ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 17387, 17388, 17389, 17390, 17391; Statutes 1982, chapter 689, Statutes 1984, Chapter 584, Statutes 1986, Chapter 1124, Statutes 1987, Chapter 655, Statutes 1996, Chapter 277

Surplus Property Advisory Committees
02-TC-36

Clovis Unified School District, Claimant

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Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

This test claim alleges reimbursable state-mandated costs for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school buildings or space in school buildings.

Staff finds that the reasoning of the Court of Appeal in *City of Merced v. State of California,*[1] and of the Supreme Court in *Kern High School District,*[2] applies to this claim, so it is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution. That is, because there is no legal or practical compulsion for school district governing boards to designate as surplus or transfer (sell, lease or rent) school district property, staff finds that there is no state mandate to perform the activities in the test claim statutes.

As an alternative ground for denial, staff finds that Education Code section 17388 is not a new program or higher level of service. Claimant pled the test claim statutes beginning with Statutes 1982, chapter 689. The advisory committee's formation, however, was first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.). Although this program was not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010), it was enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and amended in 1980 (Stats. 1980, ch. 1354). Because section 17388 provided for the formation of the advisory committee before the 1982 test claim statute, staff finds that section 17388 is not a new program or higher level of service.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

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

[2] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

STAFF ANALYSIS

Claimants

Clovis Unified School District

Chronology

6/25/03	Claimant Clovis Unified School District files test claim
7/25/03	Department of Finance files comments on the test claim
8/15/03	Claimant files rebuttal comments on the test claim
7/29/08	Commission staff issues draft staff analysis
8/28/08	Department of Finance files comments on the draft staff analysis
9/12/08	Commission staff issues final staff analysis and proposed Statement of Decision
9/23/08	Claimant files request to postpone hearing
10/30/08	Claimant files authorization for new claimant representative Art Palkowitz
12/12/08	Commission staff re-issues final staff analysis and proposed Statement of Decision
1/16/09	Commission staff re-issues final staff analysis and proposed Statement of Decision (no changes from 12/12/08 re-issue)

Background

This test claim alleges a state-mandate for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school property.

Test Claim Statutes

The intent behind the test claim statutes is expressed by the Legislature as follows:

> It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.
>
> It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires. (Ed. Code, § 17387.)[3]

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[3] The original legislative intent language (Stats. 1976, ch. 606 & Stats. 1977, ch. 36)) stated: "(a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships,

The original 1976 legislation (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.),[4] in addition to creating the advisory committee, repealed a prohibition against joint occupancy of school buildings used for classroom purposes. The intent of the bill was to help districts offset revenue losses due to declining enrollment. The revenue from renting unused facilities could be used to supplement the school districts' regular educational program.[5]

The test claim statute that creates the advisory committee has changed very little since its first enactment.[6] It authorizes the school district to appoint a district advisory committee to help develop "districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes." The school district is required to appoint the advisory committee "prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days."[7]

The advisory committee has seven to 11 members that represent the ethnic, age-group, and socioeconomic composition of the district, as well as the business community, landowners or

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businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs. It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation. It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires." (Former Ed. Code § 39384, Stats. 1977, ch. 36, § 448.)

[4] The test claim statutes were first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.) but were not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010). They were enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and were amended in 1980 (Stats. 1980, ch. 1354).

As pled by claimant, the test claim statutes were moved (to former §§ 39295 et seq.) and amended again in 1982 (Stats. 1982, ch. 689) and amended again by Statutes 1984, chapter 584, Statutes 1986, chapter 1124, and Statutes 1987, chapter 655. They were moved to their present location (§§ 17387 et seq.) in 1996 (Stats. 1996, ch. 277).

[5] Assembly Office of Research, Analysis of Assembly Bill No. 2882 (1975-1976 Reg. Sess.) as amended June 9, 1976 (concurrence in Senate amendments).

[6] Education Code section 17388. The word "sale" was amended out of the 1980 version (Stats. 1980, ch. 1354, former Ed. Code, § 39384 et seq.) but was amended back in by Statutes 1982, chapter 689.

[7] *Ibid.*

renters, teachers, administrators, parents, and persons with expertise in specified areas (§ 17389).[8]

According to section 17390, the advisory committee shall perform the following duties:

> (a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
> (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
> (c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.
> (d) Make a final determination of limits of tolerance of use of space and real property.
> (e) Forward to the district governing board a report recommending uses of surplus space and real property.

Section 17391 states that the "governing board may elect not to appoint an advisory committee in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district."

The Advisory Committee in other Statutes

In addition to appointment of the advisory committee for the purpose stated in the test claim statutes ("prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days," § 17388) the committee may be used in acquiring property. Section 17211 provides:

> Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the **district's advisory committee established pursuant to Section 17388** to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing. [Emphasis added.]

Additionally, a district governing board that seeks to sell or lease surplus real property may first offer the property to a "contracting agency" (§ 17458), which is an entity that is authorized to establish, maintain, or operate services pursuant to the Child Care and Development Services Act. (See § 8200 et seq., including the definition of "contracting agency" in § 8208, subd. (b).) Specified conditions must be met in order to offer the property under the Act, including hearings by the advisory committee: "No sale or lease of the real property of any school district, as

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[8] All references are to the Education Code unless otherwise indicated.

authorized under subdivision (a), may occur until the school district advisory committee has held hearings pursuant to **subdivision (c) of Section 17390.**" (§ 17458, subd. (b)), emphasis added.)

School-District Surplus Property Law

The test claim statutes apply only to disposal of surplus or "excess real property"[9] so a discussion of school district surplus property law is warranted.

Generally, school district governing boards have power to sell or lease "any real property belonging to the school district ... which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession." (§ 17455.)

In addition to using surplus property for childcare facilities discussed above (§ 17458), the governing board may sell surplus property for less than fair market value to a park district, city or county for recreational purposes or open-space purposes under certain conditions (§ 17230).[10]

Most transfers of school-district surplus property fall under the Naylor Act,[11] which governs offers to sell or lease schoolsites[12] to public agencies ("Notwithstanding Section 54222 of the Government Code").[13] The Act also governs retention of part of a schoolsite, sales price or rate of lease, public agencies buying or leasing the land, maintenance by public agencies, uses of the land, reacquisition by the school district, and limitations on the right of acquisition or lease.

The legislative intent of the Naylor Act is "to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes."[14] In accordance with this intent, the Naylor Act applies to schoolsites in which all or part of the land is used for a school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes, and has been used for one of these purposes for at least eight years before the governing board decides to sell or lease the schoolsite (§ 17486). The Act also applies if no other available publicly owned land in the vicinity of the schoolsite would be adequate to meet the existing and foreseeable

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[9] Education Code section 17388.

[10] Section 17230 states that it is in addition to requirements placed on school districts pursuant to Section 54222 of the Government Code, which requires making written offers to specified government entities when selling surplus land. The entities to which the offers are made depend on the intended or suitable purpose for the land.

[11] Education Code sections 17485-17500. For the Supreme Court's summary and interpretation of the Naylor Act, see *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921.

[12] Schoolsite is defined in the Naylor Act as "a parcel of land, or two or more contiguous parcels, which is owned by a school district." (§ 17487.)

[13] Section 54222 of the Government Code requires, when selling surplus land, making written offers to specified government entities, depending on the land's intended or suitable purposes.

[14] Education Code section 17485.

needs of the community for outdoor recreational and open-space purposes, as determined by the purchasing or leasing public agency (*Ibid).*

School districts with more than 400,000 pupils in average daily attendance are not included in the Naylor Act (§ 17500), and it does not apply if other public agencies do not wish to purchase the surplus land (§ 17493, subd. (b)). Also, a school district may exempt property from the Act under certain conditions (§ 17497).

Claimants' Position

Claimant alleges that the test claim statutes constitute a reimbursable mandate under article XIII B, section 6 of the California Constitution because they require claimant to:

A) Develop, adopt and implement policies and procedures for community involvement in the disposition of school buildings or space in school buildings which is not needed for school purposes prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, pursuant to Education Code Section 17388.

B) Appoint, supervise and consult with a district advisory committee established to advise the governing board in the use and disposition of surplus space and real property, pursuant to Education Code Section 17388.

C) Appoint an advisory committee consisting of not less than seven nor more than 11 members, and that is representative of each of the criteria required by Education Code Section 17389.

D) For the school district advisory committee appointed pursuant to Education Code Section 17388 to implement all of the following duties, pursuant to Education Code Section 17390:
   1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;
   2) Establish a priority list of use of surplus space and real property that will be acceptable to the community;
   3) Circulate throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;
   4) Make a final determination of limits of tolerance of use of space and real property; and
   5) Forward to the district governing board a report recommending uses of surplus space and real property, pursuant to Education Code Section 17390 (e).

Claimant estimates that it will incur more than $1000 in staffing and other costs to implement these duties.

Claimant, in its August 2003 comments, argues that the July 25, 2003 comments by the Department of Finance should be excluded because they are not accompanied by a signed declaration that the comments are true and complete to the best of the representative's personal

knowledge or information and belief, as required by section 1183.02(d) of the Commission's regulations.[15] Claimant also argues that (1) the appointment of an advisory committee is not discretionary; (2) a district does incur costs in appointing a committee; and (3) that Finance is incorrect in stating that the district may use the proceeds resulting from the sale, lease or rental of excess property to offset the costs of the committee.

Claimant did not comment on the draft staff analysis.

State Agency Positions

The Department of Finance, in its July 2003 comments, states:

> [W]e believe that a school district's appointment of a Surplus Property Advisory Committee is the result of a discretionary action taken by the governing board of the district. As a result, we conclude that the cited State laws do not create a State-mandated reimbursable activity; therefore the test claim should be denied.

Finance also asserts that nothing in the statute directs the governing board to sell, lease or rent excess real property, so that "even though a district is required to appoint an advisory board prior to the sale, lease or rental of excess property, it is a local discretionary action that caused the requirement of an advisory board, not a State-mandated activity."

Finance also states that it does not believe a district would incur any costs due to the statute, and that in the absence of the requirement for an advisory committee, a district facilities or business manager and staff would perform all or similar duties specified of the advisory committee in the normal conduct of good school district policies. Finally, Finance believes that should a district incur costs in complying with the test claim statutes, that it may use the proceeds from the sale, lease or rental of excess property to offset the costs.[16]

Finance filed comments on August 28, 2008, concurring with the draft staff analysis.

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[15] Section 1183.02, subdivision (d), 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, and that any assertions of fact are to be supported by documentary evidence. 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 (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied on by staff when determining eligibility for reimbursement under article XIII B, section 6. Finance's comments as to whether the Commission should approve this test claim and are thus not stricken from the administrative record.

[16] Education Code section 17462 requires the proceeds from the sale of surplus school district property to be used for "capital outlay or for costs of maintenance of school district property that the governing board of the school district determines will not recur within a five-year period."

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[17] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[18] "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."[19] 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.[20]

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.[21]

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 policy, but does not apply generally to all residents and entities in the state.[22] 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

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[17] Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) 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.

[18] *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

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

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

[21] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

legislation.[23] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[24]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[25]

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.[26] 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."[27]

I. Are the test claim statutes state mandates within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute 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.[28] The issue is whether the test claim statutes mandate a school district to form an advisory committee to perform specified duties.

As a preliminary matter, staff finds that the test claim statutes that require discussion are sections 17388, which forms the advisory committee, and 17390, which enumerates its duties (see pp. 3-4). The remaining statutes merely define the advisory committee's scope, in that they specify the membership of the advisory committee (§ 17389), and excuse its formation for a specified purpose (§ 17391). Thus, the sole issue is whether sections 17388 and 17390 constitute a state mandate. Section 17388 reads:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (§ 17388.)

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

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[25] *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

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

[27] *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.

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

The plain language of this single-sentence statute indicates two things. First, that the governing board may form an advisory committee. And second, that prior to the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee.

As to the first part of the sentence (formation of the committee when there is no excess property), the plain meaning of the word "may" indicates that section 17388 is not mandatory.[29] An appellate court decision confirms this interpretation. The case, *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.*,[30] involved a school district accused of failing to comply with various statutes in closing two elementary schools. The court interpreted section 17388 as follows:

> Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory. (See § 75 ["may" is permissive; "shall" is mandatory].) Because the SPAC [surplus property advisory committee] was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties.[31]

Based on the plain language of section 17388, and the interpretation of it by the *San Lorenzo Valley* court, staff finds section 17388 is not a state mandate within the meaning of article XIII B, section 6 if there is no surplus property involved.

The second part of section 17388 states that before the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee. The issue is whether this is a state mandate.

In 2003, the California Supreme Court, in the *Kern High School Dist.* case,[32] considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. In *Kern*, school districts participated in various education-related programs that were funded by the state and federal government. Each of the underlying funded programs required school districts to establish and use school site councils and advisory committees. State open meeting laws later enacted in the mid-1990s required the school site councils and advisory bodies to post a notice and an agenda of their meetings. The school districts requested reimbursement for the notice and agenda costs pursuant to article XIII B, section 6.[33]

In analyzing the concept of "state mandate," the court reviewed the ballot materials for article XIII B, which defined state mandate as "something that a local government entity is required or

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[29] Education Code section 75: ""Shall' is mandatory and 'may' is permissive."

[30] *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.* (2006) 139 Cal.App.4th 1356 ("*San Lorenzo Valley*").

[31] *San Lorenzo Valley, supra,* 139 Cal.App.4th 1356, 1419.

[32] *Kern High School Dist., supra,* 30 Cal.4th 727.

[33] *Id.* at page 730.

forced to do" and "requirements imposed on local governments by legislation or executive orders."[34]

The *Kern* court also reviewed and affirmed the holding of *City of Merced v. State of California*,[35] where the city, under its eminent domain authority condemned privately owned real property and was required by statute to compensate the property owner for the loss of business goodwill. Upon review, the Supreme Court determined that, when analyzing state mandates, the underlying program must be reviewed to determine whether the claimant's participation in the underlying program is voluntary or legally compelled.[36] The *Kern* court stated:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[37] (Emphasis in original.)

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.*[38] [Emphasis added.]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws.

One of the underlying programs the Supreme Court discussed in *Kern* was the American Indian Early Childhood Education Program (Ed. Code § 52060 et seq.) which, as part of participation, requires a districtwide American Indian advisory committee for American Indian early childhood education. The court stated:

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[34] *Id.* at page 737.

