

ITEM 20
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

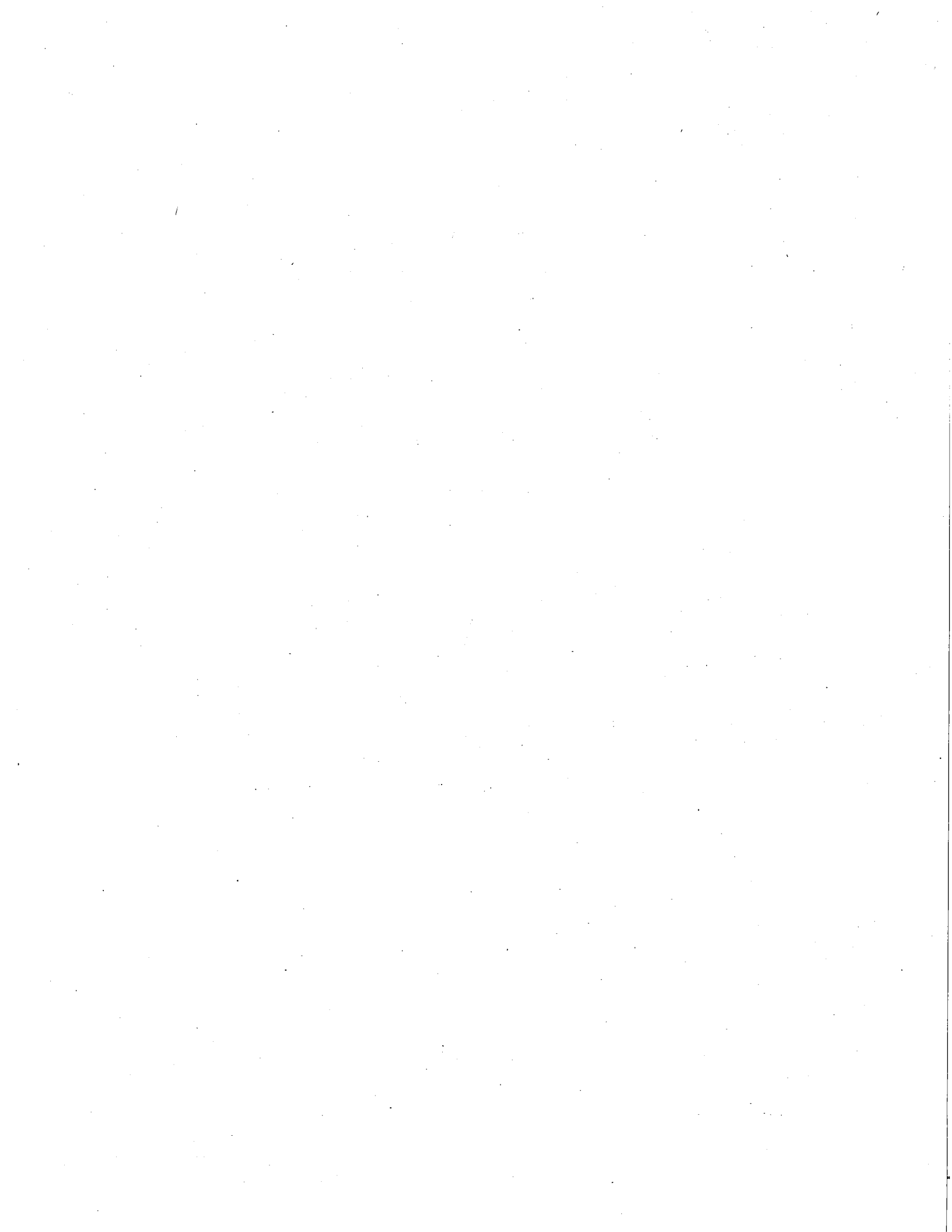
California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17, 01-TC-14)

Clovis Unified School District, Claimant

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ITEM 20
PROPOSED PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17, 01-TC-14)

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

On December 9, 2005, the Commission adopted the Statement of Decision for *Agency Fee Arrangements* (00-TC-17, 01-TC-14). The Commission found that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.¹ Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)²
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)³
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last

¹ Exhibit A.

² As added by Statutes 2000, chapter 893, operative January 1, 2001.

³ As amended by Statutes 2001, chapter 805, operative January 1, 2002.

date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)⁴

The Commission concluded that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

Discussion

In an effort to expedite the parameters and guidelines process, staff prepared and issued the draft parameters and guidelines on December 14, 2005. The proposed reimbursable activities were limited to those approved in the Statement of Decision.

In comments dated December 30, 2005⁵, the claimant offered no additional reimbursable activities, no reasonable methods of complying with the mandate and stated that the approved activities are not sufficiently related to any workload unit which could reasonably support a statewide reimbursement methodology. The claimant also stated objections to the boilerplate language to preserve appeal rights and suggested technical amendments for clarification.

In comments dated January 6, 2006⁶, the State Controller's Office (SCO) stated that some activities should be identified as one-time activities and requested changes to the boilerplate language.

Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Substantive changes were made to Section I. Summary of the Mandate, Section II. Eligible Claimants, and Section IV. Reimbursable Activities.

Staff Recommendation

Staff recommends that the Commission adopt the draft parameters and guidelines, as prepared by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁴ As amended and operative on January 1, 2001.

⁵ Exhibit B.

⁶ Exhibit C.

Claimant

Clovis Unified School District

Chronology

- 06/27/01 Claimant files original test claim (00-TC-17)
- 05/15/02 Claimant files test claim amendment (01-TC-14)
- 12/09/05 Commission on State Mandates (Commission) adopted Statement of Decision
- 12/14/05 Commission Staff issued draft parameters and guidelines
- 12/30/05 Claimant files comments on draft parameters and guidelines
- 01/06/06 State Controller's Office (SCO) files comments on draft parameters and guidelines
- 06/07/06 Draft staff analysis and proposed parameters and guidelines issued
- 07/07/06 Final staff analysis and proposed parameters and guidelines issued

Background and Summary of the Claim

On December 9, 2005, the Commission adopted the Statement of Decision for *Agency Fee Arrangements* (00-TC-17, 01-TC-14). The Commission found that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.⁷ Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)⁸
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)⁹
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last

⁷ Exhibit A.

⁸ As added by Statutes 2000, chapter 893, operative January 1, 2001.

⁹ As amended by Statutes 2001, chapter 805, operative January 1, 2002.

date of the payroll period immediately preceding the date the petition was filed.
(Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)¹⁰

The Commission concluded that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

Discussion

In an effort to expedite the parameters and guidelines process, staff prepared and issued the draft parameters and guidelines on December 14, 2005. The proposed reimbursable activities were limited to those approved in the Statement of Decision.

In comments dated December 30, 2005¹¹, the claimant offered no additional reimbursable activities, no reasonable methods of complying with the mandate and stated that the approved activities are not sufficiently related to any workload unit which could reasonably support a statewide reimbursement methodology. The claimant also stated objections to the boilerplate language to preserve appeal rights and suggested technical amendments for clarification.

In comments dated January 6, 2006¹², the SCO stated that some activities should be identified as one-time activities and requested technical changes to the boilerplate language.

Staff made non-substantive, technical changes for purposes of clarification, consistency with language in parameters and guidelines, and conformity to the Statement of Decision and statutory language. The SCO requested numerous technical changes to language that is common to all parameters and guidelines (boilerplate language). Staff did not make these changes so that this set of parameters and guidelines remains consistent with other parameters and guidelines adopted by the Commission.. Substantive changes were made to the following sections of the draft parameters and guidelines:

I. Summary of the Mandate

The claimant requested that “K-14 school districts” be changed to “school districts, county offices of education, and community college districts” for clarity. Staff agreed and modified the language accordingly. These changes also satisfied changes requested by the SCO.

II. Eligible Claimants

As requested by the claimant, staff modified this section to clarify that school districts, county offices of education, and community college districts are eligible claimants. The SCO requested that language be added to specify that charter schools are not eligible claimants. Staff added a sentence stating that “charter schools are not eligible claimants” for the following reasons:

- Charter schools are not eligible for mandate reimbursement because they are not part of the definition in Government Code section 17519, which defines “school district” for

¹⁰ As amended and operative on January 1, 2001.

¹¹ Exhibit B.

¹² Exhibit C.

purposes of mandate reimbursement, as “any school district, community college district, or county superintendent of schools.”

