

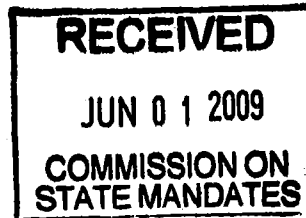


ARNOLD SCHWARZENEGGER, GOVERNOR

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May 29, 2009

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



Dear Ms. Higashi:

As requested in your letter of January 29, 2009, the Department of Finance has reviewed the draft staff analysis of Test Claim number 02-TC-34 (Student Records), submitted by the Riverside Unified School District and the Palomar Community College District (claimants) asking the Commission to determine whether specified costs incurred under various provisions of the California Education Code and other enacted statutes are reimbursable state mandated costs.

While we concur with the staff analysis on the vast majority of the individual Education Code Sections (ECS) that compose this claim, we disagree with staff analysis related to ECSs 49069.3 and 76234. Additionally, we would note that other activities found by Commission staff to be reimbursable state mandated costs in ECSs 49069.5 and 49076.5 are either de minimis or are offset by state funding provided in the annual Budget Act. Each of our conclusions regarding these specific code provisions are discussed below.

With respect to ECS 49069.3, the Commission staff finds that the statutory scheme surrounding this statute reveals a clear legislative intent for districts to provide foster family agencies with access to records of grades and transcripts, as well as any individualized education plans of foster children under their jurisdiction. However, we would emphasize that this conclusion is grounded in an interpretation of legislative intent, and is not specifically supported by the plain language of the statute, which only requires that foster family agencies may access records for foster children under their jurisdiction. Within the statute, there is no mention of any requirement for school districts to furnish this information, and therefore we do not believe this statute imposes a reimbursable mandated cost on local school districts. To further illustrate this point, we would refer to the Commission's own decision on *School Accountability Report Cards III*. In that test claim, claimants asserted costs associated with training local district staff in using and preparing the report card. However, the Commission noted that the plain language of the relevant statutes did not specifically require training for local districts, and made no attempt to draw an inference of any legislative intent for that activity. Instead, the Commission noted that the plain language placed new requirements on the Department of Education. We believe that conclusions drawn in that test claim analysis have equal applicability to the consideration of activities alleged to be reimbursable under ECS 49069.3, and would argue that the Commission should similarly withhold speculation on legislative intent in this case.

Commission staff also finds that ECS 49069.5 imposes several reimbursable state mandated activities and associated costs relative to furnishing and transferring educational records and information of attending foster children. While we acknowledge that there are specific

requirements delineated in the statute, we would also note that these activities center on informational interactions with county social service agencies. As such, we believe these activities fall broadly in the realm of providing linkages to community services for the affected foster children. Linkages to community services are one of many specific activities supported by the Educational Services for Foster Youth Program. Local districts are eligible to receive funding through this program annually via Item 6110-119-0001 of the annual Budget Act. We would point out that, for approximately two-thirds of the activities found to be reimbursable state mandated costs by Commission staff pursuant to this statute, there is a claiming period of July 1, 2001 to December 31, 2003. For the two fiscal years overlapping that period, more than \$17 million was provided by the state to local districts as a potential offset to any costs incurred for these activities. Furthermore, the budget for this program has grown steadily over the remaining years, and is now more than \$15 million for the 2009-10 fiscal year. Thus, the program has provided tens of millions of dollars for the period of 2003-04 to present, providing a very stable source of funding to offset costs for the remaining third of activities found by Commission staff to be reimbursable state mandated costs pursuant to ECS 49069.5. Therefore, any claims submitted by local districts should be properly offset for any funding provided by this program that local districts used to support any of the activities found to be reimbursable state mandated costs in this statute.

Additionally, Commission staff finds that ECS 49076.5 constitutes a reimbursable state mandated cost relative to the requirement that school districts provide information relating to a pupil's identity or location through a records transfer request from another school, when requested by a peace officer. This request must be complied with if a proper police purpose exists, which the statute defines as a situation in which a peace officer believes probable cause exists that a pupil has been kidnapped or abducted and that his or her abductor has enrolled the student in another school and the law enforcement agency has begun an active investigation. Again in this instance, we readily acknowledge that a specific requirement exists that schools must comply with. However, this activity is only triggered by the alleged or potential abduction of a child; something which we believe is very infrequent or episodic in nature. As a result, we believe that any costs claimed by local school districts will be de minimis, and will fail to generate the minimum claiming threshold for reimbursement.

Within the discussion of community college statutes related to this test claim, we disagree with conclusions reached by Commission staff on ECS 76234. Specifically, Commission staff find a reimbursable state mandated program exists for community college districts to inform an alleged victim of sexual assault or physical abuse of any disciplinary action taken by the college and results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a college concerning the alleged sexual assault or physical abuse. However, it appears as though community colleges are already entitled to claim reimbursable state mandated costs for the same activity pursuant to the adopted parameters and guidelines for *Sexual Assault Response Procedures (99-TC-12)*. Specifically, the parameters and guidelines adopted on December 2, 2003 allow community college districts to claim reimbursement for a series of activities, including:

"Procedures for ongoing case management, including keeping the victim informed of the status of student disciplinary proceedings in connection with the assault, the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties stemming from the sexual assault."

As evidenced by the adopted parameters and guidelines in *Sexual Assault Response Procedures*, community colleges are already required to perform, and entitled to reimbursement for, providing information on disciplinary actions and appeals related to sexual assault irrespective of whether this information is related to a specific action on, or entry into a student record. As a result, we do not believe it is appropriate for this activity to be found reimbursable for a second time within the *Student Records* test claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your letters have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Thomas Todd, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



JEANNIE OROPEZA
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: Student Records
Test Claim Number: 02-TC-34

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, California 95814.

On May 29, 2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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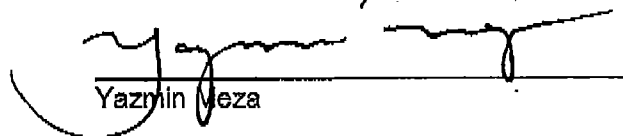
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 29, 2009, at Sacramento, California.


Yazmin Meza

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Department of Finance



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Pages: (including cover) Co + cover = 7

Phone:

Date: 5/29/2009

Re:

cc:

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