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

[36] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

[37] *Ibid.*

[38] *Id.* at 731.

> Plainly, a school district's initial and continued participation in the program is voluntary, and the obligation to establish or maintain an advisory committee arises only if the district elects to participate in, or continue to participate in, the program. ... [T]he obligation to establish or maintain a site council or advisory committee arises only if a district elects to participate in, or continue to participate in, the particular program.[39]

In this claim, as with the eminent domain in *City of Merced* and the advisory committee in *Kern High School Dist.*, there is no state requirement for the school district to declare property surplus or excess, or to participate in what the *Kern* court calls the "underlying program." It is the local school district officials who make the triggering decision to designate property as surplus or transfer it. Therefore, there is no legal compulsion that creates a state mandate.[40]

In addition to the test claim statutes, the other school district surplus property statutes do not legally compel property to be designated as surplus or excess, or to be transferred. For example, the Naylor Act (§§ 17485-17500) states that "The governing board of any school district may sell or lease any schoolsite containing land described in Section 17486, and, if the governing board decides to sell or lease such land, it shall do so in accordance with this article."[41] A second example is in Education Code section 17458, which requires the advisory committee to hold hearings before selling or leasing real property to contracting agencies under the Child Care and Development Services Act (see pp. 4-5 above). But there is no requirement to sell or lease the property, as stated in part: "[T]he governing board of any school district ... seeking to sell or lease any real property it deems to be surplus property **may** first offer that property for sale or lease to any contracting agency, as defined in Section 8208 of the Education Code, pursuant to the following conditions ..."[42] One of the conditions is the advisory committee hearing, which is contingent on the initial decisions to deem the property surplus and offer it to a contracting agency.

Legal compulsion aside, in the *Kern High School Dist.* case, the California Supreme Court found that state mandates could be found in cases of practical compulsion on the local entity when a statute imposes "certain and severe penalties such as double taxation or other draconian consequences"[43] for not participating in the programs. The court also described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."[44]

Claimant, in August 2003 rebuttal comments, argues that school districts are practically compelled to use the advisory committee as follows:

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[39] *Id.* at 744.

[40] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

[41] Education Code section 17488.

[42] Education Code section 17458. Emphasis added.

[43] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[44] *Id.* at p. 731.

> This argument is pure nonsense and suggests that school districts should permit the underutilization of district assets. Migrating populations, changes in the population density of school age children, and other socio-economic conditions dictate the sale or disposal of surplus school property. The decision to act is not discretionary, demographic conditions beyond the control of governing boards dictate those decisions. And once the decision is dictated, the appointment of an advisory committee is a mandated activity for which reimbursement is required.[45]

Local governments could make the same argument about use of eminent domain at issue in *City of Merced*, i.e., that conditions beyond the control of local government make the use of eminent domain necessary. The *City of Merced* court, however, did not find this a compelling reason for making the cost of eminent domain reimbursable. The decision to invoke eminent domain, just like the decision to designate property as surplus, is made at the local level.[46]

There is no evidence in the record of practical compulsion, in that there are no "certain and severe penalties such as double taxation or other draconian consequences"[47] for school districts' failing to designate or transfer property as surplus or excess.

Therefore, staff finds that the reasoning of *City of Merced* and *Kern High School Dist.* control this claim. That is, because there is no legal or practical compulsion to designate as surplus or transfer (sell, lease, or rent) school district property, neither formation of the advisory committee (§ 17388), nor its activities (§ 17390), are state mandates imposed on a school district. Accordingly, the test claim statutes (§§ 17387-17389) do not constitute a state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

II. Does Education Code section 17388 constitute a new program or higher level of service?

As an alternative ground for denial, staff finds that section 17388 is not a new program or higher level of service.[48] Claimant pled the test claim statutes starting with Statutes 1982, chapter 689. The advisory committee statute, however, was first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.). Although it was not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010), it was enacted again in 1977 (Stats. 1977, ch. 36, § 448; Ed. Code, § 39384 et seq.) and amended in 1980 (Stats. 1980, ch. 1354).

The 1977 statute, former section 39384, subdivision (c), read as follows:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and

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[45] Letter from claimant, August 18, 2003, page 2.

[46] Cf. *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

[47] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835-836.

procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

Because this statute provided for the formation of the advisory committee before the 1982 test claim statute pled by claimant, staff finds that section 17388 is not a new program or higher level of service.

CONCLUSION

For the reasons discussed above, staff finds that the test claim statutes (Ed. Code, §§ 17387, 17388, 17389, 17390, 17391; Statutes 1982, chapter 689, Statutes 1984, chapter 584, Statutes 1986, chapter 1124, Statutes 1987, chapter 655, Statutes 1996, chapter 277) are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

PAGES 15-100 LEFT BLANK INTENTIONALLY

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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JUN 25 2003
COMMISSION ON STATE MANDATES

Exhibit A

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person

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

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

( ) Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

( )

Surplus Property Advisory Committees

Chapter 689, Statutes of 1982	Education Code Section 17387
Chapter 584, Statutes of 1984	Education Code Section 17388
Chapter 1124, Statutes of 1986	Education Code Section 17389
Chapter 655, Statutes of 1987	Education Code Section 17390
Chapter 277, Statutes of 1996	Education Code Section 17391

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

William McGuire, Associate Superintendent, Business Services

Telephone No.

Voice: 559-327-9110

Signature of Authorized Representative

X Bill McGuire

Date

6/19/2003

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM _____
Clovis Unified School District	Chapter 277, Statutes of 1996 Chapter 655, Statutes of 1987 Chapter 1124, Statutes of 1986 Chapter 584, Statutes of 1984 Chapter 689, Statutes of 1982
Test Claimant	Education Code Sections 17387, 17388, 17389, 17390 and 17391
	Surplus Property Advisory Committees
	TEST CLAIM FILING

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Clovis Unified School District is a "school district" as defined in

Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts to adopt and implement policies and procedures governing the use or disposition of surplus school buildings or space in school buildings and to appoint, supervise and consult with an advisory committee to assist in this process.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

There was no mandated duty for school districts to adopt and implement policies and procedures regarding the disposition of surplus school buildings or space in school buildings prior to January 1, 1975.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 689, Statutes of 1982, Section 1, added Education Code Sections 39295-39299.5, inclusive, as Article 1.5, entitled "Advisory Committees", to Chapter 3 of Part 23 of the Education Code.

Education Code Section 39295[2] states the legislative intent to include the

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

[2]Education Code Section 39295 as added by Chapter 689, Statutes of 1982, Section 1:

"It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the

community in decisions regarding school closure or the use of surplus space in order to avoid community conflict, to assure building use that is compatible with the community's needs and desires, and to facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

Education Code Section 39296[3] requires the governing board of each school district, prior to the sale, lease, or rental of any excess real property, to appoint a district advisory committee to advise the governing board in the development of district-wide policies and procedures regarding the use or disposition of school buildings that are not needed for school purposes.

Education Code Section 39297[4] requires the school district advisory committee

---

use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires."

[3]Education Code Section 39296 as added by Chapter 689, Statutes of 1982, Section 1:

"The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes."

[4]Education Code Section 39297 as added by Chapter 689, Statutes of 1982, Section 1:

"A school district advisory committee appointed pursuant to Section 39296 shall consist of not less than seven nor more than 11 members, and shall be representative

to be comprised of seven to eleven members that are representative of the ethnic, age group and socioeconomic composition of the district, the business community, landowners and renters, teachers, administrators, parents of students, and persons with expertise in all areas of land development.

Education Code Section 39298[5] requires the school district advisory committee to do all of the following: (a) review the projected school enrollment and other data to determine the amount of surplus space; (b) establish a priority list for use of surplus

---

of each of the following:
(a) The ethnic, age group, and socioeconomic composition of the district.
(b) The business community, such as store owners, managers, or supervisors.
(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.
(d) Teachers.
(e) Administrators.
(f) Parents of students.
(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning."

[5]Education Code Section 39298 as added by Chapter 689, Statutes of 1982, Section 1:

"The school district advisory committee shall:
(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space.
(b) Establish a priority list of use of surplus space that will be acceptable to the community.
(c) Cause to have circulated throughout the attendance area a priority list of surplus space and provide for hearings of community input to the committee on acceptable uses of space.
(d) Make a final determination of limits of tolerance of use of space.
(e) Forward to the district governing board a report recommending uses of surplus space."

space that will be acceptable to the community; (c) circulate the priority list of surplus space and provide for hearings for community input; (d) make a final determination of limits of tolerance for use of space; and (e) forward to the district governing board a report recommending uses of surplus space.

Education Code Section 39299[6] permits the governing board of a school district to elect not to appoint an advisory committee in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district.

Education Code Section 39299.5[7] provides that article 1.5 was to remain in effect only until December 31, 1986, and would be repealed as of that date unless a later enacted statute, chaptered before December 31, 1986, deleted or extended that date.

Chapter 584, Statutes of 1984, Section 1 amended Education Code Section

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[6]Education Code Section 39299 as added by Chapter 689, Statutes of 1982, Section 1:

"The governing board may elect not to appoint an advisory committee pursuant to Section 39295 in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district."

[7]Education Code Section 39299.5 as added by Chapter 689, Statutes of 1982, Section 1:

"This article shall remain in effect only until December 31, 1986, and as of that date is repealed unless a later enacted statute, which is chaptered before December 31, 1986, deletes or extends that date."

39297[8] to add language to subdivision (g) requiring that the members of the school district advisory committee possess knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

Chapter 584, Statutes of 1984, Section 2 amended Education Code Section 39298[9] to clarify that the school district advisory committee must perform all of the

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[8]Education Code Section 39297 as amended by Chapter 584, Statutes of 1984, Section 1:

"A school district advisory committee appointed pursuant to Section 39296 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:
(a) The ethnic, age group, and socioeconomic composition of the district.
(b) The business community, such as store owners, managers, or supervisors.
(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.
(d) Teachers.
(e) Administrators.
(f) Parents of students.
(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located."

[9]Education Code Section 39298 as amended by Chapter 584, Statutes of 1984, Section 2:

"The school district advisory committee shall do all of the following:
(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the

duties listed in subdivisions (a) through (e). In addition, the amendment required that the advisory committee include data pertaining to the surplus real property owned by the district when performing the duties listed in subdivisions (a) through (e).

Chapter 1124, Statutes of 1986, Section 4.5 repealed Education Code Section 39299.5.

Chapter 655, Statutes of 1987, Section 2 amended Education Code Section 39298[10] to require, in subdivision (c), the school district advisory committee to include the option of the sale or lease of surplus real property for child care development purposes among the types of acceptable uses of space and real property that the

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committee on acceptable uses of space and real property.
(d) Make a final determination of limits of tolerance of use of space and real property.
(e) Forward to the district governing board a report recommending uses of surplus space and real property."

[10]Education Code Section 39298 as amended by Chapter 655, Statutes of 1987, Section 2:

"The school district advisory committee shall do all of the following:
(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 39360.3.
(d) Make a final determination of limits of tolerance of use of space and real property.
(e) Forward to the district governing board a report recommending uses of surplus space and real property."

community may recommend when providing input on such space.

Chapter 277, Statutes of 1996, Section 6 repealed Education Code Sections 39295-39299, inclusive. Chapter 277, Statutes of 1996, Section 3 added Part 10.5 to the Education Code, which replaced and renumbered the repealed sections but retained the same language in each section. The code sections before and after the renumbering are as follows:

Former Code Section Number	New Code Section Number
39295	17387
39296	17388
39297	17389
39298	17390
39299	17391

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Statutes and Education Code Sections referenced in this test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514[11], by creating new state-mandated duties related to the uniquely

[11] Government Code section 17514, as added by Chapter 1459/84:

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

governmental function of providing public services and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[12]

The new duties mandated by the state upon school districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) For the governing board of each school district to develop, adopt and implement policies and procedures for community involvement in the disposition of school buildings or space in school buildings which is not needed for school purposes prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, pursuant to Education Code Section 17388.

B) For the governing board of each school district to appoint, supervise and consult with a district advisory committee established to advise the

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Constitution.

[12] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

governing board in the use and disposition of surplus space and real property, pursuant to Education Code Section 17388.

C) For school districts to appoint an advisory committee consisting of not less than seven nor more than 11 members, and that is representative of each of the criteria required by Education Code Section 17389.

D) For the school district advisory committee appointed pursuant to Education Code Section 17388 to implement all of the following duties, pursuant to Education Code Section 17390:

1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;

2) Establish a priority list of use of surplus space and real property that will be acceptable to the community;

3) Circulate throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;

4) Make a final determination of limits of tolerance of use of space and real property; and

5) Forward to the district governing board a report recommending

uses of surplus space and real property, pursuant to Education Code Section 17390(e).

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[13] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school

[13] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"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:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

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

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

(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.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[14]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of William McGuire
Associate Superintendent, Business Services
Clovis Unified School District

Exhibit 2: Copies of Statutes Cited
Chapter 689, Statutes of 1982
Chapter 584, Statutes of 1984
Chapter 1124, Statutes of 1986
Chapter 655, Statutes of 1987
Chapter 277, Statutes of 1996

[14] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"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."

Exhibit 3: Copies of Code Sections Cited

Education Code Section 17387
Education Code Section 17388
Education Code Section 17389
Education Code Section 17390
Education Code Section 17391

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 19, 2003, at Clovis, California by:

William McGuire
Associate Superintendent, Business Services
Clovis Unified School District

Voice: 559-327-3110
Fax: 559-327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

William McGuire
Associate Superintendent, Business Services
Clovis Unified School District

6/19/2003
Date

EXHIBIT 1
DECLARATION

DECLARATION OF WILLIAM McGUIRE

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 689, Statutes of 1982
Chapter 584, Statutes of 1984
Chapter 1124, Statutes of 1986
Chapter 655, Statutes of 1987
Chapter 277, Statutes of 1996

Education Code Section 17387
Education Code Section 17388
Education Code Section 17389
Education Code Section 17390
Education Code Section 17391

Surplus Property Advisory Committees

I, William McGuire, Associate Superintendent, Business Services, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent, Business Services, I am responsible for the district's compliance with laws governing the administration of the district facilities. I am familiar with the provisions and requirements of the Education Code Sections enumerated above.