- Charter schools are initiated by petition of either parents or teachers; and thus, are created voluntarily. No state mandate requires them to exist. In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735, the court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. Consequently, based on the reasoning in the *Kern* case, charter schools are not entitled to reimbursement under article XIII B, section 6.

IV. Reimbursable Activities

The SCO requested that the language describing reimbursable activities be revised to make it easier to understand for claimants when they file reimbursement claims, and requested that the reimbursable activities be designated as one-time or ongoing. Staff agrees that the SCO’s proposed revisions would make the language easier to understand for the claimants and made their proposed changes. However, staff did not designate activities as one-time or ongoing since neither the test claim statutes nor the Statement of Decision limit any activities to a one-time status.

The SCO further requested that “training packets” be deleted from the common language used to describe acceptable documentation since training is not a reimbursable activity. Staff agreed and deleted this language. Staff also modified this section to clearly identify the activities that are not reimbursable.

Staff Recommendation

Staff recommends that the Commission adopt the draft parameters and guidelines, as prepared by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED DRAFT PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF

Government Code Section 3546

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17/01-TC-14)

Clovis Unified School District, Claimant

I. SUMMARY OF THE MANDATE

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for ~~K-14~~ school districts, county offices of education, and community college districts within the meaning of article XIII B, section 6 of the California Constitution, and ~~impose costs mandated by the state pursuant to~~ Government Code section 17514. Accordingly, the Commission approved this test claim for the following specific new/reimbursable activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)

The Commission also found that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any school district, county office of education, or community college district, as defined in Government Code section 17519, that incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), ~~as amended by Statutes 1998, chapter 681,~~ states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Clovis Unified School District filed the test claim on June 27, 2001, establishing eligibility for fiscal year 1999-2000. However, the operative dates of Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 is January 1, 2001. Therefore, costs incurred pursuant to Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 are reimbursable on or after January 1, 2001. The operative date of Statutes 2001, chapter 805 is January 1, 2002; therefore, costs incurred pursuant to Statutes 2001, chapter 805 is reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets,~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

1. Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).) *(Reimbursement period begins January 1, 2001.)*
 - a. Deduction of the fair share service fee from the wages and salary of the employee who is in the bargaining unit upon receiving notice from the exclusive representative.
 - b. Payment of the collected amount of the fair share service fee to the employee organization.
2. School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).) *(Reimbursement period begins January 1, 2002.)*
 - a. Provision of the bargaining unit member's home address by the school district employer to the exclusive representative of a public school employee.
3. Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).) *(Reimbursement period begins January 1, 2001.)*
 - a. Providing a list of the names of employees and their job titles or classifications within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price

after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a ~~local agency or school district~~ pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES SAVINGS AND REIMBURSEMENTS

Any offsetting ~~savings~~ revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist ~~local agencies and school districts~~ in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the ~~local agencies and school districts~~ to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a ~~local agency or school district~~, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

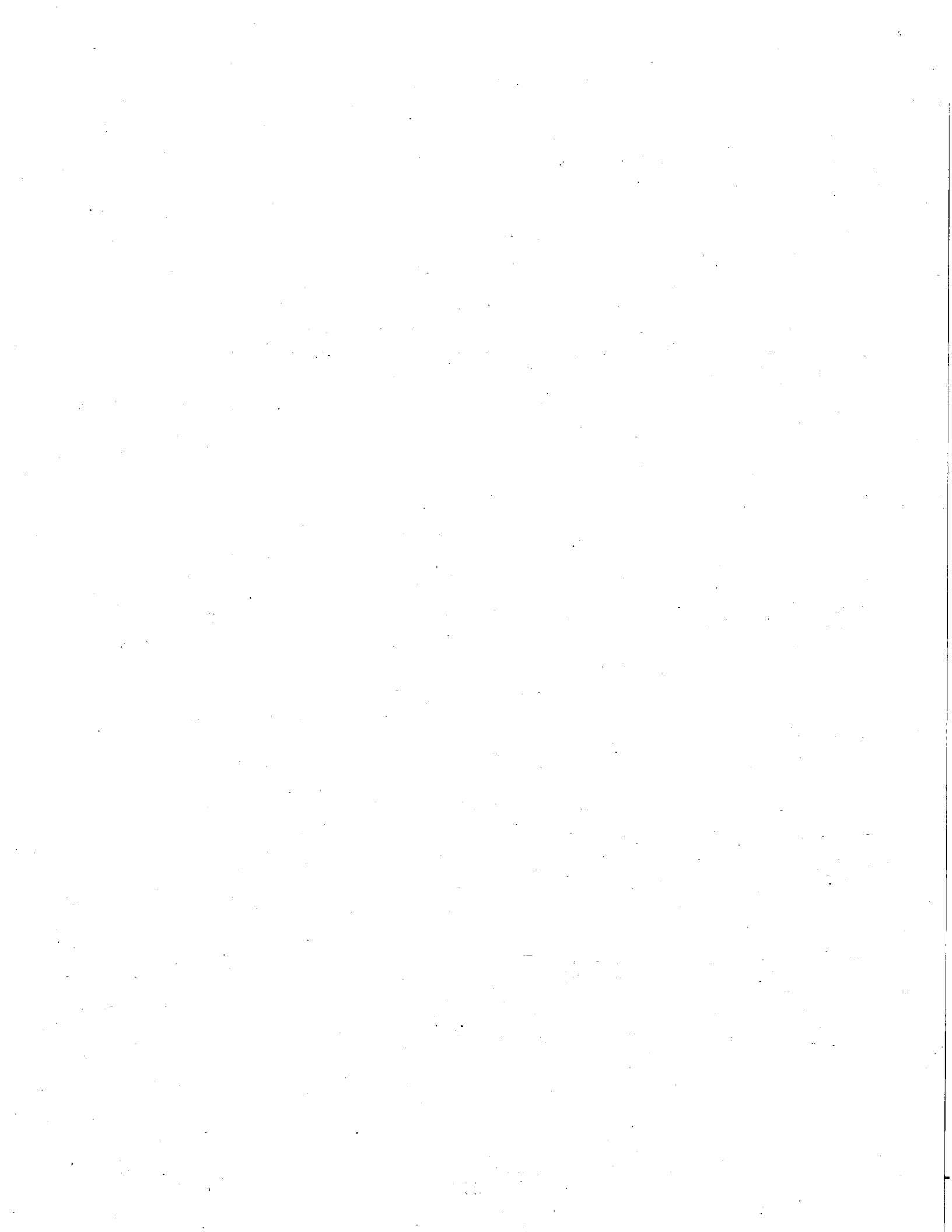
In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

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December 14, 2005

Mr. Keith B. Petersen
 SixTen and Associates
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Adopted Statement of Decision and Draft Parameters and Guidelines
Agency Fee Arrangements (00-TC-17, 01-TC-14)
 Clovis Unified School District, Claimant
 Statutes 1980, chapter 816; Statutes 2000, chapter 893; Statutes 2001, chapter 805
 Government Code sections 3543, 3546, and 3546.3

Dear Mr. Petersen:

The Commission on State Mandates adopted the attached Statement of Decision on December 9, 2005. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

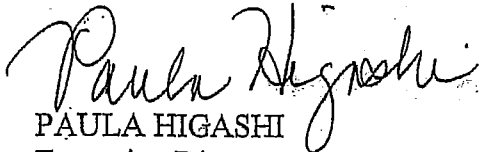
- **Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12 (operative September 6, 2005), the Commission staff is expediting the parameters and guidelines process by enclosing draft parameters and guidelines to assist the claimant. The proposed reimbursable activities are limited to those approved in the Statement of Decision by the Commission.
- **Claimant's Review of Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12, subdivisions (b) and (c), the successful test claimant may file modifications and/or comments on the proposal with Commission staff by **January 6, 2006**. The claimant may also propose a reasonable reimbursement methodology pursuant to Government Code section 17518.5 and California Code of Regulations, title 2, section 1183.13. The claimant is required to submit an original and two (2) copies of written responses to the Commission and to simultaneously serve copies on the state agencies and interested parties on the mailing list.
- **State Agencies and Interested Parties Comments.** State agencies and interested parties may submit recommendations and comments on staff's draft proposal and the claimant's modifications and/or comments within 15 days of service. State agencies and interested parties are required to submit an original and two (2) copies of written responses or

rebuttals to the Commission and to simultaneously serve copies on the test claimant, state agencies, and interested parties on the mailing list. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)

- **Adoption of Parameters and Guidelines.** After review of the draft parameters and guidelines and all comments, Commission staff will recommend the adoption of an amended, modified, or supplemented version of staff's draft parameters and guidelines. (See Cal. Code Regs., tit. 2, § 1183.14.)

