title 5, section 18573 of the CDE regulations, both of which merely list state board approval conditions.
- **Superintendent financial oversight:** pursuant to Education Code section 42127.6, subdivision (j), that authorizes the county superintendent to exercise financial oversight duties after tabulation of the election results.

And the Comrnission finds the test claim legislation does not impose costs mandated by the state for the following activity:

- **Base revenue limit calculation:** pursuant to Education Code sections 35735 and 35735.1, subdivision (a), that expands the calculation of adjustment for employee salaries and benefits to include all districts rather than only those with at least 25 percent of full-time employees in the newly reorganized district.

The Comrnission finds that all other statutes in the test claim do not constitute a reimbursable state mandated program.

DECLARATION OF SERVICE BY MAIL

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 958 14.

October 28, 2002, I served the:

Adopted Statement of Decision

School District Reorganization, 98-E-24

Campbell Union High School District and San Luis Obispo

County Office of Education, Co-claimants

Education Code Sections 35704, 35705.5, 35706, 35707, 35735, 35735.1, 35751, 35753, and 42 127.6; and California Code of Regulations, title 5, section 18573 ; Statutes 1976, Chapter 1010; Statutes 1980, Chapter 1192; Statutes 1994, Chapter 1186; and Statutes 1998, Chapter 906

by placing a true copy thereof in an envelope addressed to:

Mr. Paul C. Minney .

Spector, Middleton, Young, & Minney , LLP

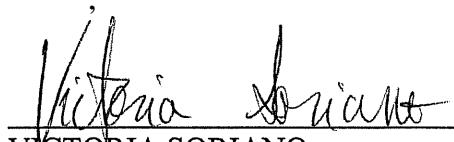
7 Park Center Drive

Sacramento, CA 95825

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

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 October 28, 2002, at Sacramento, California.



VICTORIA SORIANO