These Education Code sections require the Clovis Unified School District to:

A) Develop, adopt and implement policies and procedures for community involvement in the disposition of school buildings or space in school buildings which is not needed for school purposes prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30

days, pursuant to Education Code Section 17388.

B) Appoint, supervise and consult with a district advisory committee established to advise the governing board in the use and disposition of surplus space and real property, pursuant to Education Code Section 17388.

C) Appoint an advisory committee consisting of not less than seven nor more than 11 members, and that is representative of each of the criteria required by Education Code Section 17389.

D) For the school district advisory committee appointed pursuant to Education Code Section 17388 to implement all of the following duties, pursuant to Education Code Section 17390:

1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;

2) Establish a priority list of use of surplus space and real property that will be acceptable to the community;

3) Circulate throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;

4) Make a final determination of limits of tolerance of use of space and real property; and

5) Forward to the district governing board a report recommending uses of surplus space and real property, pursuant to Education Code Section 17390(e).

It is estimated that the Clovis Unified School District would incur more than $1,000 in staffing and other costs to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 19 day of June 2003, at Clovis, California.

William McGuire
Associate Superintendent, Business Services
Clovis Unified School District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 689

An act to repeal Section 39384 of, to add and repeal Article 1.5 (commencing with Section 39295) of Chapter 3 of Part 23 of, and to repeal, add, and repeal Article 9 (commencing with Section 39470) of Chapter 3 of Part 23 of, the Education Code, relating to education.

[Approved by Governor September 2, 1982. Filed with Secretary of State September 2, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Article 1.5 (commencing with Section 39295) is added to Chapter 3 of Part 23 of the Education Code, to read:

10 05

am. 1980 ch 1354

Article 1.5. Advisory Committees

39295. It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

39296. The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

39297. A school district advisory committee appointed pursuant to Section 39296 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning.

39298. The school district advisory committee shall:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space.

(b) Establish a priority list of use of surplus space that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and provide for hearings of community input to the committee on acceptable uses of space.

(d) Make a final determination of limits of tolerance of use of space.

(e) Forward to the district governing board a report recommending uses of surplus space.

39299. The governing board may elect not to appoint an advisory committee pursuant to Section 39295 in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district.

39299.5. This article shall remain in effect only until December

31, 1986, and as of that date is repealed unless a later enacted statute, which is chaptered before December 31, 1986, deletes or extends that date.

SEC. 2. Section 39384 of the Education Code is repealed.

SEC. 3. Article 9 (commencing with Section 39470) of Chapter 3 of Part 23 of the Education Code is repealed.

SEC. 4. Article 9 (commencing with Section 39470) is added to Chapter 3 of Part 23 of the Education Code, to read:

Article 9. Joint Use

39470. (a) The governing board of any school district may enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours if the school is in session.

(b) The governing board shall give first priority in leasing or renting vacant classroom space or other space to educational agencies for conducting special education programs and second priority to other educational agencies.

39471. As used in this article, "building" includes onsite and offsite facilities, utilities, and improvements which, as agreed upon by the parties, are appropriate for the proper operation or function of the building to be jointly occupied and used. It also includes the permanent improvement of school grounds.

39472. Prior to entering into a lease or agreement pursuant to this article, the school district governing board shall determine that the proposed joint occupancy and use of school district property or buildings will not do any of the following:

(a) Interfere with the educational program or activities of any school or class conducted upon the real property or in any building.

(b) Unduly disrupt the residents in the surrounding neighborhood.

(c) Jeopardize the safety of the children of the school.

39473. The governing board of a school district entering into a lease pursuant to this article shall comply with the applicable provisions of Article 4 (commencing with Section 39360).

39474. (a) Except as provided in subdivision (b) of this section and Section 39475, the amount of classroom space leased pursuant to this article in any school site during normal school hours shall not exceed 45 percent of the total classroom space of that school, and in no event shall the leased classroom space in the school district during normal school hours exceed 30 percent of the district's total classroom space in operating schools.

(b) The governing board of a school district may, upon a

two-thirds vote, enter into lease agreements which exceed the 45-percent limit per school upon making a finding that the leases are compatible with the educational purpose of the school. The board, however, shall not exceed, pursuant to this subdivision, the 30-percent limit of classroom space for the entire school district.

(c) The provisions of this section shall not apply to agreements for the lease of classroom space entered into by districts on or before March 4, 1981.

39475. The governing board of a school district may lease vacant classroom space the total area of which exceeds the 30-percent districtwide limit of classroom space available pursuant to this article, if a lease is for any day care center, nursery school, or special education class.

39476. A local agency having general planning jurisdiction may require adherence to appropriate zoning ordinances, use permits, construction or safety codes, by a school district seeking to lease a portion of a school building for uses other than public or education-related uses.

39477. (a) Except as provided in subdivision (b), the term of any agreement entered into by a school district pursuant to this article shall not exceed five years.

(b) The provisions of subdivision (a) shall not apply to agreements under or pursuant to which capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations.

39478. (a) Except as provided in subdivision (b), no agreement entered into by a school district pursuant to this article shall rent or lease vacant classrooms or other space in operating schools for less than fair market rental for comparable facilities.

(b) A district may enter into an agreement to rent or lease vacant classrooms or other space in operating schools to public entities for less than fair market rental for comparable facilities.

39479. This article shall remain in effect only until December 31, 1986, and as of that date is repealed unless a later enacted statute, which is chaptered before December 31, 1986, deletes or extends that date.

SEC. 5. The provisions of this act shall apply only to leases entered into after January 1, 1983.

CHAPTER 584

An act to amend Sections 39297 and 39298 of the Education Code, relating to education.

[Approved by Governor July 18, 1984. Filed with Secretary of State July 19, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 39297 of the Education Code is amended to read:

39297. A school district advisory committee appointed pursuant to Section 39296 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

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(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

SEC. 2. Section 39298 of the Education Code is amended to read:

39298. The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1124

An act to amend Sections 2550, 2558, 37250, 46144, 48915, 51731, 56741, 69612.5, 69613, 69618.2, and 69615.4 of, to add Section 35160.2 to, and to repeal Sections 39299.5 and 41379 of, the Education Code, and to amend Section 4 of Chapter 1668 of the Statutes of 1984, relating to education, and making an appropriation therefor.

[Approved by Governor September 24, 1986. Filed with Secretary of State September 25, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 2550 of the Education Code is amended to read:

2550. The Superintendent of Public Instruction shall perform the computations prescribed in this section for each county superintendent of schools.

(a) The Superintendent of Public Instruction shall make the

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succeeding fiscal years, the amount in this subdivision shall be multiplied by a factor of 0.97.

(b) For the 1983–84 fiscal year and each fiscal year thereafter, the amount computed in subdivision (a) shall be reduced by the amount of the decreased contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982. For the 1983–84 fiscal year and each fiscal year thereafter, the decreased contributions shall be based on the 1982–83 salaries of employees participating in the Public Employees' Retirement System during the 1982–83 fiscal year. For the purposes of this subdivision, no reduction shall be made for decreased contributions for positions that were funded totally from federal funds during the 1982–83 fiscal year.

(c) The Superintendent of Public Instruction shall also subtract from the amount determined in subdivision (a) the sum of: (1) local property tax revenues received pursuant to Section 2573 in the then current fiscal year, and tax revenues received pursuant to Section 2556 in the then current fiscal year, (2) state and federal categorical aid for the fiscal year, (3) district contributions pursuant to Section 52321 for the fiscal year, and other applicable local contributions and revenues, and (4) any amounts that the county superintendent of schools was required to maintain as restricted and not available for expenditure in the 1978–79 fiscal year as specified in the second paragraph of subdivision (c) of Section 6 of Chapter 292 of the Statutes of 1978, as amended by Chapter 51 of the Statutes of 1979.

(d) The remainder computed in subdivision (c) shall be distributed in the same manner as state aid to school districts from funds appropriated to Section A of the State School Fund.

(e) If the remainder determined pursuant to subdivision (c) is a negative amount, no state aid shall be distributed to that county superintendent of schools pursuant to subdivision (d), and an amount of funds of that county superintendent equal to that negative amount shall be deemed restricted and not available for expenditure during the current fiscal year. In the next fiscal year, that amount shall be considered local property tax revenue for purposes of the operation of paragraph (1) of subdivision (c) of this section.

SEC. 3. Section 35160.2 is added to the Education Code, to read:

35160.2. For the purposes of Section 35160, "school district" shall include county superintendents of schools and county boards of education.

This section shall be interpreted to be declaratory of existing law.

SEC. 4. Section 37250 of the Education Code is amended to read:

37250. The governing board of a district maintaining one or more high schools may maintain a summer school at any of the high schools during the period between the close of one academic year and the beginning of the succeeding academic year.

SEC. 4.5. Section 39299.5 of the Education Code is repealed.

SEC. 5. Section 41379 of the Education Code is repealed.

SEC. 6. Section 46144 of the Education Code is amended to read:

available for apprentice programs operated pursuant to Section 8153 of the Education Code in the 1985–86 fiscal year.

The Superintendent of Public Instruction shall apportion these funds in recognition of the funding deficiencies experienced by these apprentice programs in the 1984–85 and 1985–86 fiscal years.

SEC. 15. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

112170

CHAPTER 655

An act to amend Section 39298 of, and to add Section 39360.3 to, the Education Code, relating to child care.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Due to economic and social changes in California, child care has become a necessity for working families, including families headed by a single woman or man and dual wage-earning families. This growing need has fostered an availability crisis for quality child care.

(b) Studies have shown that the shortage of child care spaces ranges as high as 40 percent in Sacramento County and San Francisco, and that some two million children may be without adequate day care throughout the state. This problem is particularly acute for "latchkey" children—those left on their own before and after school while their parents are at work.

(c) The child care shortage stems, at least in part, from the failure of the private sector to meet the demand for child care facilities. One contributing factor, particularly in dense urban areas, is the high cost of land and constructing facilities.

(d) The state can stimulate private sector child care providers to

increase spaces by encouraging the use of surplus or unused facilities for child care use. Particularly appropriate for that use are underutilized school facilities, because they are designed for use by children and are conveniently located for before-school and after-school child care programs.

SEC. 2. Section 39298 of the Education Code is amended to read:

39298. The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 39360.3.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

SEC. 3. Section 39360.3 is added to the Education Code, to read:

39360.3. (a) Notwithstanding Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, the governing board of any school district complying with Section 101338.2 of Title 22 of the California Administrative Code and seeking to sell or lease any real property it deems to be surplus property may first offer that property for sale or lease to any contracting agency, as defined in Section 8208 of the Education Code, pursuant to the following conditions:

(1) The real property sold or leased shall be used by the contracting agency, or by any successor in interest to the contracting agency, exclusively for the delivery of child care and development services, as defined in Section 8208 of the Education Code, for a period of not less than five years from the date upon which the real property is made available to that agency, or successor in interest, pursuant to the sale, or, in the event of a lease, until the real property is returned to the possession of the school district, whichever occurs earlier.

(2) In the event that the contracting agency, or any successor in interest, fails to comply with the condition set forth in paragraph (1), that agency, or successor in interest, that purchased the real property, is required immediately to offer that real property for sale pursuant to this article and Article 5 (commencing with Section 39390) and to sell the property pursuant to those provisions. The agency, or its successor in interest, shall comply, in that regard, with all requirements under those provisions that would otherwise apply

to a school district, except that a sale price computed under subdivision (a) of Section 39396 shall be based upon the cost of acquisition incurred by the school district that sold the property pursuant to this subdivision, rather than that incurred by the contracting agency or its successor in interest. In the event, alternatively, of a lease of real property pursuant to this subdivision, the failure by the contracting agency, or any successor in interest, to comply with paragraph (1) shall constitute a breach of the lease, entitling the school district to immediate possession of the real property, in addition to any damages to which the district may be entitled under the lease agreement.

(3) The school district, and each of the entities authorized to receive offers of sale pursuant to this article or Article 5 (commencing with Section 39390), has standing to enforce the conditions set forth in this subdivision, and shall be entitled to the payment of reasonable attorneys' fees incurred as a prevailing party in any action or proceeding brought to enforce any of those conditions.

(b) No sale or lease of the real property of any school district, as authorized under subdivision (a), may occur until the school district advisory committee has held hearings pursuant to subdivision (c) of Section 39298.

(c) This section is in addition to, and shall not limit the requirements of, Article 5 (commencing with Section 39390), but this section may be utilized with regard to property which the governing board of a school district may retain under Section 39395.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
FILED WITH SECRETARY OF STATE JULY 25, 1996
APPROVED BY GOVERNOR JULY 24, 1996
PASSED THE ASSEMBLY JULY 11, 1996
PASSED THE SENATE APRIL 25, 1996
AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities.

This bill would repeal and add those provisions and would make technical, nonsubstantive changes in those provisions.

city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

17212. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for

unless and until such proposition is approved by the voters.

17380. The Legislature finds and declares that because of a unique situation existing in the San Pedro area of the County of Los Angeles regarding the possible acquisition of useful federal surplus land, a general law, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable.

CHAPTER 4. PROPERTY: SALE, LEASE, EXCHANGE

Article 1. Conveyances

17385. The governing board of any school district shall receive in the name of the district conveyances for all property received and purchased by it, and shall make in the name of the district conveyances of all property belonging to the district and sold by it.

17386. The governing board of any school district shall have the power to execute and deliver quitclaim deeds, either with or without consideration to the owners of real property adjacent to any real property owned by the school district, for the purpose of removing defects in and otherwise clearing up the title to such adjacent real property.

Article 1.5. Advisory Committees

17387. It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

17388. The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

17389. A school district advisory committee appointed pursuant to Section 17388 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

17390. The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

17391. The governing board may elect not to appoint an advisory committee pursuant to Section 17387 in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district.

Article 2. Leasing Property

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

(1) One or more buildings located or to be located on one or more sites.

(2) The remodeling of any building located on a site to be leased pursuant to this article.

(3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.

(4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7

or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

38167. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

38168. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 38158 or 38162 the opportunity to be trained without the loss of wages or benefits.

SEC. 6. Part 23 (commencing with Section 39001) of the Education Code is repealed.

SEC. 7. Section 53080 of the Government Code is repealed.

SEC. 8. Section 53080.1 of the Government Code is repealed.

SEC. 9. Section 53080.15 of the Government Code is repealed.

SEC. 10. Section 53080.2 of the Government Code is repealed.

SEC. 11. Section 53080.3 of the Government Code is repealed.