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosures: Adopted Statement of Decision, Draft Parameters and Guidelines, and California Code of Regulations, title 2, sections 1183.12 and 1183.13 (operative September 6, 2005).

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DATE: 12/14/05 INITIAL: LJ _____
CHRON: _____ FILE: _____
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Government Code Sections 3543, 3546, and
3546.3;

Statutes 1980, Chapter 816; Statutes 2000,
Chapter 893; Statutes 2001, Chapter 805;

California Code of Regulations, Title 8,
Sections 34030 and 34055

Filed on June 27, 2001, and Amended on
May 15, 2002, by Clovis Unified School
District, Claimant.

Case No.: 00-TC-17/01-TC-14

Agency Fee Arrangements

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

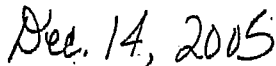
(Adopted on December 9, 2005)

STATEMENT OF DECISION

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



PAULA HIGASHI, Executive Director



Date

MAILED: X FAXED: _____
DATE: 12/14 INITIAL: LJ
CHRON: _____ FILE: _____
WORKING BINDER: X

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Government Code Sections 3543, 3546, and 3546.3;

Statutes 1980, Chapter 816; Statutes 2000, Chapter 893; Statutes 2001, Chapter 805;

California Code of Regulations, Title 8, Sections 34030 and 34055

Filed on June 27, 2001, and Amended on May 15, 2002, by Clovis Unified School District, Claimant.

Case No.: 00-TC-17/01-TC-14

Agency Fee Arrangements

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

(Adopted on December 9, 2005)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on December 9, 2005. Mr. Keith Petersen appeared on behalf of Clovis Unified School District, Claimant. Ms. Susan Geanacou, Senior Staff Counsel, appeared for the Department of Finance.

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

The Commission adopted the staff analysis to approve this test claim at the hearing by a vote of 6 to 0.

The Commission finds that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose a new program or higher level of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)

BACKGROUND

The *Agency Fee Arrangements* test claim, filed by Clovis Unified School District, addresses issues within the collective bargaining process and employer-employee relations in California's K-14 public school systems. Specifically, the test claim legislation focuses on the payment of fees by non-union member (or "fair share") employees to exclusive representative organizations. In 1975, the Legislature enacted the Educational Employment Relations Act (EERA).¹ In doing so, the Legislature sought to "promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California."² This policy aimed at furthering the public interest in "maintaining the continuity and quality of educational services."³

The EERA imposes on school districts the duty to "meet and negotiate" with an employee organization selected as the exclusive representative of an employee bargaining unit on matters within the scope of representation.⁴ The scope of representation is limited to "matters relating to wages, hours of employment, and other terms and conditions of employment."⁵ The EERA explicitly includes "organizational security" within the scope of representation.⁶

¹ Statutes 1975, chapter 961. Pursuant to Government Code section 3541.3, subdivision (g), the Public Employment Relations Board (PERB) is vested with the authority to "adopt... rules and regulations to carry out the provisions and effectuate the purposes and policies" of the EERA. (Government Code sections 3540 et seq.). Accordingly, in Code of Regulations, title 8, section 32001, subdivision (c), PERB has declared that "[s]chool district" as used in the EERA means a school district of any kind or class, including any public community college district, within the state").

² Government Code section 3540.

³ *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 11.

⁴ Government Code section 3543.3.

⁵ Government Code section 3543.2.

⁶ Former Government Code section 3546 provided that "organizational security... shall be within the scope of representation." (Stats. 1975, ch. 961, § 2). In 2000, former Government Code section 3546 was repealed (Stats. 2000, ch. 893), but similar language was added via the same bill to Government Code section 3540.1, subdivision (i), which now provides that

Government Code section 3540.1, subdivision (i), provides two definitions for "organizational security." The first describes organizational security as:

[a]n arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement.

Thus, such an arrangement would provide that once an employee organization has been selected by an employee bargaining unit as exclusive representative, each employee has the option of either joining or not joining the employee organization.

Alternatively, the second definition describes organizational security as:

[a]n arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement.

This type of organizational security arrangement dictates that an employee in a bargaining unit for which an employee organization has been selected as exclusive representative *must* either (a) join the employee organization, or (b) pay such organization a service fee or agency fee arrangement. The EERA explicitly declares that the "employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit."⁷

Under prior law, organizational security arrangements were subject to the collective bargaining process. Statutes 2000, chapter 893 created a statutory organizational security arrangement -- removing the basic issue from the bargaining process.

Claimant's Position

Claimant, Clovis Unified School District, filed a test claim on June 27, 2001, alleging Government Code sections 3543 and 3546, as amended by Statutes 2000, chapter 893, impose reimbursable state-mandated activities on K-14 school districts for activities including establishing and implementing payroll procedures for collecting fair share service fees, and remitting the fees to the certified employee organization. Claimant alleges a new activity to: "Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for 'fair share services fees' for non-member employees of a certified employee organization."

Additionally, claimant alleges that Government Code section 3546.3 as added by Statutes 1980, chapter 816, requires school districts to "Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of 'fair share services fees,'" and

"'Organizational security' is within the scope of representation..."

⁷ Government Code section 3544.9.

establish and implement payroll procedures to prevent automatic deductions from the wages of such conscientious objectors.

Claimant also alleges the California Code of Regulations, title 8, sections 34030 and 34055, requires K-14 school districts, within 20 days of a filed petition to rescind or reinstate the collective bargaining agreement, file with the regional office of the Public Employment Relations Board (PERB) an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition, and establish new payroll procedures, as needed.

On May 15, 2002, claimant filed a test claim amendment alleging the following reimbursable state-mandated activities from amendments by Statutes 2001, chapter 805:

- Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code section 3546.3.
- Adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant to regulations adopted by PERB, pursuant to Government Code section 3546, subdivision (a).
- Take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization, arising from any court or administrative action relating to the school district's compliance with the section pursuant to Government Code section 3546, subdivision (e);
- Provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of when the employees commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to Government Code section 3546, subdivision (f).

Claimant's complete, detailed allegations are found in the Amendment to the Test Claim Filing, pages five through nine, received May 15, 2002.

Claimant filed comments on the draft the Commission analysis on October 31, 2005. The substantive comments will be summarized in the analysis below.

Department of Finance's Position

Department of Finance filed comments on August 3, 2001, and July 30, 2002, addressing the allegations stated in the test claim and subsequent amendment. Regarding claimant's allegations that the test claim legislation mandates a variety of activities involving the establishment and maintenance of payroll procedures to account for deducting fair share service fees and transmitting those fees to the employee organization, Department of Finance contends that public school employers who did not negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are justified in claiming mandated costs.

However, those employers who did negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are not justified in making similar claims for reimbursement. Department of Finance argues that those employers who did negotiate and implement such arrangements prior to the 2000 amendments "would presumably have already established" such payroll procedures and those employers should not "be reimbursed for costs they voluntarily incurred."

Department of Finance has similar arguments regarding claimant's allegations on costs incurred in complying with PERB's regulations in the event a petition to rescind or reinstate an organizational security arrangement is filed.

Regarding claimant's allegation that it must draft notices explaining the fee deductions to employees paying fair share service fees, Department of Finance argues that no such mandate exists. Department of Finance relies on California Code of Regulations, title 8, section 32992 which provides that each employee "required to pay an agency fee shall receive written notice from the exclusive representative" regarding the fee deduction.

Likewise, responding to claimant's allegation that it must incur costs in taking the necessary actions in recovering legal fees from an exclusive representative under Government Code section 3546, subdivision (e), Department of Finance asserts that the subdivision, by its plain language, does not impose any duties on the public school employer.

Department of Finance's other comments and arguments will be addressed in the analysis below, where pertinent.⁸

⁸ Claimant argues that the Department of Finance's comments are "incompetent" and should be stricken from the record since they do not comply with section 1183.02, subdivision (d), of the Commission's regulations. That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that the Department of Finance's response "is signed without certification" and the declaration attached to the response "simply stipulate[s] to the accuracy of the citations of law in the test claim." (Claimant's comments to draft the Commission analysis, page 1-2.)