SEC. 12. Section 53080.4 of the Government Code is repealed.

SEC. 13. Section 53080.6 of the Government Code is repealed.

SEC. 14. Section 53081 of the Government Code is repealed.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

Article 1.5

ADVISORY COMMITTEES

Section
17387. Community involvement; school closure or use of surplus space; legislative intent.
17388. Appointment by governing board of school district.
17389. Membership.
17390. Duties.
17391. Election not to appoint committee.

Article 1.5 was added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.

§ 17387. Community involvement; school closure or use of surplus space; legislative intent

It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17388. Appointment by governing board of school district

The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17389. Membership

A school district advisory committee appointed pursuant to Section 17388 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the

zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17390. Duties

The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17391. Election not to appoint committee

The governing board may elect not to appoint an advisory committee pursuant to Section 17387 in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

they are eligible at any time is the refund of accumulated contributions, the rate of interest which will be earned, and actions which may be taken by the board if such contributions are not withdrawn. Employing school districts and other employing agents shall transmit such information to the member as part of the usual separation documents.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that members of the State Teachers' Retirement System who terminate employment with less than five years credited California service receive the benefits of this act during the 1976–77 fiscal year, this act must take effect immediately.

CHAPTER 606

An act to add Section 16051.1 to, and to amend Section 16075 of, the Education Code, relating to school property.

[Approved by Governor August 26, 1976 Filed with Secretary of State August 27, 1976]

The people of the State of California do enact as follows:

SECTION 1. Section 16051.1 is added to the Education Code, to read:

16051.1. (a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs.

It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

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(c) The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

(d) A district advisory committee shall consist of not less than 7 nor more than 11 members, and shall be representative of the following:

1. The ethnic, age group and socioeconomic composition of the district.

2. The business community, such as store owners, managers or supervisors.

3. Landowners and renters.

4. Teachers and administrators.

5. Parents of students.

6. Persons with expertise in environmental impact, legal contracts, building codes, and land use planning.

(e) The district advisory committee shall:

1. Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space.

2. Establish a priority list of use of surplus space that will be acceptable to the community.

3. Cause to have circulated throughout the attendance area a priority list of surplus space and provide for hearings of community input to the committee on acceptable uses of space.

4. Make a final determination of limits of tolerance for use of space.

5. Forward to the district governing board a report recommending uses of surplus space.

(f) An existing district advisory committee having the representation specified in subdivision (c), may be designated as the district advisory committee for the purposes of this section.

SEC. 2. Section 16075 of the Education Code is amended to read:

16075. Any school district may enter into leases and agreements relating to real property and buildings to be used jointly by the district and any private person, firm, or corporation pursuant to this article. As used in this article, "building" includes onsite and offsite facilities, utilities and improvements which as agreed upon by the parties are appropriate for the proper operation or function of the building to be occupied jointly by the district and the private person, firm, or corporation. It also includes the permanent improvement of school grounds.

Any building, or portion thereof, which is used by a private person, firm, or corporation pursuant to this section shall be subject to the zoning and building code requirements of the local jurisdiction in which the building is situated.

Section 53094 of the Government Code shall not be applicable to

uses of school district property or buildings authorized by this section, except in the case of property or buildings used solely for educational purposes.

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be an appropriation made by this act because the duties, obligations or responsibilities imposed on local governmental entities or school districts by this act are such that related costs are incurred as part of their normal operating procedures.

CHAPTER 607

An act to add Section 6211 to the Public Resources Code, relating to public lands.

[Approved by Governor August 26, 1976 Filed with Secretary of State August 27, 1976]

The people of the State of California do enact as follows:

SECTION 1. Section 6211 is added to the Public Resources Code, to read:

6211. Whenever a parcel of timbered land under jurisdiction of the commission is totally surrounded by, or is contiguous to, a national or state forest, the commission may, whenever it is in the best interests of the state to do so, and after 10 days' prior notice to the Secretary of the Resources Agency for comments, provide for the harvesting of timber from such land at the same time as the orderly harvesting of the surrounding or adjacent federal- or state-owned timber. In carrying out the provisions of this section, the commission may enter into agreements with the United States or the Division of Forestry for the inclusion of timbered lands under the jurisdiction of the commission within a total parcel to be offered for timber harvesting contracts. The commission shall report to the Legislature by December 1 of each year, a summary of any actions taken pursuant to this section during the preceding 12 months, including any comments made by interested state agencies.

CHAPTER 608

An act to amend Section 1428b of the Penal Code, relating to courts.

[Approved by Governor August 26, 1976 Filed with Secretary of State August 27, 1976]

of such building, such building shall be deemed structurally unsafe for school use. Such building shall be subject to replacement at another location in accordance with the procedure provided for repair, reconstruction, or replacement in Section 39212 as though it had not been constructed in conformance with Article 3 (commencing with Section 39140) of this chapter.

This section shall remain in effect only until July 1, 1977, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1977, deletes or extends such date.

SEC. 446. Section 39233 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39233. Beginning with the 1978–79 fiscal year, the county superintendent of schools, in conjunction with his review of any school district budget pursuant to Section 42127, shall determine any unexpended funds derived from the tax levied pursuant to Section 39230 and require that such funds be utilized by the district in one of the following ways:

(a) If the district was not an applicant district pursuant to Article 9 (commencing with Section 16310) of Chapter 8 of Part 10, the unexpended funds shall be budgeted for capital outlay purposes only.

(b) If the district was an applicant pursuant to Article 9, such unexpended funds received prior to July 1, 1980, shall only be applied as a direct reduction of any Article 9 apportionment outstanding against the district. The county superintendent of schools shall in such case notify the duly authorized representative of the State Allocation Board of the amount available as a reduction of outstanding Article 9 apportionments and the authorized representative shall take the action necessary to reduce the outstanding apportionments. After July 1, 1980, any additional amounts shall be available only for the purposes of reducing the tax levy under Section 16090.

This section shall remain in effect only until June 30, 1985, and as of that date is repealed.

SEC. 447. Section 39234 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39234. Notwithstanding the requirement, applicable after the 1974–75 fiscal year, of Section 39320 relative to the levying of a twenty-cent ($0.20) tax as a condition precedent to the levying of such a tax in subsequent years, a district having an approved application under the provisions of Section 16321.7 may levy a tax at a rate of not to exceed twenty cents ($0.20) per one hundred dollars ($100) of assessed valuation for the 1976–77 fiscal year, under the conditions otherwise prescribed by Section 39230, for matching funds for such application. The tax rate so levied shall have the same effect for the purposes of Section 16339 as though the tax had been levied in the 1974–75 fiscal year.

SEC. 448. Section 39384 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39384. (a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in

operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs.

It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

(c) The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

(d) A district advisory committee shall consist of not less than 7 nor more than 11 members, and shall be representative of the following:

1. The ethnic, age group and socioeconomic composition of the district.

2. The business community, such as store owners, managers or supervisors.

3. Landowners and renters.

4. Teachers and administrators.

5. Parents of students.

6. Persons with expertise in environmental impact, legal contracts, building codes, and land use planning.

(e) The district advisory committee shall:

1. Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space.

2. Establish a priority list of use of surplus space that will be acceptable to the community.

3. Cause to have circulated throughout the attendance area a priority list of surplus space and provide for hearings of community input to the committee on acceptable uses of space.

4. Make a final determination of limits of tolerance for use of space.

5. Forward to the district governing board a report recommending uses of surplus space.

(f) An existing district advisory committee having the representation specified in subdivision (c), may be designated as the

district advisory committee for the purposes of this section.

SEC. 449. Section 39617 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39617. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football after the commencement of the 1980–81 school year, unless such equipment has been certified for use by the Department of Education. In determining the suitability of equipment for certification the department may accept the certification of the National Operating Committee on Standards for Athletic Equipment or any other recognized certifying agency in the field.

This section shall not be construed as relieving school districts from the duty of maintaining football protective equipment in a safe and serviceable condition.

SEC. 450. Section 39645.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39645.5. In addition to utilizing the procedures specified in Article 14 (commencing with Section 39520) of Chapter 3 of this part, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the sale and leaseback is the most economical means for providing electronic data-processing equipment to the school district or county.

SEC. 451. Section 39646 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39646. The governing board of a school district may contract for electromechanical or electronic data-processing work.

SEC. 452. Section 39649.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

39649.5. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

SEC. 453. Section 41716.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

41716.5. For the fiscal year 1976–77, and each fiscal year thereafter

space.

(5) Forward to the district governing board a report recommending uses of surplus space.

(f) An existing district advisory committee having the representation specified in subdivision (c), may be designated as the district advisory committee for the purposes of this section.

(g) In the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district used under a lease or agreement entered into pursuant to Section 39470, the governing board of any school district may elect not to appoint an advisory committee pursuant to subdivision (c).

SEC. 37.23. Section 39401 of the Education Code, as added by Chapter 736 of the Statutes of 1980, is amended to read:

39401. Notwithstanding the other provisions of this article, any school district governing board may designate not more than two surplus school sites as exempt from the provisions of this article for each planned school site acquisition if the school district has an immediate need for an additional school site and is actively seeking to acquire such an additional site, and may exempt not more than one surplus school site if the district is seeking immediate expansion of the classroom capacity of an existing school by 50 percent or more.

The exemption provided for by this section shall be inapplicable to any school site which, under a lease executed on or before July 1, 1974, with a term of 10 years, was leased to a city of under 100,000 population for park purposes, was improved at city expense, and used for public park purposes.

SEC. 37.25. Section 39510 of the Education Code is amended to read:

39510. The governing board of any school district may sell any personal property or school supplies belonging to the district to the federal government or its agencies, to the state, to any county, city and county, city or special district, or to any other school district or any agency eligible under the federal surplus property law, (40 U.S.C., Sec. 484(j)(3)) and the governing board of another school district may purchase the property, for an amount equal to the cost thereof plus the estimated cost of purchasing, storing, and handling the property, without advertisement for or receipt of bids or compliance with any other provisions of this code. The governing board of any school district may purchase any personal property or school supplies for the purpose of selling them, pursuant to this section.

This section does not authorize the purchase, for the purpose of resale, of standard school supplies and equipment by any elementary school district governed by school trustees.

SEC. 37.3. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established

39384. (a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs.

It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.

It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires.

(c) The governing board of any school district may, and the governing board of each school district, prior to the lease or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

(d) A district advisory committee shall consist of not less than seven nor more than 11 members, and shall be representative of the following:

(1) The ethnic, age group and socioeconomic composition of the district.

(2) The business community, such as store owners, managers or supervisors.

(3) Landowners and renters.

(4) Teachers and administrators.

(5) Parents of students.

(6) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning.

(e) The district advisory committee shall:

(1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space.

(2) Establish a priority list of use of surplus space that will be acceptable to the community.

(3) Cause to have circulated throughout the attendance area a priority list of surplus space and provide for hearings of community input to the committee on acceptable uses of space.

(4) Make a final determination of limits of tolerance for use of

UNFINISHED BUSINESS

CONCURRENCE IN SENATE AMENDMENTS

AB 2882 (Arnett) As Amended: 9 June 1976

ASSEMBLY VOTE 62-7 (22 April 1976) SENATE VOTE 22-10 (11 August 1976)

DIGEST

As it was passed by the Assembly, the bill allows school districts to develop and implement joint use of school facilities by the district and any private person, firm or corporation. Specifically, the bill:

1) Deletes the existing prohibition against joint occupancy of school buildings which are used for classroom purposes.

2) Expresses legislative intent that school districts be authorized to make vacant classrooms in operating schools available for lease or rent to specified entities.

3) Requires the establishment of a district advisory committee to review proposals for and recommend uses of surplus space.

The Senate amendments:

1) Delete the provision that persons serving on district advisory committees not be employed by school districts.

2) Provide that the district advisory committees consist of not less than seven nor more than 11 members.

3) Provide that existing district advisory committees having the specified representation may be designated as the advisory committee for purposes of the bill.

4) Exempt short-term rentals not exceeding 30 days from provisions of bill.

5) Provide that any building, or portion thereof, used by a private person, firm, or corporation shall be subject to the zoning and building code requirements of the local jurisdiction in which it is situated, and that existing law authorizing school districts to waive zoning requirements shall not be applicable to uses of school district property or buildings authorized by the bill, except in the case of property used solely for educational purposes.

6) Express legislative intent that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs.

-continued-

FISCAL EFFECT

Provides neither appropriation nor reimbursement because the related costs are incurred as part of the school districts' normal operating procedure.

The Legislative Analyst estimates that local costs associated with establishing and administering the district advisory committee would be minor. Local school districts would realize a minor undetermined increase in revenue from the lease or rent of vacant classrooms.

COMMENTS

According to the Assembly Ways and Means Committee analysis, the goal of the author is to help districts offset revenue losses resulting from declining enrollment. The additional revenue generated by renting unused facilities could be used to supplement the school districts' regular educational program.

C San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.
Cal.App. 6 Dist.,2006.

Court of Appeal, Sixth District, California.
SAN LORENZO VALLEY COMMUNITY ADVOCATES FOR RESPONSIBLE EDUCATION, Plaintiff and Appellant,
v.
SAN LORENZO VALLEY UNIFIED SCHOOL DISTRICT, Defendant and Respondent.
No. H028147.

May 26, 2006.

Background: Education advocates association brought action to challenge school district's decision to close two elementary schools and to transfer students from those schools to district's other elementary schools. After bench trial, the Superior Court, Santa Cruz County, No. CV147109,Irwin Joseph, J., entered judgment for district. Association appealed.

Holdings: The Court of Appeal, McAdams, J., held that:
(1) district's closure decision constituted "project" under California Environmental Quality Act (CEQA);
(2) substantial evidence supported determination that district's decision was exempt from CEQA;
(3) district's use of proceeds from local school facilities bond did not violate bond law provision on ballot requirements;
(4) district's expenditures did not violate bond laws;
(5) substantial evidence did not show district violated California Public Records Act (CPRA);
(6) district did not violate community involvement statutes; and
(7) association was not entitled to attorney fees.

Affirmed.

West Headnotes

[1] Environmental Law 149E 582

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek580 Preliminary Assessment or Report
149Ek582 k. Necessity. Most Cited Cases
If a project is not exempt from California Environmental Quality Act (CEQA) requirements-either because it does not fall within an exempt category or because an exception makes the exemption unavailable-then the agency must conduct an initial study to choose between a negative declaration or an environmental impact report (EIR). West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15063.