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of Jose, supra*, 45 Cal.App.4th at p. 1817; *County of San Diego, supra*, 15 Cal.4th at p. 109). Thus, any factual allegations raised by a party, including the Department of Finance, regarding how a program is implemented is not relied upon by the Commission at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The Department's response contains comments on whether the Commission should approve this test claim and is, therefore, not stricken from the administrative record.

California Community Colleges Chancellor's Office Position

The California Community Colleges Chancellor's Office ("Chancellor's Office") filed comments regarding this test claim on July 30, 2001. The Chancellor's Office begins by noting that community colleges are subject to PERB's jurisdiction. Secondly, looking to the statutes regarding organizational security, the Chancellor's Office believes that "the provisions of Government Code [sections] 3540.1 and 3546 and the related implementing regulations in the Code of Regulations impose a mandate of specific tasks for community college district the Commission."

The Chancellor's Office concludes by stating that no funds have been appropriated for costs incurred in performing these activities, and that none of the provisions of Government Code section 17556 apply to community colleges "complying with the mandate."

FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."¹¹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹² In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.¹³

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

⁹ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 (*County of San Diego*).

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."¹⁶

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁸ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁹

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

Government Code Section 3543:

Government Code section 3543 was rewritten by Statutes 2000, chapter 893. Statutes 2001, chapter 805 amended one sentence, as indicated by underline below:

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority

¹⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

¹⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁹ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (*City of San Jose*).

of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

Before the amendment in 2000, prior law provided: "Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer." Current subdivision (b) is identical to prior law.

In order to be subject to article XIII B, section 6, of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.²⁰ Courts have adopted a "strict construction" interpretation of article XIII B, section 6.²¹ Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."²² Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and "where the language is clear there is no room for interpretation."²³ Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court

²⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

²¹ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

²² *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

²³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

to write such requirements into the statute.²⁴ The courts have noted that "[w]e cannot... read a mandate into language which is plainly discretionary."²⁵

Beginning with the plain language of section 3543, subdivision (a), there is no activity imposed on the public school *employer*. While public school *employees* "shall be required" to either join the employee organization selected by the unit as exclusive representative or to pay such organization a service fee, there is nothing in the language of section 3543, subdivision (a), imposing upon the public school employer the obligation to perform any activities.

Government Code section 3543, subdivision (a), by its plain language, fails to impose any activities on school districts. Section 3543, subdivision (b), contains the same language found in former section 3543 and therefore is not new, nor does the plain language of subdivision (b) impose any duties upon school districts. Accordingly, the Commission finds that Government Code section 3543 is not subject to article XIII.B, section 6, of the California Constitution.

Government Code Section 3546.3:

Government Code section 3546.3 was added by Statutes 1980, chapter 816, as follows:

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c) (3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

Claimant asserts that section 3546.3 requires school districts to establish and maintain procedures for determining which employees may claim a conscientious objection, establish procedures to ensure that fair share service fee deductions are not made from the wages of those employees claiming such objections, and to establish procedures to ensure, at least annually, that those employees are making payments to charitable organizations in lieu of service fee deductions. Claimant asserts that if section 3546.3 was determined to not impose any state-

²⁴ *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

²⁵ *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816.

mandated activities on school districts, then it must also be interpreted that "there is no requirement for religious objectors to pay any sum of money to either their employee organization or the specified alternative approved organizations."²⁶

Department of Finance, in its August 3, 2001 comments, argues that school districts that negotiated and implemented organizational security arrangements prior to the enactment of the 2000 amendments are not justified in claiming mandated costs, but that school districts that did not negotiate such arrangements are justified in claiming mandated costs. Department of Finance's position is grounded in the discretionary nature of the collective bargaining process, and that employers who negotiated organizational security arrangements prior to the enactment of the 2000 amendments should not "be reimbursed for costs they voluntarily incurred."²⁷

For the reasons below, the Commission finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution because section 3546.3 does not impose any state-mandated activities on school districts.

In order to be subject to article XIII B, section 6, of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.²⁸ Courts have adopted a "strict construction" interpretation of article XIII B, section 6.²⁹ Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."³⁰ Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and "where the language is clear there is no room for interpretation."³¹ Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.³² The courts have noted that "[w]e cannot... read a mandate into language which is plainly discretionary."³³

Just as discussed above regarding Government Code section 3543, the plain language of Government Code section 3546.3 is also discretionary. Section 3546.3 states only that an employee holding a conscientious objection to joining or financially supporting an employee organization "may be required" to make payments to a nonreligious, nonlabor, charitable organization in lieu of paying a fair share service fee to such organization. (Emphasis added).

²⁶ Claimant's comments to draft the Commission analysis, page 3.

²⁷ Department of Finance, August 3, 2001 Comments, page 3.

²⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

²⁹ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

³⁰ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

³¹ *City of Merced*, *supra*, 153 Cal.App.3d 777.

³² *Whitcomb Hotel, Inc.*, *supra*, 24 Cal.App.2d 753, 757.

³³ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

Section 3546.3 does not impose any obligation on school districts. Section 3546.3 provides that “[e]ither the employee organization or the public school employer may require that proof of such payments be made on an annual basis.” (Emphasis added). Section 3546.3, by its plain meaning, does not require or command school districts to perform an activity. Accordingly, the Commission finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution.

Remaining Test Claim Legislation

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” Government Code section 3546 provides, in part, that “the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization,” and that “[t]he employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit.” California Code of Regulations, title 8, sections 34030 and 34055 require that a school district employer file an alphabetical list containing the names and job titles or classifications of the persons employed in the unit within 20 days after a petition is filed to rescind or reinstate an organizational security arrangement.

In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.³⁴ The court has held that only one of these findings is necessary.³⁵

Department of Finance asserts that Government Code section 3546, subdivision (a), as it relates to rebates and reductions to the fair share service fee do not constitute a program because it neither provides a service to the public nor qualifies as a function unique to governmental entities. Department of Finance claims that the United States Supreme Court’s holding in *Communication Workers v. Beck* (1988) 487 U.S. 735, which addresses fair share service fees, applies to both private and public employees. The Court in *Beck* interpreted and applied the provisions of the National Labor Relations Act (NLRA). However, the NLRA by its own terms expressly excludes public employees from its coverage. Section 2, subdivision (2), of the NLRA (29 U.S.C. § 152(2)) provides, in pertinent part, that “[t]he term ‘employer’ ... shall not include ... any State or political subdivision thereof...” Furthermore, section 2, subdivision (3), of the NLRA (29 U.S.C. § 152(3)) provides that “[t]he term ‘employee’ ... shall not include any individual employed... by any... person who is not an employer as herein defined.”³⁶

³⁴ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

³⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

³⁶ See *Carmen v. San Francisco Unified School District* (1997) 982 F.Supp. 1396, 1409 (concluding that “school districts are considered ‘political subdivisions’ of the State of California within the meaning of 29 U.S.C. § 152(2), and therefore are exempt from coverage under the NLRA”).

The Commission finds that Government Code section 3546 and California Code of Regulations, title 8, sections 34030 and 34055, impose a program within the meaning of article XIII B, section 6 of the California Constitution under the second test, to the extent the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state.

Accordingly, the Commission finds that the remaining test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 2: Does the remaining test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Test claim legislation imposes a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.³⁷ The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."³⁸ A statute or executive order imposes a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.³⁹

Government Code Section 3546:

Government Code section 3546, as enacted by Statutes 2000, chapter 893, and amended by Statutes 2001, chapter 805,⁴⁰ follows:

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, *the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization.* Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or

³⁷ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

³⁸ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁴⁰ Reworded subdivision (a), and added subdivisions (e) and (f).

pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action

relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) *The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed. 2d 232. (Emphasis added.)*

The test claim allegations regarding Government Code section 3546 will be analyzed in order of subdivision below.

Government Code Section 3546, Subdivision (a):

Claimant alleges that subdivision (a) of Government Code section 3546 constitutes a reimbursable state mandate in two respects by requiring school districts to (1) establish, implement, maintain and update payroll procedures to determine those employees from whose paychecks service fees must be deducted, and to make such deductions and transmit those fees to the employee organization; (2) "adjust payroll withholdings for rebates or withholding reductions" pursuant to the rebate or fee reduction provision of subdivision (a); and (3) provide notice to employees explaining the payroll deduction for the fair share service fees.