[2] Environmental Law 149E 589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in General. Most Cited Cases

Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
California Environmental Quality Act (CEQA) excuses the preparation of an environmental impact report (EIR) and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR §§ 15063, 15070.

[3] Environmental Law 149E 690

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek690 k. Harmless Error. Most Cited Cases

Generally, an agency's failure to comply with the procedural requirements of the California Environmental Quality Act (CEQA) is prejudicial when the violation thwarts CEQA's goals by precluding informed decision-making and public participation. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[4] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases

Environmental Law 149E 692

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek692 k. Questions of Law and Fact. Most Cited Cases
Questions of interpretation or application of the requirements of the California Environmental Quality Act (CEQA) are matters of law subject to de novo review by the court. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[5] Environmental Law 149E 595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
School district's decision to close two elementary schools and to transfer students from those schools to district's other elementary schools constituted a "project" under the California Environmental Quality Act (CEQA); possibility of environmental effects from closure itself, although not high, could not be rejected, and transfer of students could change bus routes, alter traffic patterns, increase traffic congestion and parking problems, with attendant environmental effects. West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR § 15061.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 832 et seq.; 9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:186; Cal. Jur. 3d, Pollution and Conservation Laws, § 511 et seq.; Cal. Civil Practice (Thomson/West 2003) Environmental Law, § 8:7.

[6] Environmental Law 149E 587

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek587 k. Major Government Action. Most Cited Cases
To maximize environmental protection, the concept of a "project" subject to the California Environmental Quality Act (CEQA) is broadly defined. West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR §§ 15002, 15378.

[7] Environmental Law 149E 692

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek692 k. Questions of Law and Fact. Most Cited Cases
Where the facts in the record are undisputed, the court decides as a matter of law whether the challenged activity falls within the definition of a "project" under the California Environmental Quality Act (CEQA). West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR §§ 15002, 15378.

[8] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Each class of categorical exemptions from California Environmental Quality Act (CEQA) embodies a finding by the State Resources Agency that the project will not have a significant environmental impact. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[9] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Under California Environmental Quality Act (CEQA) guideline providing that categorical exemptions shall not be used for activity where there is reasonable possibility that activity will have significant effect on environment due to unusual circumstances, term "unusual circumstances" refers to feature of project that distinguishes it from others in exempt class. 14 CCR § 15300.2(c).

[10] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
The scope of an exemption from California Environmental Quality Act (CEQA) may be analyzed as a question of statutory interpretation and thus subject to independent review. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[11] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
Substantial evidence test governs judicial review of agency's factual determination that a project falls within a categorical exemption from California Environmental Quality Act (CEQA). West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[12] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Because California Environmental Quality Act (CEQA) exemptions operate as exceptions to CEQA, they are narrowly construed. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[13] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
If a procedural violation of California Environmental Quality Act (CEQA) is shown, the substantial evidence prong of the statutory standard of judicial review does not come into play. West's Ann.Cal.Pub.Res.Code § 21168.5.

[14] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
In granting an exemption from California Environmental Quality Act (CEQA), the agency must proceed in the manner prescribed by law, i.e., CEQA statutes, CEQA Guidelines, and judicial gloss on both, lest it be charged with abusing its discretion. West's Ann.Cal.Pub.Res.Code §§ 21080, 21168.5; 14 CCR §§ 15061, 15301-15333.

[15] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other

Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
In determining whether a project is exempt from California Environmental Quality Act (CEQA), the agency should proceed with considered awareness of purposes and policy that underlie CEQA, and should not undertake mechanical application of exemption criteria in reaching its decision. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[16] Environmental Law 149E ⚿610

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek610 k. Time Requirements. Most Cited Cases
In California Environmental Quality Act (CEQA) cases where a negative declaration or an environmental impact report (EIR) is necessary, environmental issues must be considered and resolved before a project is approved, but preliminary determinations of applicability of CEQA are not formalized until after project has been approved. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15062.

[17] Environmental Law 149E ⚿594

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek594 k. Negative Declaration; Statement of Reasons. Most Cited Cases
While California Environmental Quality Act (CEQA) guideline expressly requires that agency render a written determination whether project requires environmental impact report (EIR), there is no requirement that agency put its decision that project is exempt from CEQA in writing. 14 CCR § 15362.

[18] Environmental Law 149E ⚿596

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek596 k. Proceedings. Most Cited Cases
Although California Environmental Quality Act (CEQA) provides for public comment on a negative declaration and an environmental impact report (EIR), CEQA does not provide for a public comment period before an agency decides a project is exempt. West's Ann.Cal.Pub.Res.Code § 21092.

[19] Environmental Law 149E ⚿592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Where a project is categorically exempt from California Environmental Quality Act (CEQA), it is not subject to CEQA requirements and may be implemented without any CEQA compliance whatsoever. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[20] Environmental Law 149E ⚿595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
Substantial evidence contained in school closure committee's report supported determination that school district's decision to close two elementary schools and to transfer students from those schools to district's other elementary schools was categorically exempt from California Environmental Quality Act (CEQA); additional student populations and additional classrooms in receptor schools fell within CEQA exemption guideline, and evidence did not support applicability of exception to exemption for project's potential for significant adverse environmental impacts from mold, geologic hazards, septic failure, or traffic-related issues. West's Ann.Cal.Pub.Res.Code § 21080.18; 14 CCR §§ 15061, 15314.

[21] Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
There must be substantial evidence, such as that found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold, that the project is within category exemption from California Environmental Quality Act (CEQA). West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[22] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
When called upon to review an agency's decision that a project is exempt from California Environmental Quality Act (CEQA), the court's task is to determine whether, as a matter of law, the activity meets the definition of a categorically exempt project; to do this, court applies de novo standard of review, not substantial evidence standard. West's Ann.Cal.Pub.Res.Code §§ 21080, 21168.5; 14 CCR § 15061.

[23] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
For California Environmental Quality Act (CEQA) exemption for transfer of students from one public school to another public school where the addition does not increase original student capacity by more than 25 percent or 10 classrooms, "student capacity" means the number of students that can be accommodated physically at the receptor school. West's Ann.Cal.Pub.Res.Code § 21080.18; 14 CCR § 15314.

[24] Environmental Law 149E 614

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek614 k. Presumptions, Inferences, and Burden of Proof. Most Cited Cases

Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
At the administrative level, once an agency determines, based on substantial evidence in the record, that the project falls within a categorical exemption from California Environmental Quality Act (CEQA), the burden shifts to the challenging party to produce substantial evidence that one of the exceptions to categorical exemption applies. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15300.2(c), 15301-15333.

[25] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
A party challenging an agency's decision that a project is exempt from California Environmental Quality Act (CEQA) must produce substantial evidence that the project has the potential for a substantial adverse environmental impact. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15300.2(c), 15301-15333.

[26] Schools 345 97(1)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds

345k97(1) k. Authority to Issue Bonds in General. Most Cited Cases
Generally, school bond financing is restricted to projects of a capital or permanent character. West's Ann.Cal. Const. Art. 13A, § 1(b)(3); Art. 16, § 18(b); West's Ann.Cal.Educ.Code § 15146(b).

[27] Schools 345 ⚿97(4)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(4) k. Submission of Question of Issue to Popular Vote. Most Cited Cases
Elements that made up relationship between school district and electorate arising from school bond measure were authorizing legislation, district's formal resolution to submit issue to the electorate, the ballot proposition itself, and assent or ratification by the electors. West's Ann.Cal.Educ.Code §§ 15100, 15122.

[28] Schools 345 ⚿97(5)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by School District. Most Cited Cases
In determining whether school district violated bond law by using proceeds from local school facilities bond issue approved by local voters for closing two elementary schools and transferring students from those schools to district's other elementary schools, ballot arguments on bond measure were not part of analysis. West's Ann.Cal.Educ.Code § 15100.

[29] Schools 345 ⚿97(4)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(4) k. Submission of Question of Issue to Popular Vote. Most Cited Cases
School district's expenditures of proceeds from local school facilities bond issue approved by local voters did not violate statute providing that ballot for project funded by bonds requiring state matching funds must contain statement that project was subject to state approval, even though purpose of measure was to make district eligible to receive state matching funds; neither measure nor any other evidence suggested bond-financed projects required state matching funds. West's Ann.Cal.Educ.Code § 15122.5.

[30] Schools 345 ⚿90

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k90 k. Power to Incur Indebtedness and Expenditures. Most Cited Cases
Permissible administrative costs under school bond measure approved by voters included salaries and associated training costs of school district personnel acting as construction project administrators for project to close two elementary schools and to transfer students from those schools to district's other elementary schools. West's Ann.Cal. Const. Art. 13A, § 1(b)(3)(A); West's Ann.Cal.Educ.Code § 15100; West's Ann.Cal.Gov.Code § 16727.

[31] Schools 345 ⚿97(5)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by School District. Most Cited Cases
School district's use of bond funds for printing expenses and attorney fees incurred in preparing the bond did not violate statutes on permitted use of proceeds of sale of bonds. West's Ann.Cal.Educ.Code § 15145; West's Ann.Cal.Gov.Code § 16727.

[32] Schools 345 ⚿97(5)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by School District. Most Cited Cases
School district's use of bond funds for deferred maintenance and repair of septic tank on certain campus did not violate state bond laws, in absence of

showing that district paid for current maintenance with deferred maintenance bond funds, or showing that district may improper transfers within its accounts. West's Ann.Cal. Const. Art. 13D, § 2; West's Ann.Cal.Educ.Code §§ 15100, 17582.

[33] Schools 345 ⚿97(5)

345 Schools
345II Public Schools
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by School District. Most Cited Cases
School district's use of bond funds for demographic and geo-coding studies, consultants, mold reports, California Environmental Quality Act (CEQA) study, and moving and leasing of portable classrooms, in connection with decision to close two elementary schools and to transfer students to district's other elementary schools, did not violate bond statutes. West's Ann.Cal.Educ.Code §§ 17357, 17404; West's Ann.Cal.Gov.Code § 16727; West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[34] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
California Public Records Act (CPRA) was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. West's Ann.Cal.Gov.Code § 6250 et seq.

[35] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
California Public Records Act (CPRA) embodies a strong policy in favor of disclosure of public records. West's Ann.Cal.Gov.Code § 6250 et seq.

[36] Records 326 ⚿52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases

Records 326 ⚿54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Unless exempted by the California Public Records Act (CPRA), all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity. West's Ann.Cal.Gov.Code §§ 6254, 6255.

[37] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
An order of the trial court under the California Public Records Act (CPRA), which either directs disclosure of records by a public official or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ. West's Ann.Cal.Gov.Code §§ 6258, 6259.

[38] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure

326k63 k. Judicial Enforcement in General. Most Cited Cases
Standard for appellate review of an order under the California Public Records Act (CPRA) is an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence. West's Ann.Cal.Gov.Code §§ 6258, 6259.

[39] Counties 104 ⚿52

104 Counties
104II Government
104II(C) County Board
104k52 k. Meetings. Most Cited Cases

Municipal Corporations 268 ⚿92

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(A) Meetings, Rules, and Proceedings in General
268k92 k. Rules of Procedure and Conduct of Business. Most Cited Cases

Schools 345 ⚿57

345 Schools
345II Public Schools
345II(C) Government, Officers, and District Meetings
345k51 District Boards
345k57 k. Meetings. Most Cited Cases
Ralph M. Brown Open Meeting Act provides for open meetings for local legislative bodies such as city councils, boards of supervisors, and school boards. West's Ann.Cal.Gov.Code § 54950 et seq.

[40] Administrative Law and Procedure 15A ⚿124

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak124 k. Meetings in General. Most Cited Cases
A major objective of the Ralph M. Brown Open Meeting Act is to facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic process by secret legislation by public bodies. West's Ann.Cal.Gov.Code § 54950.

[41] Administrative Law and Procedure 15A ⚿816

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(F) Determination
15Ak816 k. Annulment, Vacation or Setting Aside of Administrative Decision. Most Cited Cases
Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Ralph M. Brown Open Meeting Act violations will not necessarily invalidate a decision, in the absence of a showing of prejudice. West's Ann.Cal.Gov.Code § 54950 et seq.

[42] Records 326 ⚿62

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k62 k. In General; Request and Compliance. Most Cited Cases
Substantial evidence did not show school district violated California Public Records Act (CPRA) concerning requests for records connected to district's decision to close two elementary schools and to transfer students to district's other elementary schools; evidence showed only that district personnel were unaware of e-mails requesting documents, requesting attorney's failure to specify certain files, and district superintendent's testimony that she had never seen requested geologic report but that it "likely" was in certain location. West's Ann.Cal.Gov.Code § 6250 et seq.

[43] Records 326 ⚿65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure

326k65 k. Evidence and Burden of Proof. Most Cited Cases
In hearing to determine whether school district violated California Public Records Act (CPRA) by failing to provide education advocates association with records concerning decision to close two schools, testimony of individual resident who also alleged CPRA violations was irrelevant, where resident did not purport to act as member of association, and his testimony did not address any collateral matter. West's Ann.Cal.Gov.Code § 6258.

[44] Appeal and Error 30 ⚿970(2)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
Generally, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence.

[45] Appeal and Error 30 ⚿970(2)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
An appellate court examines for abuse of discretion a decision on admissibility that turns on the relevance of the evidence in question.

[46] Witnesses 410 ⚿319

410 Witnesses
410IV Credibility and Impeachment
410IV(A) In General
410k319 k. Right to Impeach Witness in General. Most Cited Cases
Though not directly germane, a matter collateral to an issue in the action may nevertheless be relevant to the credibility of a witness who presents evidence on an issue, but the admissibility of such collateral matter lies within the trial court's discretion. West's Ann.Cal.Evid.Code § 210.

[47] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
(Formerly 118Ak300)
California Public Records Act (CPRA) provision authorizing plaintiff to enforce his or her right to inspect or to receive a copy of any public record contemplates a declaratory relief proceeding commenced only by the individual or entity seeking disclosure of public records. West's Ann.Cal.Gov.Code § 6258.