Department of Finance agrees that subdivision (a) requires school districts to deduct service fees from the wages of its employees, and then transmit those fees to the employee organization. However, Department of Finance also argues that those school districts that did establish organizational security arrangements prior to the enactment of the test claim legislation are not justified in claiming any mandated costs because those districts voluntarily chose to incur such costs, and so nothing new is mandated upon them by the test claim legislation. The Commission disagrees. Government Code section 17565 clearly provides that: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Department of Finance also argues that the rebate and fee reduction provision imposes no activities on school districts. Department of Finance asserts that PERB's regulations squarely place the burden of issuing fee rebates to employees on the employee organization.

Under prior law, a school district could voluntarily enter into organizational security arrangements with an employee organization. Organizational security has been within the scope of representation since the EERA's enactment.⁴¹ This results in a duty upon the school district to

⁴¹ Former Government Code section 3546 (added by Stats. 1975, ch. 961, and repealed by Stats. 2000, ch. 893); Gov. Code, § 3540.1, subd. (i) (as amended by Stats. 2000, ch. 893).

meet and negotiate in good faith with the exclusive representative upon request.⁴² Prior to the 2000 amendments, the EERA, while imposing a duty to bargain, did not compel the parties to reach agreement on organizational security. Thus, any agreement ultimately reached through the bargaining process was entered into voluntarily by both sides.

Government Code section 3546, subdivision (a), requires what was once voluntary. Section 3546, subdivision (a), bypasses the discretion of a school district, and instead compels the district to institute an organizational security arrangement "upon receiving notice from the exclusive representative." This new requirement that school districts shall implement organizational security arrangements requires school districts to make service fee deductions from the wages of employees, and consequently transmit those fees to the employee organization. Such fee deductions and payments to the employee organization were never required immediately preceding the enactment of the test claim legislation, and thus impose a new program or higher level of service on school districts.

In addition, under prior law, certificated and classified employees could pay the service fees directly to the certificated or recognized employee organization in lieu of having the school district deduct the service fees from the employee's salary or wage order.⁴³ Claimant argues that Government Code section 3546, subdivision (a), expressly states that its terms apply "notwithstanding any other provision of law." Thus, claimant argues that the employee's right to pay the service fee directly to the employee organization is "nullified." Claimant contends the school districts are now required to make the service fee deductions from the wages of all employees that work in a unit for which an exclusive representative has been selected and transmit those fees to the employee organization.⁴⁴

The Commission agrees with claimant. Government Code section 3546, subdivision (a), states the following:

Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Emphasis added.)

The phrase "notwithstanding any other provision of law" has expressly been interpreted by the courts as "an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern."⁴⁵ Thus, any other provision of law that is contrary or inconsistent with the statute "is subordinated to the latter provision" containing the "notwithstanding" language.⁴⁶ In this case, the sections in the Education Code allowing the

⁴² Government Code section 3543.3.

⁴³ Education Code sections 45061, 45168, 87834, and 88167.

⁴⁴ Claimant's response to draft the Commission analysis, page 4.

⁴⁵ *People v. Tillman* (1999) 73 Cal.App.4th 771, 784-785.

⁴⁶ *Id.* at page 786.

employee to directly pay the service fee to the employee organization is inconsistent with the test claim statute that requires, without exception, the employer to deduct the service fee from the wages of the employee that works in a unit for which an exclusive representative has been selected. Accordingly, the Commission finds that Government Code section 3456, subdivision (a), imposes a new program or higher level of service by requiring school districts to make service fee deductions from the wages of all certificated and classified employees that work in a unit for which an exclusive representative has been selected, and transmit those fees to the employee organization.

However, in order to be subject to the subvention requirement of article XIII B, section 6, of the California Constitution, the test claim legislation must also impose upon a local agency or school district "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" to mean "any increased costs which a local agency or school district is required to incur..."

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Specifically, "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Pursuant to Education Code sections 45061 and 87834, K-14 school districts retain the authority to levy the charges necessary to cover any costs incurred in making service fee deductions from the wages of certificated employees choosing not to join the employee organization. Education Code section 45061 applies to elementary and secondary districts, while Education Code section 87834 is for community colleges. Education Code section 45061 follows:

The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certified or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be determined by the board and shall include startup and ongoing costs.

Education Code section 87834 is nearly identical, the only difference being that section 87834 substitutes the words "community college district" for the words "school district" in the first sentence of section 45061. As is evident from the plain language of sections 45061 and 87834,

school districts may deduct service fees from the wages of certificated employees "*with or without charge*." (Emphasis added).

The language of Government Code section 17556, subdivision (d), is clear and unambiguous. In *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, the court found that "the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." In making such a determination, the court explicitly rejected the argument that the term "authority" should be construed as meaning "a practical ability in light of surrounding economic circumstances."⁴⁷ Accordingly, the focus is not whether a local agency or school district *chooses* to exercise an authority to levy service charges or fees, but rather whether such authority exists at all. Section 17556, subdivision (d), explicitly declares that if the local agency or school district "has the authority" to assess fees, then the commission shall be precluded from finding "costs mandated by the state." Here, school districts do possess such authority.

According to the Education Code sections, "No charge shall exceed the actual cost to the district of the deduction," but the costs for which the governing board is authorized to assess charges "shall be determined by the board and shall include startup and ongoing costs." Thus, the school district may assess charges for costs it must incur in establishing, maintaining, and adjusting its service fee deduction procedures, in addition to transmitting those fees to the employee organization.

Education Code sections 45061 and 87834 provide school districts with "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program," within the meaning of Government Code section 17556, subdivision (d). Accordingly, the Commission finds that Government Code section 3546, subdivision (a), does not constitute a reimbursable state mandate because the test claim legislation does not impose "costs mandated by the state" as to activities regarding certificated employees.

This same fee authority does not apply for classified employees. Subdivision (b) of both Education Code sections 45168 and 88167 (for K-12 districts and community college districts, respectively), provide:

The governing board of each [] district, when drawing an order for the salary or wage payment due to a classified employee of the district may, *without charge*, reduce the order ... for the payment of service fees to the certified or recognized organization as required in an organizational security arrangement between the exclusive representative and a [] district employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. [Emphasis added.]

Thus, the Commission finds that Government Code section 3546, subdivision (a) imposes a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following new activity:

⁴⁷ *Ibid.*

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization.

This activity does not apply for certificated employees; fee authority is available pursuant to Education Code sections 45061 and 87834.

Claimant further alleges that Government Code section 3546, subdivision (a), requires school districts to make payroll adjustments for service fee deductions to account for fee reductions or rebates to which the fee-paying employees may become entitled. Claimant alleges that this activity is mandated since school districts are required to report accurate payroll information to their employees and the state and federal governments.⁴⁸

Government Code section 3546, subdivision (a), recognizes the right of employees paying fair share service fees "to receive a rebate or fee reduction upon request, of that portion of their fee" determined to be beyond the permissible scope of the employee organization's role as exclusive bargaining representative. To implement these provisions, PERB regulations require the exclusive representative to provide annual notice to nonmembers that are required to pay the fair share service fee of the amount of the service fee deduction and the calculation used to arrive at the amount of the fee.⁴⁹ If the employee disagrees with the amount of the service fee deduction, the employee may file an agency fee objection and the exclusive representative is required to administer an agency fee appeal procedure.⁵⁰ The Commission finds that the requirement imposed by Government Code section 3546, subdivision (a), on school districts to deduct the correct amount from the wages of the employee after receiving notice from the exclusive representative of the amount, applies when the agency fee objection is resolved and it is determined that the employee is entitled to a reduction of future agency fee deductions.

But there is no mandate in the statutes or regulations plead by the claimant requiring the school district to make payroll adjustments for rebates. Rather, any rebates are paid by the exclusive representative. Under PERB regulations, once an agency fee objection is filed, the exclusive representative is required to hold any disputed agency fees in an escrow account for the duration of the dispute.⁵¹ Escrowed agency fees that are being challenged shall not be released until after there is a mutual agreement between the agency fee objector and the exclusive representative, or an impartial decisionmaker has made a decision.⁵² Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.⁵³

⁴⁸ Claimant's response to draft the Commission analysis, page 5.

⁴⁹ California Code of Regulations, title 8, section 32992, subdivision (a).

⁵⁰ California Code of Regulations, title 8, section 32994.

⁵¹ California Code of Regulations, title 8, section 32995, subdivision (a).

⁵² California Code of Regulations, title 8, section 32995, subdivision (b).

⁵³ California Code of Regulations, title 8, section 32995, subdivision (c).

Finally, claimant requests reimbursement to "draft, approve, and distribute an appropriate and neutral notice to existing nonmember employees and new employees which explains the additional payroll deduction for 'fair share service fees' for nonmember employees of an employee organization." Claimant argues that these activities are "implicit in the legislation" and are necessary since the employer is responsible for changes to employee payroll amounts. Claimant asserts this activity is required since there is no statutory requirement for the exclusive representative to provide such notices to employees about these payroll adjustments.⁵⁴ Neither Government Code section 3546, nor the PERB regulations, require school districts to provide notice to its employees regarding the service fee deduction. If this test claim is approved, however, the Commission can consider claimant's request at the parameters and guidelines stage and determine whether the requested activities are a reasonable method of complying with the mandate to deduct the fair share service fee in an amount authorized by Government Code section 3546.⁵⁵

Government Code Section 3546, Subdivisions (b) through (e):

Government Code section 3546, subdivision (b), describes the permissible costs towards which an employee organization may apply the fair share service fees. Nothing in the language of subdivision (b), imposes any activities upon school districts:

Subdivision (c) provides that the "employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board." Claimant alleges that subdivision (c) requires the public school employer to supply "administrative support" as required by PERB.⁵⁶ However, PERB has not enacted any rules or regulations requiring a school district's participation in an organizational security election.⁵⁷ Therefore, subdivision (c) does not impose any required activities on school districts.

Government Code section 3546, subdivision (d), contains four subparts. Subdivisions (d)(1) and (d)(2) describe the process by which employees in a bargaining unit may either rescind or reinstate, respectively, an organizational security arrangement. Such a process includes the submission of a petition to PERB and a consequent election among the employees if the petition meets PERB's requirements as promulgated by its regulations. Claimant alleges that subdivisions (d)(1) and (d)(2) require school districts to adjust payroll procedures when the organizational security arrangement is rescinded or reinstated to comply with the requirement to deduct fair share service fees in the appropriate amount from the employee salaries. Government Code section 3546, subdivisions (d)(1) and (d)(2), however, do not impose any state-mandated

⁵⁴ Claimant's response to draft the Commission analysis, pages 5 and 6.

⁵⁵ California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

⁵⁶ First Amendment to the Test Claim, page 6; claimant's response to draft the Commission analysis, page 6.

⁵⁷ See California Code of Regulations, title 8, division 3, chapter 2, subchapter 2 for PERB's regulations governing organizational security arrangements under the EERA.

activities on school districts and, therefore, reimbursement is not required to comply with these subdivisions.⁵⁸

Subdivision (d)(3) provides that PERB shall conduct a vote to either rescind or reinstate an organizational security arrangement if the required number of employee signatures on a petition have been collected. Claimant alleges that subdivision (d)(3) requires school districts to "supply any required administrative support as may be required by PERB."⁵⁹ Claimant asserts that "it can be reasonably anticipated that if, for example, the Board determines that the appropriate number of signatures have not been collected, there may be some inquiry as to the content of the list of employees the school district is required to provide to PERB pursuant to Title 8, CCR, Sections 34030 and 34055."⁶⁰ Government Code section 3546, subdivision (d)(3), however, does not require anything of school districts, thus any mandated activities related to this subdivision would only arise from an executive order. No such executive order is included in this test claim, therefore no findings can be made that school districts have reimbursable state-mandated costs to supply administrative support to PERB.

Subdivision (d)(4) states that the costs of conducting an election to rescind an organizational security arrangement "shall be borne by the board," while the costs in an election to rescind "shall be borne by the petitioning party." The Commission finds that nothing in the plain language of section 3546, subdivision (d)(4), requires school districts to perform any activities.

Finally, Government Code section 3546, subdivision (e), requires that the "recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section."

Claimant argues that subdivision (e) requires school districts to take any and all necessary actions... to recover reasonable legal fees... from the recognized employee organization."⁶¹ Claimant also contends that "the right to indemnification stems from this subdivision and the cause of civil action which may result in the indemnification of the school district arises from this code section, thus making it a source of costs mandated by the state."⁶² Department of Finance rebuts this argument by asserting that the plain language of subdivision (e) does not impose any activities on school districts.

⁵⁸ The requirement for school districts to deduct the fair share service fees from employee wages in the appropriate amount is mandated by Government Code section 3546, subdivision (a), and not subdivision (d). Thus, the requested activity to adjust payroll procedures to reflect the amount required to be deducted from an employee's salary because of a rescission or reinstatement of the organizational security arrangement may be considered by the Commission as a reasonable method of complying with Government Code section 3546, subdivision (a), at the parameters and guidelines stage. (Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(4).)

⁵⁹ First Amendment to the Test Claim, page 6.

⁶⁰ Claimant's response to draft the Commission analysis, page 6.

⁶¹ First Amendment to the Test Claim, page 8.

⁶² Claimant's response to draft the Commission analysis, page 7.

The Commission finds that the plain language of subdivision (e) does not impose any duties on school districts. Rather, subdivision (e) imposes a requirement on the *employee organization* to indemnify and hold harmless a school district for any legal expenses incurred in complying with implementing an organizational security arrangement. If a school district asserts its legal right to indemnification, that action is a decision of the school district and not a mandate by the state.

Accordingly, the Commission finds that Government Code section 3546, subdivisions (b), (c), (d), and (e) do not mandate a program, or impose a new program or higher level of service upon school districts within the meaning of article XIII B, section 6, of the California Constitution.

Government Code Section 3546, Subdivision (f):

Statutes 2001, chapter 805 added subdivision (f) to Government Code section 3546 "so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232."

Claimant asserts that Government Code section 3546, subdivision (f) imposes a state-mandated activity on school districts for providing a list of employee home addresses to the exclusive representative. Department of Finance, on the other hand, claims that the activity "consists of producing a report which should readily be available through the school district's payroll system,"⁶³ and that any costs incurred by the claimant in providing such a list are *de minimis*, and should therefore not be reimbursable because claimant's costs would be unlikely to reach the threshold for a claim.

Government Code section 3546, subdivision (f) requires school districts to file a list of employee home addresses with an employee organization selected by an employee bargaining unit to act as exclusive representative. Prior to the enactment of Statutes 2001, chapter 805, no statutory or regulatory requirement obligated a school district to provide a list of home addresses to the exclusive representative. The requirements imposed upon school districts by Government Code section 3546, subdivision (f), impose a new program or higher level of service within the meaning of article XIII B, section 6, of the California Constitution for the following new activity:

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit.

Government Code section 3546, subdivision (f), also imposes "costs mandated by the state" upon school districts as defined in Government Code section 17514. Government Code section 17556, states, in pertinent part:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ...

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

⁶³ Department of Finance, July 30, 2002 Comments, page 3.

(c) [t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.

However, the Commission finds that Government Code section 17556, subdivisions (b) and (c) do not apply in this case.

In *Chicago Teachers Union v. Hudson*, *supra*, 475 U.S. 292, 305-07, the United States Supreme Court held that employee organizations must: (1) establish procedures prior to making agency fee deductions which will ensure that the funds from such fees are not used to finance ideological activities beyond the scope of collective bargaining; (2) provide agency fee payers with the methods used for calculating the amount of the agency fee; and (3) establish an appeals process to ensure that agency fee objections are addressed in a timely and fair manner by an impartial decision maker.

In order to facilitate the exclusive representative's responsibility to provide notice to nonmember employees regarding the service fee deductions and the methods used to calculate the amount of such fees, Government Code section 3546, subdivision (f) imposes upon school districts the obligation to provide a list of employee home addresses to the exclusive representative. Although subdivision (f) aims at imposing certain notification requirements upon the employee organization in order to comply with federal case law, the requirement that school districts provide the employee organization with a list of employee home addresses goes beyond mere compliance with federal case law.

In *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817, the court found that Penal Code section 987.9, which requires counties to provide ancillary investigative services when providing defense services to indigent criminal defendants, constituted a federal mandate. The court determined that the right to counsel under the Sixth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution include "the right to reasonably necessary ancillary services."⁶⁴ Accordingly, Penal Code section 987.9 "merely codified these constitutional guarantees," and thus section 987.9 simply required local compliance with the federal mandate.⁶⁵

In *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 889, the California Supreme Court adopted the reasoning that procedural protections that are merely incidental to the codification of a federal right, and which add only *a-de minimis* financial impact, constitute an implementation of federal law not reimbursable under article XIII B, section 6, of the California Constitution.