[48] Schools 345 ⚿74

345 Schools
345II Public Schools
345II(D) District Property
345k66 School Buildings
345k74 k. Sale or Other Disposition. Most Cited Cases
School district's superintendent's school closure committee, appointed prior to decision to close two elementary schools in district, did not violate community involvement statutes; statutes did not dictate what information must be provided to advisory committees, district made good faith attempt to provide committee with information that was complete and accurate, and no prejudice was demonstrated from absence of any pertinent reports. West's Ann.Cal.Educ.Code §§ 17387-17391.

[49] Appeal and Error 30 ⚿970(2)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
A trial court's exercise of discretion in admitting or excluding evidence will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. West's Ann.Cal.Evid.Code §§ 353, 354.

[50] Trial 388 ⚿55

388 Trial
388IV Reception of Evidence
388IV(A) Introduction, Offer, and Admission of Evidence in General
388k55 k. Exclusion of Improper Evidence. Most Cited Cases

Trial 388 ⚿105(1)

388 Trial
388IV Reception of Evidence
388IV(C) Objections, Motions to Strike Out, and Exceptions
388k105 Effect of Failure to Object or Except
388k105(1) k. In General. Most Cited Cases
Where questions are asked which are improper, the court acts within the scope of its duty in refusing to allow them to be answered, even though no objection is made.

[51] Evidence 157 ⚿505

157 Evidence
157XII Opinion Evidence
157XII(B) Subjects of Expert Testimony
157k505 k. Matters of Opinion or Facts. Most Cited Cases
In bench trial of association's challenge to school district's use of bond funds, testimony of district's bond counsel about propriety of bond expenditures was admissible, where testimony was his percipient testimony rather that his conclusions of law.

[52] Costs 102 ⚿194.42

102 Costs
102VIII Attorney Fees
102k194.42 k. Public Interest and Substantial Benefit Doctrine; Private Attorney General. Most Cited Cases
Education advocates association, that unsuccessfully appealed adverse judgment in its action to challenge school district's decision to close two elementary schools and to transfer students from those schools to district's other elementary schools, was not prevailing party entitled to attorney fees under private attorney general doctrine. West's Ann.Cal.C.C.P. § 1021.5.

[53] Records 326 ⚿68

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and Fees. Most Cited Cases
Plaintiff prevails within meaning of California Public Records Act (CPRA) fee provision when he or she files action which results in defendant releasing copy of previously withheld document; conversely, plaintiff has not prevailed where substantial evidence supported finding that litigation did not cause agency to disclose any of documents ultimately made available. West's Ann.Cal.Gov.Code § 6259.

****135** Dawson, Passafuime, Bowden & Martinez, Gerald Bowden, Kathleen Morgan-Martinez, Scotts Valley, for Appellant.
Burton, Volkmann & Schmal, Timothy R. Volkmann, Santa Cruz, John P. Loringer, for Respondents.
McADAMS, J.
***1368** This action arises out of a decision by the defendant school district to close two elementary schools in the San Lorenzo Valley area of Santa Cruz County. Plaintiff seeks to overturn the closure decision, alleging that it violates various state laws, including the California Environmental Quality Act, the Public Records Act, the Brown Act, provisions of the Education Code, and school bond financing laws. The trial court rejected all of the plaintiff's contentions. We shall affirm.

BACKGROUND

This suit was brought by plaintiff and appellant San Lorenzo Valley Community Advocates for Responsible Education, an unincorporated association (SLV CARE). SLV CARE challenges a school closure decision made by defendant and respondent San Lorenzo Valley Unified School District (the District). At issue is the District's April 2003 decision to close two of its elementary schools and to transfer students from those schools to the District's other two elementary school campuses.

Plaintiff SLV CARE challenges that decision on various legal grounds.

Factual Summary

The District made the challenged decision in response to declining enrollment and fiscal difficulties. The initial decision to close one or more schools was approved by District's Board of Trustees (Board) in December 2002. From December 2002 to June 2003, the District entertained public comment on the issue at its regular and special board meetings.

January 2003-March 2003: First Advisory Committee

The District also convened a task force-called the Superintendent's School Closure Committee (SSCC)-to consider the school closure question *1369 and make a recommendation to the Board. The SSCC was composed of 17 people representing all of the affected schools; task force **136 members included seven parents, four teachers, four classified employees, and two community members.

Between mid-January and mid-March 2003, the SSCC met formally eight times; ad hoc subcommittees also met separately. In mid-March 2003, after considering an extensive body of information about the schools, the SSCC recommended the closure of Redwood and Quail Hollow Elementary Schools. To consolidate student populations at the north end of the San Lorenzo Valley, in Boulder Creek, Redwood students would be transferred to Boulder Creek Elementary School (BCE). At the south end of the valley, in Felton, Quail Hollow students would be transferred to San Lorenzo Elementary School (SLE).

April 2003: Closure Decision

At a public meeting held on April 8, 2003, the District's Board considered and ultimately adopted the recommendation of the SSCC. Thus, as to the north valley elementary schools, the Board voted to close Redwood, and keep BCE open. As for the south valley, the Board voted to close Quail Hollow and keep SLE open.

In May 2003, a community group proposed private fundraising to keep Redwood Elementary School open for the upcoming school year. The Board rejected that proposal the following month.

June 2003-October 2003: Requests for Public Records

Starting in June 2003, various written requests for public records relating to the closure decision were made by attorney Steven A. Greenburg, acting as counsel for plaintiff SLV CARE.

In July 2003, the District forwarded more than 400 pages of records to Greenburg. The following month, acting through its counsel, the District provided Greenburg with additional documents. After October 2003, document requests were addressed through formal discovery.

An additional request for documents was e-mailed to the District by San Lorenzo Valley resident David Churchill, with a copy to attorney Greenburg. The principal subject of Churchill's request was the District's use of money from Measure S, a multimillion-dollar school facilities bond issue that had been approved by local voters in 2000.

***1370June 2003-October 2003: Consideration of Environmental Impacts**

In early August 2003, in response to public concerns-and notwithstanding its receipt of earlier legal advice that the school closure decision was exempt under the California Environmental Quality Act (CEQA)-the District retained consultants to evaluate possible environmental impacts, including traffic. The District retained environmental consultant Stephen Graves & Associates (Graves). The District also hired traffic consultant Keith Higgins & Associates (Higgins).

Graves, the environmental consultant, confirmed that the school consolidation decision was exempt from CEQA. On August 19, 2003, the District formally approved the filing of a notice of exemption from CEQA. Despite the exemption, the District authorized Graves to prepare an initial study of environmental effects. The initial study concluded that the school closures and transfers would not create any significant environmental impacts, and that potential traffic impacts, though insignificant,

could be minimized with recommended project conditions. After public comment and response, Graves stood by the conclusions in the initial study.

As for traffic, by June 2003, the Public Works Department of Santa Cruz County **137 had advised the Board of Supervisors of the need for an ordinance to reroute traffic in the San Lorenzo Valley following the school closure decision. The initial study by environmental consultant Graves incorporated a report by traffic consultant Higgins. That report identified anticipated traffic and parking problems resulting from the school consolidations. Nevertheless, the traffic report concluded, mitigation measures were not mandatory because those impacts would not exceed historic levels. With respect to BCE, however, the report noted that the District was "planning on implementing several strategies to improve traffic and parking operations" as described in the report. The District implemented those strategies.

By October 2003, having considered the issues, the District was prepared to approve the adoption of a negative declaration, thus confirming the absence of significant environmental impacts. No environmental impact report was prepared.

Fall 2003: Second Advisory Committee

In August 2003, the District's Board voted to convene a Surplus Property Advisory Committee (SPAC). At the same time, it approved an application form for membership on the committee. In October 2003, the District's Board approved the proposed roster of SPAC members. The Board meeting minutes of November 4, 2003, state: "The Board has declared the District Office and *1371 Redwood Elementary School surplus property as a result of the Board decision to close Redwood Elementary and Quail Hollow Elementary Schools and move the District Office from the Felton site to Quail Hollow." Those minutes further state that the purpose of the public hearing on the SPAC was "to provide input to the committee for the purpose of determining acceptable uses of these properties." The SPAC met three times, from late October to mid-November 2003. In December 2003, the SPAC presented its recommendations for Redwood Elementary and the District Office, which included commercial, community, and educational uses.

Procedural History

Plaintiff SLV CARE brought this action, challenging the District's closure decision. As amended in August 2004, the complaint states five causes of action, all asserting statutory violations by the District. The first cause of action is for breach of statutory duties arising out of school bond financing laws. The second cause of action alleges CEQA violations. The third cause of action asserts breach of Education Code mandates for community input on certain decisions. The final two causes of action allege violation of the California Public Records Act, which requires disclosure of public records, and of the Brown Act, which compels open public meetings.

The court conducted a six-day bench trial, which started on August 30, 2004, and concluded on September 8, 2004. At the close of evidence and argument, the court took the matter under submission. It issued a statement of decision on September 13, 2004, finding for the District on all claims.

In November 2004, the court entered judgment for the District. This appeal by SLV CARE followed.

CONTENTIONS

On appeal, SLV CARE renews its trial court claims that the District violated CEQA, bond financing laws, the Public Records Act, the Brown Act, and the Education Code. In addition, SLV CARE asserts that the trial court made certain **138 erroneous evidentiary rulings and that it demonstrated bias. Appellant SLV CARE also seeks an award of attorney fees and costs. The District opposes all of appellant's arguments.

DISCUSSION

We consider each issue in turn, beginning with the claims of statutory violation.

I. CEQA*1372

SLV CARE asserts that the District violated CEQA. To establish the proper framework for assessing that contention, we begin by summarizing the governing

legal principles.

A. General Principles

The California Environmental Quality Act is codified at Division 13 of the Public Resources Code, beginning with section 21000.[FN1] As an aid to carrying out the statute, the State Resources Agency has issued a set of regulations, called Guidelines for the California Environmental Quality Act (Guidelines).[FN2]

FN1. In this section of the opinion (I), which discusses CEQA, further unspecified statutory references are to the Public Resources Code.

FN2. The Guidelines are contained in the California Code of Regulations, Title 14, Division 6, Chapter 3, starting at section 15000. Further unspecified guideline references are to those regulations.

CEQA embodies our state's policy that "the long-term protection of the environment ... shall be the guiding criterion in public decisions."(§ 21001, subd. (d). See *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112, 62 Cal.Rptr.2d 612.) As this court has observed, "the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117, 104 Cal.Rptr.2d 326.) Together, the statute and accompanying regulatory guidelines protect a variety of environmental values. Human health is among them. (See Guidelines, § 15065, subd. (a)(4).)

1. The Three-Step CEQA Process

Consistent with California's strong environmental policy, whenever the approval of a project is at issue, the statute and regulations "have established a three-tiered process to ensure that public agencies inform their decisions with environmental considerations." (*Davidon Homes v. City of San Jose, supra,* 54 Cal.App.4th at p. 112, 62 Cal.Rptr.2d 612. See also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1371, 43 Cal.Rptr.2d 170.)

a. Threshold Determination of CEQA's Applicability

"The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity. (Guidelines, §§ 15060, 15061.)" (*Davidon Homes v. City of *1373 San Jose, supra,* 54 Cal.App.4th at p. 112, 62 Cal.Rptr.2d 612.) CEQA applies if the activity is a "project" under the statutory definition, unless the project is exempt. (See §§ 21065, 21080.) "If the agency finds the project is exempt from CEQA under any of the stated exemptions, no further environmental review is necessary." (*Davidon Homes,* p. 113, 62 Cal.Rptr.2d 612.) In such cases, the agency may file a notice of CEQA exemption, if it chooses to do so. (Guidelines, § 15062, subd. (a); see *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) **139 90 Cal.App.4th 1162, 1171, 109 Cal.Rptr.2d 504.)

[1] If the project is not exempt-either because it does not fall within an exempt category or because an exception makes the exemption unavailable-then the agency must proceed to the second tier and conduct an initial study. (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 792, 124 Cal.Rptr.2d 731; see Guidelines, § 15063.)

b. Initial Study

The second tier of the process, the initial study, serves several purposes. One purpose is to inform the choice between a negative declaration and an environmental impact report (EIR). (Guidelines, § 15063, subd. (c)(1); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1180, 31 Cal.Rptr.3d 901.) Another of the initial study's purposes is to eliminate unnecessary environmental impact reports. (Guidelines, § 15063, subd. (c)(7).)

[2] "CEQA excuses the preparation of an EIR and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment." (*San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 389-390, 83 Cal.Rptr.2d 836,

citing Guidelines, § 15070. See also Pub. Resources Code, §§ 21064, 21080, subd. (c).) In certain situations where a straightforward negative declaration is not appropriate, the agency may permit the use of a mitigated negative declaration. (See § 21064.5; Guidelines, § 15064, subd. (f)(2); *San Bernardino Valley Audubon Society,* at p. 390, 83 Cal.Rptr.2d 836.)

c. Environmental Impact Report

If the project does not qualify for a negative declaration, "the third step in the process is to prepare a full environmental impact report...."(*Davidon Homes v. City of San Jose, supra,* 54 Cal.App.4th at p. 113, 62 Cal.Rptr.2d 612, citing §§ 21100 and 21151, and Guidelines, §§ 15063, subd. (b)(1) & 15080; *Gentry v. City of Murrieta, supra,* 36 Cal.App.4th at p. 1372, 43 Cal.Rptr.2d 170.)

The California Supreme Court has "repeatedly recognized that the EIR is the 'heart of CEQA.' "(*Laurel Heights Improvement Assn. v. Regents* *1374 *of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal.Rptr.2d 231, 864 P.2d 502(*Laurel Heights II*).) As the court observed more than three decades ago, "since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 118 Cal.Rptr. 34, 529 P.2d 66, criticized on another point in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) Other cases have since confirmed the statutory preference for resolving doubts in favor of an EIR. (See, e.g., *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703, 7 Cal.Rptr.3d 868; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905, 60 Cal.Rptr.2d 821.)

2. Timing

"Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations**140 should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (Guidelines, § 15004, subd. (b). See also, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395, 253 Cal.Rptr. 426, 764 P.2d 278.) As a general rule, "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance." (Guidelines, § 15004, subd. (b)(2).)

When a project is exempt, however, a somewhat different timing rule applies. "When a public agency decides that a project is exempt from CEQA ..., the agency may file a notice of exemption. The notice shall be filed, if at all, *after* approval of the project." (Guidelines, § 15062, subd. (a), italics added.) "A notice of exemption may be filled out and may accompany the project application through the approval process" but it "shall not be filed ... until the project has been approved." (*Id.,* subd. (b). See also Guidelines, § 15061, subd. (d).)

3. Judicial Review

At issue here are CEQA challenges to a quasi-legislative action taken by the District, in a procedural setting where no administrative hearing was required. (See *No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 74, *1375 fn. 3, 118 Cal.Rptr. 34, 529 P.2d 66; *City of South Gate v. Los Angeles Unified School Dist.* (1986) 184 Cal.App.3d 1416, 1423-1424, 229 Cal.Rptr. 568(*South Gate*); *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 835-836, 171 Cal.Rptr. 753.) Judicial review of such challenges is governed by well-established rules.

a. Prejudicial Abuse of Discretion

[3] Where a party seeks judicial review of a quasi-legislative decision "on the grounds of noncompliance with [CEQA], the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."(§ 21168.5. See

also, e.g., *No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 88, 118 Cal.Rptr. 34, 529 P.2d 66; *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1182, 31 Cal.Rptr.3d 901.) Generally speaking, an agency's failure to comply with the procedural requirements of CEQA is prejudicial when the violation thwarts the Act's goals by precluding informed decision-making and public participation. (See, e.g., *Lighthouse Field Beach Rescue,* at pp. 1182, 1202, 31 Cal.Rptr.3d 901 [deficient initial study]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198, 22 Cal.Rptr.3d 203 [deficient EIR].)

"The determinations that an agency makes during a preliminary review are subject to judicial review under the abuse of discretion standard contained in section 21168.5." (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 636, 10 Cal.Rptr.3d 560; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 821, 17 Cal.Rptr.2d 766,disapproved on another point in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 576, fn. 6, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

****141***b. Independent Review*

[4] The foregoing review standard applies to case-specific issues of compliance with the law and sufficiency of the evidence. But "questions of interpretation or application of the requirements of CEQA are matters of law." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 118, 104 Cal.Rptr.2d 326. Accord, *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at p. 1207, 22 Cal.Rptr.3d 203.) Thus, for example, interpreting the scope of a CEQA exemption presents "a question of law, subject to de novo review by this court." (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251, 89 Cal.Rptr.2d 233. Accord, *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731; see also, e.g., *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192, 61 Cal.Rptr.2d 447.)

***1376B. Application**

Addressing the first tier of the analysis, we consider whether CEQA applies to the school consolidation decision at issue here. That inquiry involves two threshold questions: Is this a project under CEQA? If so, is it exempt?

1. The District's School Closure Decision Is a Project Under CEQA.

[5] At the threshold, for CEQA to apply, the activity or decision at issue must constitute a "project" under the statute. CEQA applies only to "discretionary *projects* proposed to be carried out or approved by public agencies ...." (§ 21080, subd. (a), italics added.) "If there was no 'project,' there was no occasion to prepare either a negative declaration or an EIR."(*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 663, 124 Cal.Rptr. 635. Accord, *Prentiss v. Board of Education* (1980) 111 Cal.App.3d 847, 852, 169 Cal.Rptr. 5(*Prentiss*), questioned on another point in *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 796, 187 Cal.Rptr. 398, 654 P.2d 168, fn. 16 (*Fullerton*).)

a. Definition

"A 'project' is an activity subject to CEQA."(Guidelines, § 15002, subd. (d).) As relevant here, "project" means activity by a public agency that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment ...." (Pub. Resources Code, § 21065, subd. (a).) [FN3] "The word 'may' in this context connotes a reasonable possibility." (*Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 753, 272 Cal.Rptr. 83.) " 'Environment' means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance."(§ 21060.5.)

> FN3. Section 21065 provides in full as follows: " 'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: [¶] (a) An activity directly undertaken by any public

> agency. [¶] (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. [¶] (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

*1377 The statutory definition of a CEQA project "is amplified in the Guidelines," **142 which clarify that a project means " '*the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a), italics added.)" (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 637, 10 Cal.Rptr.3d 560. See also, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.)

[6] To maximize environmental protection, the concept of a "project" is broadly defined under CEQA. (*Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.)

b. Judicial Determination

"Exactly what constitutes a project within the meaning of CEQA is a question which has been addressed by California courts on several occasions since the enactment of CEQA in 1970." (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 472, 11 Cal.Rptr.2d 792.)

As articulated in recent case authority, there is a two-pronged test for determining whether a public agency's action qualifies as a project under CEQA: The first consideration is "whether there has been an 'activity directly undertaken by any public agency.'(§ 21065, subd., (a).)" (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 639, 10 Cal.Rptr.3d 560.)"The second test for a 'project' is whether the activities have a 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a).)" (*Ibid.*)

[7] Where the facts in the record are undisputed, the court decides as a matter of law whether the challenged activity falls within CEQA's definition of a project. (*Fullerton, supra,* 32 Cal.3d at pp. 794-795, 187 Cal.Rptr. 398, 654 P.2d 168; *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 637, 10 Cal.Rptr.3d 560.)

c. School Closures and Student Transfers

Several published appellate cases have addressed the issue of CEQA's applicability to decisions involving school closures, the transfer of students between schools, or both.

In *Prentiss,* a case decided in 1980, the court held that a school closure decision was not a project under CEQA. (*Prentiss, supra,* 111 Cal.App.3d at *1378 p. 851, 169 Cal.Rptr. 5.) The *Prentiss* court reasoned that the school district's decision to close an elementary school was not "a necessary step in the development of property for a new and different use" and thus was not subject to CEQA. (*Id.* at p. 853, 169 Cal.Rptr. 5.) But the California Supreme Court has since questioned that holding in a plurality opinion. (See *Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168. But see *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918, 13 Cal.Rptr.2d 245, 838 P.2d 1198 [criticizing *Fullerton* on another point, and further noting that as a plurality opinion, it "lacks authority as precedent"].) As the plurality said in *Fullerton:* "The decision in *Prentiss* [ ], that the closure of a school is not a 'project' because the school board had not decided whether to put the land to a different use, is questionable. It may be unlikely that the closure of a single elementary **143 school would have a significant environmental impact apart from its effect on the use of the property-the school board in *Prentiss* filed a negative declaration-but the possibility cannot be rejected categorically." (*Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168.)

In a 1986 case, *South Gate,* the challenged action was the transfer of students from one campus to another,

though without a school closure. (*South Gate, supra,* 184 Cal.App.3d at pp. 1423-1424, 229 Cal.Rptr. 568.) At issue in *South Gate* was the school district's use of a pupil attendance boundary adjustment, a mechanism used to "distribute student population over the District so as to relieve school overcrowding." (*Id.* at p. 1420, 229 Cal.Rptr. 568.) In concluding that CEQA did not apply to the transfer, the *South Gate* court conflated the two threshold concepts-project and exemption. As the court put it: "The District's action creating the boundary adjustment is not a project requiring an EIR because it is exempt under CEQA guidelines...."(*Id.* at p. 1423, 229 Cal.Rptr. 568.)

A 1989 case, *East Peninsula,* involved the decision to close a high school and transfer its students to other campuses. (*East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 258 Cal.Rptr. 147(*East Peninsula*).) Again, both threshold issues were at issue: "whether the [school] closure [ ] and transfer of students is a project subject to CEQA" and "whether such action is statutorily exempt...."(*Id.* at p. 165, fn. 5, 258 Cal.Rptr. 147.)And again, the court conflated the two questions. In the court's view, the two issues involved "the same analysis" under the statutory language. (*Ibid.*) Furthermore, the court said: "In this case, for all practical purposes, the two concepts merge." (*Ibid.*) The court concluded that CEQA applied, that the school board used an "incorrect legal standard" in making the exemption determination, and that its failure to comply with CEQA was prejudicial. (*Id.* at p. 174, 258 Cal.Rptr. 147; cf., *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at p. 752, 272 Cal.Rptr. 83 [school district did not "consider the closure exempt from CEQA" but instead proceeded with a negative declaration]; *Fullerton, supra,* 32 Cal.3d at pp. 797, 798, 187 Cal.Rptr. 398, 654 P.2d 168 [school district's reconfiguration and secession plan was a project under CEQA; it "is an essential step leading **1379 to ultimate environmental impact" as it "necessarily entails building a new high school and other actions which may have an environmental effect"].)

d. Analysis

Although some courts have conflated the issues presented in the first tier of the CEQA analysis, we shall separately address the first question first: Is this a project?

To answer that question, we turn to the two-pronged test for defining a project under CEQA, described above. (See *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 639, 10 Cal.Rptr.3d 560.) As to the first prong, there is no dispute that the decision challenged in this case is an "activity directly undertaken by any public agency."(§ 21065, subd. (a).)

Our focus is on the second prong-"whether the activities have a 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a).)" (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 639, 10 ****144** Cal.Rptr.3d 560.) As noted above, "project" is defined broadly for these purposes. (*Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.) But "the broad definition of project is tempered by the requirement that CEQA applies only to those activities which 'may have a significant effect on the environment.' "(*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist., supra,* 9 Cal.App.4th at p. 471, 11 Cal.Rptr.2d 792.) Applying those principles to the case at hand, we conclude that the District's school closure decision constitutes a project for CEQA purposes.

The consequences of the decision challenged here can be broken down into two components: (1) the closure of two schools (Redwood and Quail Hollow); and (2) the transfer of students from those schools to the District's two other campuses (BCE and SLE).

Concerning the first component, as a plurality of our state's high court recognized in *Fullerton,* while it "may be unlikely that the closure of a single elementary school would have a significant environmental impact apart from its effect on the use of the property ... the possibility cannot be rejected categorically." (*Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168.)As the *Fullerton* opinion stated: "Implementation of the secession Plan in the present case involves the possibility of a significant impact. Secession will likely require the construction of a new high school

in Yorba Linda and may result in abandonment of some facilities in the remaining portion of the Fullerton HSD."(*Id.* at p. 794, 187 Cal.Rptr. 398, 654 P.2d 168, fn. omitted.)

*1380 As for the second component, transferring students may "change bus routes and schedules, and affect traffic patterns." (*Fullerton, supra,* 32 Cal.3d at p. 794, 187 Cal.Rptr. 398, 654 P.2d 168.) The transfer could increase traffic congestion and parking problems, with attendant environmental effects. (See, e.g., *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at pp. 755, 756, 272 Cal.Rptr. 83.) The transfer component also may pose some possibility of "increased physical harm to relocated [ ]students because of (1) the likelihood of a major earthquake ... and (2) altercations with students at schools receiving transferred [ ] pupils." (*Id.* at p. 757, 272 Cal.Rptr. 83 [stating party's contention].) Under the circumstances, at least at the threshold, the "possibility that the activity in question may have a significant effect on the environment" cannot be positively ruled out. (Cf., Guidelines § 15061, subd. (b)(3); *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist., supra,* 9 Cal.App.4th at p. 471, 11 Cal.Rptr.2d 792.)

In sum, both tests for defining a CEQA project are satisfied. We thus conclude that the school consolidation decision falls within the broad definition of a CEQA project. That conclusion finds further support in the very existence of a categorical exemption for school closures. As a matter of logic alone, if such closures were not CEQA projects, there would be no need for an exemption.

2. The Project Is Exempt.

Our conclusion that the challenged decision is a project brings us to the second part of the preliminary review analysis: Is the project exempt from CEQA? (See § 21080, subd. (a) [CEQA "shall apply to discretionary projects ... unless the project is exempt"]; Guidelines, § 15061, subd. (a) [once the "agency has determined that an activity is a project subject to CEQA," it "shall determine whether the project is exempt from CEQA"]; *Association for a Cleaner Environment v. Yosemite**145 Community College Dist., supra,* 116 Cal.App.4th at p. 640, 10 Cal.Rptr.3d 560 [exemption is the "second issue arising in connection with the preliminary review"].)

a. CEQA Exemptions: General Principles

CEQA does not apply to projects that are statutorily or categorically exempt. (Guideline § 15061, subd. (b).) The Legislature has specified a number of statutory CEQA exemptions. (See, e.g., § 21080, subd. (b)(1)-(15); § 21080.18; § 21084; see *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230-1231, 32 Cal.Rptr.2d 19, 876 P.2d 505.) The Legislature also has authorized the State Resources Agency to identify other categories of exemptions, which are contained in the Guidelines. (See *Sierra Club,* at pp. 1230-1231, 32 Cal.Rptr.2d 19, 876 P.2d 505.)As to these, CEQA does not apply where there is "a *1381 categorical exemption [in the Guidelines] and the application of that categorical exemption is not barred by one of the exceptions set forth in [Guidelines] Section 15300.2." (Guideline § 15061, subd. (b)(2).)

[8] The Guidelines contain 33 classes of categorical exemptions. (Guidelines, §§ 15301-15333.) Each class embodies a "finding by the Resources Agency that the project will not have a significant environmental impact." (*Davidon Homes v. City of San Jose, supra,* 54 Cal.App.4th at p. 116, 62 Cal.Rptr.2d 612. See also, *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 475, 129 Cal.Rptr.2d 344; Pub. Resources Code, § 21084, subd. (a).) In addition to the categorical exemptions, the Guidelines also incorporate a " 'common sense exemption,' " which " 'provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act.' "(*Davidon Homes,* at pp. 112-113, 62 Cal.Rptr.2d 612, citing Guidelines § 15061, subd. (b)(3), and quoting the accompanying discussion.)