Here, however, while the notification requirements imposed on the employee organization are mandated by the United States Supreme Court's holding in *Hudson*, nothing in the *Hudson* decision imposes any required activities on school districts. Thus, because Government Code section 3546, subdivision (f) imposes a new required activity on school districts beyond compliance with federal case law, Government Code section 17556, subdivisions (b) and (c) do not apply. Nor are any other provisions of Government Code section 17556 applicable here;

⁶⁴ *County of Los Angeles*, *supra*, 32 Cal.App.4th 805, 815.

⁶⁵ *Ibid.*

therefore, the Commission finds that Government Code section 3546, subdivision (f) imposes costs mandated by the state pursuant to Government Code section 17514.

California Code of Regulations, Title 8, Sections 34030 and 34055:

PERB has enacted regulations implementing the procedures for filing petitions to either rescind or reinstate an organizational security arrangement. Title 8, section 34030, was added to the California Code of Regulations in 1980, and subsection (b) was added, operative January 1, 2001:

(a) Within 20 days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Title 8, section 34055, was added to the California Code of Regulations, operative January 1, 2001, and is nearly identical in language to section 34030, except that it provides that the employer shall file the required list "Within 20 days following the filing of the petition to *reinstate* an organizational security provision ..."

Claimant alleges that section 34030, subdivision (a), and section 34055, subdivision (a), impose state-mandated activities on school districts to file a list of employee names and job titles with PERB. Department of Finance, on the other hand, contends that only those districts that did not negotiate and implement organizational security arrangements prior to the 2000 amendments are justified in claiming mandated costs. Department of Finance alleges that districts that did negotiate organizational security arrangements prior to the 2000 amendments should not be reimbursed for voluntarily assumed costs.

California Code of Regulations, title 8, section 34030, subdivision (a), was enacted by PERB in 1980. Prior to the enactment of Statutes 2000, chapter 893, any organizational security arrangement entered into between a school district and employee organization was the product of a voluntary agreement resulting from the collective bargaining process. Statutes 2000, chapter 893, however, required the parties to implement an organizational security arrangement.

Under prior law, a school district retained discretion on entering into an organizational security arrangement with an employee organization. Thus, the provisions of section 34030, subdivision (a), requiring school districts to file a list of names and job titles to PERB upon the submission of an employee petition to rescind an organizational security arrangement would not have been state-mandated or required. This conclusion flows from the fact that the decision to participate in the underlying program was within the school district's discretion, and thus any

downstream requirements imposed within such a program were also voluntary.⁶⁶ Accordingly, if the district did enter into an organizational security arrangement, compliance with PERB's filing requirements in section 34030, subdivision (a), did not constitute a mandate by the state until January 1, 2001, the operative date of Statutes 2000, chapter 893.

Government Code section 3546, subdivision (d)(1), as added by Statutes 2000, chapter 893, recognizes the right of public school employees in a unit for which an employee organization has been selected as exclusive representative to rescind an organizational security arrangement. Subdivision (d)(1), states that the organizational security arrangement required by subdivision (a) of section 3546 "may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit." If the organizational security arrangement is rescinded pursuant to such a vote, subdivision (d)(2) allows that "a majority of all employees in the negotiating unit may request that the arrangement be reinstated."⁶⁷

Sections 34030 and 34055 implement the provisions of Government Code section 3546, subdivision (d). California Code of Regulations, title 8, sections 34030 and 34055 require that within 20 days of the submission of a petition to either rescind or reinstate an organizational security arrangement, the public school "employer shall file with the regional [PERB] office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition." The Commission finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution for the following new activity:

- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed.

None of the provisions of Government Code section 17556 are applicable; therefore, the Commission finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a) impose costs mandated by the state pursuant to Government Code section 17514.

⁶⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742. The California Supreme Court addressed the issue whether legislation imposing certain notice and agenda requirements on school site councils administering various school-related educational programs constituted a reimbursable state mandate. The Court concluded that mandatory "downstream" requirements flowing from a local government entity's voluntary decision to participate in an underlying program do not constitute reimbursable state mandates.

⁶⁷ Government Code section 3546, subdivision (d)(2).

CONCLUSION

The Commission concludes that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)⁶⁸
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)⁶⁹
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)⁷⁰

The Commission concludes that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

⁶⁸ As added by Statutes 2000, chapter 893, operative January 1, 2001.

⁶⁹ As amended by Statutes 2001, chapter 805, operative January 1, 2002.

⁷⁰ As amended and operative on January 1, 2001.

DRAFT PARAMETERS AND GUIDELINES

Government Code Section 3546

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17/01-TC-14)

Clovis Unified School District, Claimant

I. SUMMARY OF THE MANDATE

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a); and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)

The Commission also found that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any school district, as defined in Government Code section 17519, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Clovis Unified School District filed the test claim on June 27, 2001, establishing eligibility for fiscal year 1999-2000. However, the operative dates of Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 is January 1, 2001. Therefore, costs incurred pursuant to Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 are reimbursable on or after January 1, 2001. The operative date of Statutes 2001, chapter 805 is January 1, 2002; therefore, costs incurred pursuant to Statutes 2001, chapter 805 is reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

1. Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).) (*Reimbursement period begins January 1, 2001.*)

2. School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).) (*Reimbursement period begins January 1, 2002.*)
3. Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).) (*Reimbursement period begins January 1, 2001.*)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

tions concerning the proposed parameters and guidelines within fifteen (15) days of service.

(c) State agencies and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the test claimant, other affected state agencies, and other interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the comments and recommendations prepared by state agencies and interested parties, the claimant and other interested parties may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530, 17553(a) and 17557, Government Code.

HISTORY

1. New section filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b)-(d) filed 9-13-99; operative 9-13-99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section heading, new subsections (a) and (b), subsection relettering and amendment of newly designated subsections (c)-(f) filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.12. Alternate Process for Proposed Parameters and Guidelines.

(a) Within ten (10) days after adoption of a statement of decision on a test claim, commission staff may expedite the parameters and guidelines process by drafting proposed parameters and guidelines to assist the claimant. The draft proposed parameters and guidelines shall be served on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(b) In lieu of filing an original proposal pursuant to Government Code section 17557, subdivision (a), the successful test claimant may file modifications and/or comments on staff's draft proposal with commission staff. The claimant shall review all sections and if necessary may:

- (1) Clarify the reimbursable activities identified by commission staff, and provide an explanation of why the clarification is necessary.
- (2) Include additional descriptions of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program. For each additional method proposed, the test claimant shall provide an explanation of why it is reasonably necessary.

(3) Indicate whether the commission should consider a reasonable reimbursement methodology for this program, and the basis for the recommendation.

(4) Identify offsetting revenues and reimbursements (if applicable), including:

- i. Dedicated state and federal funds appropriated for this program.
- ii. Non-local agency funds dedicated for this program.
- iii. Local agency's general purpose funds for this program.
- iv. Fee authority to offset partial costs of this program.

(5) Identify offsetting savings (if applicable), including any offsetting savings in the same program experienced because of the same statute(s) or executive order(s) found to contain a mandate.

(c) The successful test claimant shall file its proposed modifications and/or comments within twenty (20) days of receipt of commission staff's draft proposal.

(d) The opportunity for state agencies and interested parties to comment on staff's draft proposal and the claimant's modifications and/or comments, and the claimant and interested parties' opportunity for rebuttal will be conducted according to the timelines under Section 1181.11 of these regulations.

NOTE: Authority cited: Sections 17527(g), 17530 and 17553(a), Government Code. Reference: Sections 17553(a), 17556(e), 17557 and 17564, Government Code.

HISTORY

1. Renumbering of former section 1183.12 to section 1183.14 and new section 1183.12 filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.13. Reasonable Reimbursement Methodology.

(a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5, should be considered; or if the Department of Finance, Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumption relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5 and 17557, Government Code.

HISTORY

1. New section filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.14. Adoption of Parameters and Guidelines.

(a) After review of the proposed parameters and guidelines, written comments, recommendations, and rebuttals submitted by state agencies and interested parties, commission staff shall recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's proposed parameters and guidelines. Commission staff's recommendation may include a reasonable reimbursement methodology.

(b) A draft of commission staff's recommendation may be presented to the parties and interested parties at a prehearing or informal conference before presentation to the commission.

(c) The commission shall conduct at least one (1) informational hearing on parameters and guidelines before adoption pursuant to Government Code section 17557.

(d) Within ten (10) days of the adoption of parameters and guidelines, the executive director shall send copies to the Office of the State Controller, and to parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference cited: Sections 17557 and 17553(a), Government Code.

HISTORY

1. New section filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

December 30, 2005

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 00-TC-17 and 01-TC-14
Clovis Unified School District
Proposed Parameters and Guidelines
Agency Fee Arrangements

Dear Ms. Higashi:

I have received the Commission's Draft Parameters and Guidelines dated December 14, 2005, to which I respond on behalf of the test claimant.

1. Clarification of Reimbursable Activities (1183.12 (b) (1))

The test claimant proposed several specific activities reasonably related to complying with the mandate as part of the test claim process which were rejected by the Commission. No additional activities are offered here.

2. Reasonable Methods of Complying (1183.12 (b) (2))

The test claimant proposed several specific reasonably necessary methods of complying with the mandate as part of the test claim process which were rejected by the Commission. No additional methods are offered here.

3. Reasonable Reimbursement Method (1183.12 (b) (3))

The test claimant does not believe the costs incurred for the approved activities are sufficiently related to any workload unit (for example, number of employees) which could support a reasonable statewide reimbursement method.

4. Revenues and Reimbursements (1183.12 (b) (4))

There are no dedicated state or federal funds appropriated for this mandate. There are no known non-local agency funds dedicated to this mandate. There are no school or college district general purpose funds appropriated for this mandate. There is no fee authority to offset partial costs of this program, other than those already identified in the Statement of Decision for activities which are not included in the parameters and guidelines.

The possibility exists that some districts may have cost sharing agreements for these types of activities as a result of collective bargaining agreements. This would be a question of fact specific to each claimant each year and not a statewide funding source. To the extent that there are such cost sharing arrangements, the parameters and guidelines adequately provide for the reporting of these revenues in Part VII.

5. Offsetting Savings (1183.12 (b) (5))

Offsetting savings are a question of law determined by the test claim adjudication pursuant to Government Code section 17556. The Commission did not identify any offsetting savings for any of the activities approved for reimbursement.

Technical Corrections

PART I SUMMARY OF THE MANDATE

On line 4, the phrase "K-14 school districts" will be confusing to users of the document. "School" districts are K-12 only. It would be more appropriate to state "school districts, county offices of education, and community college districts."

PART II. ELIGIBLE CLAIMANTS

The reference to Section 17519 is correct. However, it is recommended that the phrase "school districts, county offices of education, and community college districts" be added for clarity to users of the document.

Objections to Content

PART IV. REIMBURSABLE ACTIVITIES

For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding source documents, contemporaneous documents and corroborating evidence. It is a standard of general application without independent statutory or regulatory basis. It is a standard which generally exceeds the documentation methods utilized in the usual course of business for local agencies and

the standard required for substantiation of the use of, or application for, other state funds by local agencies. It is a standard imposed retroactively upon claimants without prior notice. These and other objections were made before by local agency representatives. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines. Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past Commission decisions.

PART V. CLAIM PREPARATION AND SUBMISSION

B. Indirect Cost Rates

For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding the community college choice of indirect cost rate calculations, specifically, the Controller's FAM-29C methodology. It is a standard of general application without independent statutory or regulatory basis. It is a methodology which excludes other reasonable allocations of direct and indirect costs contrary to other state accounting procedures and generally accepted accounting principles. It is a standard imposed retroactively upon claimants without prior notice. These and other objections have been made before by local agency representatives. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines. Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past Commission decisions.

PART VI. RECORD RETENTION

For the record and preservation of appeal rights, the test claimant objects to the language regarding the documentation retention requirements. The Commission requires the claimants, as a condition of reimbursement, to retain claim documentation until the State Controller's statute of limitation for audit expires. Government Code Section 17558.5 provides no specific date for the termination of the documentation requirement, it is conditioned on subsequent independent actions by the state, that is, appropriations for mandate reimbursement, and subsequent independent acts by the Controller, that is, payment of a claim. There is no factual relationship between the content and integrity of the claim and the date of payment. Therefore, at the time the claim is filed, the claimant has no method to determine the documentation retention period, contrary to the purpose of the statute and these parameters and guidelines. It is a standard imposed retroactively upon claimants without prior notice. These and other objections have been made before by local agency representatives. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines. Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past

Commission decisions.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and correct to the best of my own knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per COSM Distribution List Attached



STEVE WESTLY

California State Controller

Division of Accounting and Reporting

January 6, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: DRAFT PARAMETERS AND GUIDELINES
AGENCY FEE ARRANGEMENTS, 00-TC-17/01-TC-14
GOVERNMENT CODE SECTION 3546
STATUTES OF 2000, CHAPTER 893
STATUTES 2001, CHAPTER 805
CALIFORNIA CODE OF REGULATIONS, TITLE 8,
SECTIONS 34030 AND 35055

Dear Ms. Higashi:

We have reviewed the draft Parameters and Guidelines (P's & G's) submitted by the Clovis Unified School District for the above-referenced subject matter, and have included an enclosure that recommends some changes to the draft P's & G's.

If you have any questions, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916) 324-0256.

Sincerely,

JOHN A. KORACH, Chief
Division of Accounting and Reporting

JAK:glb

Attachment

cc: Interested parties

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250
STREET ADDRESS 3301 C Street, Suite 500, Sacramento, CA 95816



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STEVE WESTLY
California State Controller

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Ms. Paula Higashi

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Attachment
Draft Parameters & Guidelines
January 6, 2006

COMMENTS ON DRAFT PARAMETERS AND GUIDELINES
AGENCY FEE ARRANGEMENTS (00-TC-17/01-TC-14)
GOVERNMENT CODE SECTION 3546
STATUTES OF 2000, CHAPTER 893
STATUTES 2001, CHAPTER 805
CALIFORNIA CODE OF REGULATIONS, TITLE 8,
SECTIONS 34030 AND 35055

II. ELIGIBLE CLAIMANTS

Any "school district", as defined in Government Code section 17519, including community colleges that incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

Since Government Code (GC) section 17519 does not define a school district to include charter schools, they are not entitled for reimbursement.

III. PERIOD OF REIMBURSEMENT

~~If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.~~

Government Code section 17564(a) provides that no claim shall be filed pursuant to sections 17551 and 17561, unless such a claim exceeds one thousand dollars (\$1,000).

GC section 17564 compiles subdivisions (a) and (b). Subdivision (a) of the GC section 17564 specifically defines the minimum claim amount and was omitted from the proposed language.

IV. REIMBURSABLE ACTIVITIES

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations.

This mandate does not include training as a reimbursable activity. Therefore, training packets should be deleted from this section.

For each eligible claimant, the following activities are reimbursable:

1. Upon receiving notice for the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been

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Draft Parameters & Guidelines
January 6, 2006

selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, §3546, subd.(a).) (Reimbursable period begins January 1, 2001.)

One-Time Activity

- a. Deduction of the fair share service fee from the wages and salary of the employee who is in the Bargaining Unit upon receiving notice from the exclusive representative. (Gov. Code, §3546, subd.(a).) (Reimbursable period begins January 1, 2001.)

Ongoing Activity

- b. Payment of the collected amount of the fair share service fee to the employee organization. (Gov. Code, §3546, subd.(a).) (Reimbursable period begins January 1, 2001.)

2. School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, 3546, subd.(f).) (Reimbursement period begins January 1, 2002.)

One-Time Activity

- a. Provision of the Bargaining Unit member's home address by the school district employer to the exclusive representative of a public school employee. (Gov. Code, 3546, subd.(f).) (Reimbursement period begins January 1, 2002.)

3. Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§34030, subd.(a), and 34055, subd.(a).) (Reimbursement period begins January 1, 2001.)

Ongoing Activity

- a. Providing a list of the names of employees and their job titles or classifications within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement. (Cal. Code Regs.,

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January 6, 2006

tit. 8, §§34030, subd.(a), and 34055, subd.(a). (Reimbursement period begins January 1, 2001.)

This proposed language was restated in order to be more specific.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a ~~local agency or~~ school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later.

A local agency is not eligible for this program

VII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist ~~local agencies and~~ school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision, statute, regulations, or executive order creating the mandate, and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the ~~local agencies and~~ school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

Local agencies are not entitled to be reimbursed for this mandate.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a ~~local agency or~~ school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571.

A local agency is not eligible to apply for this program.