[9] There are exceptions to the categorical exemptions. (See Guidelines § 15300.2.) Among other things, a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (*Id.,* subd. (c). See *East Peninsula, supra,* 210 Cal.App.3d at p. 164, 258 Cal.Rptr. 147.) This is sometimes called either the "significant effects" exception or the "unusual circumstances" exception. (See *City of Pasadena v. State of*

California, supra, 14 Cal.App.4th at p. 824, 17 Cal.Rptr.2d 766; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 795, 124 Cal.Rptr.2d 731.) "The Guidelines do not define the term 'unusual circumstances.' "(*City of Pasadena v. State of California, supra,* 14 Cal.App.4th at p. 826, 17 Cal.Rptr.2d 766.) As explicated in case law, an unusual circumstance refers to "some feature of the project that distinguishes it" from others in the exempt class. (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233.) In other words, "whether a circumstance is '*unusual* ' is judged relative to the *typical* circumstances related to an otherwise typically exempt project." (*Santa Monica Chamber of Commerce,* at p. 801, 124 Cal.Rptr.2d 731.)

b. Judicial Determination

[10][11] As noted above, the court reviews decisions made during an agency's preliminary review for a prejudicial abuse of discretion. (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 636, 10 Cal.Rptr.3d 560 [reviewing determination that there was no project].) ****146** When faced with a challenge to an agency's exemption determination, the court considers whether the agency proceeded in the manner required by law and whether its determination is supported by substantial evidence. (§ 21168.5; see, e.g., *East Peninsula, supra,* 210 Cal.App.3d at p. 165, 258 Cal.Rptr. 147 [holding that school district failed to proceed in manner required by law]; ***1382***Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 837, 171 Cal.Rptr. 753 [holding that "planning commission's grant of a categorical exemption" for reconstruction of existing structures was "supported by substantial evidence"].) The scope of an exemption may be analyzed as a question of statutory interpretation and thus subject to independent review. (See e.g., *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at pp. 1258-1259, 89 Cal.Rptr.2d 233 [interpreting the scope of a categorical exemption]; cf., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 795, 124 Cal.Rptr.2d 731 [same]; *Centinela Hospital Assn. v. City of Inglewood* (1990) 225 Cal.App.3d 1586, 1600, 275 Cal.Rptr. 901 [finding that the proposed facility was exempt as a matter of law].) But "the substantial evidence test governs our review of the [agency's] factual determination that a project falls within a categorical exemption." (*Fairbank,* at p. 1251, 89 Cal.Rptr.2d 233.)

[12] Because the exemptions operate as exceptions to CEQA, they are narrowly construed. (See, e.g., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 793, 124 Cal.Rptr.2d 731.) "Exemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

c. School Closure Exemption

At issue here is the categorical exemption applicable to public school closures. Pursuant to section 21080.18, CEQA "does not apply to the closing of any public school in which kindergarten or any of grades 1 through 12 is maintained or the transfer of students from that public school to another school if the only physical changes involved are categorically exempt under Chapter 3 (commencing with Section 15000)" of the Guidelines. Of the 33 classes of categorical exemptions set forth in the Guidelines, one applies to the situation presented here: "Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption." (Guidelines, § 15314.)

So far as we are aware, this particular exemption has been the subject of only one prior judicial decision, *East Peninsula.*[FN4] In that case, the defendant school board approved a high school closure and transfer of students. (*East Peninsula, supra,* 210 Cal.App.3d at pp. 161-162, 258 Cal.Rptr. 147.) The board made an ***1383** express determination that its decision was exempt from CEQA, under section 21080.18 and Guideline section 15314. (*Id.* at p. 162, 258 Cal.Rptr. 147.) But it did so without undertaking any environmental review. (*Id.* at pp. 172, 173, 258 Cal.Rptr. ****147** 147.) The trial court issued a peremptory writ of mandate, commanding the district to void its closure decision and to suspend all related activity "until the District has first analyzed the cumulative environmental effects of this and other

school closures and transfers in compliance with CEQA."(*Id.* at pp. 162-163, 258 Cal.Rptr. 147.) In the trial court's view, "the District did not properly evaluate whether its proposed action was exempt from CEQA, a step preliminary to a determination of whether an EIR is required." (*Id.* at p. 163, 258 Cal.Rptr. 147.)

> FN4. As to the other two school cases discussed above, neither reached the exemption issue. The *Prentiss* court held that the school closure decision was not a project under CEQA. (*Prentiss, supra,* 111 Cal.App.3d at p. 851, 169 Cal.Rptr. 5.) The *South Gate* case involved a transfer of students without a school closure. (*South Gate, supra,* 184 Cal.App.3d at pp. 1423-1424, 229 Cal.Rptr. 568.)

On appeal, the *East Peninsula* court addressed this question: Is the school closure categorical exemption subject to the exception for significant cumulative effects? (*East Peninsula, supra,* 210 Cal.App.3d at pp. 160, 164-165, 258 Cal.Rptr. 147.) Framing its analysis as a matter of statutory interpretation, the court answered the question in the affirmative. (*Id.* at p. 166, 258 Cal.Rptr. 147.) Thus, the court held, "the plain language of section 21080.18[ ] requires an agency to consider the issue of significant effects and cumulative impacts of a transfer of students from a closed school in determining whether the project is exempt from CEQA under that statute." (*Id.* at p. 173, 258 Cal.Rptr. 147.) As the court recognized, its "interpretation of section 21080.18 leads to a situation where the amount of analysis and study involved at the preliminary review stage of determination of whether a project is exempt from CEQA may be similar to that involved at the 'second' stage where the agency conducts an initial study to determine whether the project has a significant effect on the environment [citation]. However, such result is mandated by the statutory language and does not appear to be repugnant to legislative policy." (*Ibid.*) FN5

> FN5. As the court that decided *East Peninsula* later clarified, however, "we did not hold in *East Peninsula* an agency always must conduct an 'initial study' before declaring a project exempt from CEQA review. Such a holding would run counter to the three-tiered structure of CEQA review under which, if a project is categorically exempt 'no further agency evaluation is required' and no 'initial study' takes place." (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles, supra,* 90 Cal.App.4th at p. 1172, 109 Cal.Rptr.2d 504.)

Turning to the specific case before it, the *East Peninsula* court concluded that the school board "used an incorrect legal standard" in making its exemption determination because it failed to consider the cumulative environmental impacts of its decision. (*East Peninsula, supra,* 210 Cal.App.3d at p. 174, 258 Cal.Rptr. 147.) Furthermore, the court held, the board's "failure to comply with CEQA" was "prejudicial because meaningful information and analysis of cumulative effects and significant environmental effects not occurring at the receptor schools were omitted from the environmental review process." (*Id.* at p. 174, 258 Cal.Rptr. 147.)

*1384*d. Analysis*

[13] We analyze the District's preliminary determination that its decision is exempt from CEQA (1) for compliance with procedural requirements and (2) for evidentiary support. (§ 21168.5; *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 636, 10 Cal.Rptr.3d 560.) They are distinct issues: "if a procedural violation of CEQA is shown, the substantial evidence prong of the statutory standard of review does not come into play." (*Laurel Heights II, supra,* 6 Cal.4th at p. 1133, 26 Cal.Rptr.2d 231, 864 P.2d 502 [stating party's contention]; See *No Oil, Inc. v. City of Los Angeles, supra,* 13 **148 Cal.3d at pp. 74-75, 118 Cal.Rptr. 34, 529 P.2d 66; *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at p. 1208, 22 Cal.Rptr.3d 203; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945-946, 91 Cal.Rptr.2d 66.)

SLV CARE challenges the exemption on both grounds. On the first question-procedural compliance-the key issue is timing: the District made its closure decision in April 2003; it approved the filing of a notice of CEQA exemption more than four months later, in August 2003. SLV CARE asserts a procedural violation of CEQA because the District

failed to formally invoke the exemption in advance of its closure decision. As to the second question, SLV CARE challenges the evidentiary basis for the decision. We consider each point in turn.

Procedural compliance

[14][15] "In granting an exemption, the agency must proceed in the manner prescribed by law, lest it be charged with abusing its discretion." (*Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 842, 171 Cal.Rptr. 753.) "That law consists of CEQA statutes, the Guidelines, and the judicial gloss on both." (*Id.* at pp. 842-843, 171 Cal.Rptr. 753. Cf., *Kennedy v. City of Hayward* (1980) 105 Cal.App.3d 953, 962, 165 Cal.Rptr. 132 [in quasi-adjudicatory proceeding, due process principles apply].) Generally speaking, the agency should proceed with a "considered awareness of the purposes and policy" that underlie CEQA; it should not undertake "a mechanical application of the exemption criteria" in reaching its decision. (*Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 843, 171 Cal.Rptr. 753.)

Several legal principles are relevant to the issue of CEQA compliance, including requirements related to timing, documentation, and public comment. In applying these precepts, it is important to distinguish between an exemption determination such as the one made here, which is part of the agency's preliminary review, and a negative declaration or an EIR, which comes into play later in the CEQA analysis.

[16] As indicated above, the timing rules depend on which step of the CEQA process is involved. In cases involving the second and third tiers of *1385 CEQA analysis, where a negative declaration or an EIR is necessary, the law requires "that environmental issues be considered and resolved *before* a project is approved." (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 75, 118 Cal.Rptr. 34, 529 P.2d 66, italics added.) In such cases, courts condemn attempts at after-the-fact rationalizations. (*Id.* at p. 81, 118 Cal.Rptr. 34, 529 P.2d 66.) By contrast, determinations made as part of a preliminary, first-tier CEQA review are not formalized until after the project has been approved. Under the Guidelines, a notice of CEQA exemption "shall be filed, if at all, *after* approval of the project." (Guidelines, § 15062, subd. (a), italics added. See *County of Amador v. El Dorado County Water Agency, supra,* 76 Cal.App.4th at p. 962, 91 Cal.Rptr.2d 66 [notice of exemption was not valid, where it was filed before agency approved the project]; see also, e.g., *Magan v. County of Kings, supra,* 105 Cal.App.4th at pp. 470, 472, 129 Cal.Rptr.2d 344 [notice of exemption filed one day after action taken]; *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at pp. 1249, 1250, 89 Cal.Rptr.2d 233 [same].) Since the District's exemption determination was made as part of a preliminary, first-tier CEQA review, it was not untimely.

[17] As with timing rules, documentation requirements are different for first-tier assessments than for those undertaken**149 later in the CEQA process. When a negative declaration or an EIR is required, it must be in writing. "CEQA impliedly requires (and the guidelines expressly require) that the agency render a written determination whether a project requires an EIR before it gives final approval to that project." (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 75, 118 Cal.Rptr. 34, 529 P.2d 66 [post hoc negative declaration]. See Guidelines, § 15362 [defining "environmental documents"].) By contrast, there is no requirement that the agency put its exemption decision in writing. According to the Guidelines, "the agency *may* file a notice of exemption." (Guidelines, § 15062, subd. (a), italics added.) But it is not required to do so: "A notice of exemption has no significance other than to trigger the running of the limitations period." (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles, supra,* 90 Cal.App.4th at p. 1171, 109 Cal.Rptr.2d 504.) For that reason, "it is irrelevant" whether an exemption notice contains "all that it should under the CEQA guidelines." (*Id.* at p. 1171, fn. 23, 109 Cal.Rptr.2d 504.)

[18] There are other procedural differences between first-tier review and later CEQA evaluations, including the opportunity for public comment. "CEQA provides for public comment on a negative declaration and an EIR. (Pub. Resources Code, § 21092.) By contrast, CEQA does not provide for a public comment period before an agency decides a project is exempt." (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, supra,* 52 Cal.App.4th at p. 1210, 61 Cal.Rptr.2d 447.) "Similarly, where an agency approves a project and simultaneously decides that the project is exempt

from CEQA, there is no 'public hearing ... before the issuance of the notice of determination.' "(*Ibid.* See *City of Pasadena v. State of California, supra,* 14 Cal.App.4th at p. 821, 17 Cal.Rptr.2d 766 [agency "not required to hold a hearing prior to filing the notice of exemption"].)

[19] ***1386** Underlying these differences in procedural rules is a more fundamental concept: CEQA does not apply to exemption decisions. By definition, a "project falling within [ ] a categorical exemption is not subject to CEQA."(*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p. 124, 65 Cal.Rptr.2d 580, 939 P.2d 1280.) For that reason, compliance with the Act is not required. "Where a project is categorically exempt, it is not subject to CEQA requirements and 'may be implemented without any CEQA compliance whatsoever.' "(*Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 726, 3 Cal.Rptr.2d 488(*Ukiah*). Accord, *Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 475, 129 Cal.Rptr.2d 344.) "Once this determination of threshold exemption is made, ... none of the CEQA requirements or procedures apply." (*Kennedy v. City of Hayward, supra,* 105 Cal.App.3d at p. 962, 165 Cal.Rptr. 132.)

To sum up, CEQA has no application to exemption determinations made during an agency's preliminary review, such as the one at issue here. Since CEQA does not apply, compliance with its procedural requirements is not required. Applying that principle here, there is no basis for overturning the District's exemption determination based on claims that it failed to proceed in the manner required by law.

Substantial evidence

[20] That brings us to the question of whether the challenged categorical exemption is supported by substantial evidence in the administrative record. Our analysis of that question proceeds in two steps: first, we consider the factual predicate for the ****150** District's exemption determination; next, we examine evidence supporting the appellant's claim of exceptions to the exemption.

Exemption: The first step of the analysis concerns the exemption.

[21] At the administrative level, the agency determines whether the project qualifies for a statutory or categorical exemption from CEQA. (Guidelines, § 15061, subd. (a).) There must be "substantial evidence that the [activity is] within the exempt category of projects." (*Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 475, 129 Cal.Rptr.2d 344.) That evidence may be found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold. (See *Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 843, 171 Cal.Rptr. 753 [record of CEQA compliance included applicant's "detailed report" and information presented at five public hearings, "none of which were required by law"].)

[22] When called upon to review an agency's exemption decision, the court's task is to "determine whether, *as a matter of law,* the [activity meets] the definition of a categorically exempt project." (*Santa Monica Chamber of* ***1387** *Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731.) As to that question, "we apply a de novo standard of review, not a substantial evidence standard." (*Ibid.* See also, e.g., *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268 ["the substantiality of the evidence supporting [quasi-legislative] administrative decisions is a question of law"].) But in undertaking our independent analysis, we bear in mind the "highly deferential" review standard that applies to the agency's factual determinations. (*Western States Petroleum Assn.,* at p. 572, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) As our high court has said, "the factual bases of quasi-legislative administrative decisions are entitled to the same deference as the factual determinations of trial courts...."(*Id.* at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) That deference limits the *scope* of judicial review as well. Generally speaking, the court "may consider only the administrative record in determining whether a quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources Code section 21168.5." (*Ibid.,* fn. omitted.)

Turning to the case at hand, we begin by interpreting the exemption, starting with its plain language. In doing so, we keep in mind that CEQA is concerned only with physical changes to the environment. (Guidelines, § 15358, subd. (b); see, e.g., *City of*

Pasadena v. State of California, supra, 14 Cal.App.4th at p. 829, 17 Cal.Rptr.2d 766.) The interpretation of the exemption presents a question of law. (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1251, 89 Cal.Rptr.2d 233.)

By statute, CEQA "does not apply to the closing of [a] public school ... or the transfer of students from that public school to another school if the only physical changes involved are categorically exempt" under the Guidelines. (§ 21080.18.) From the Guidelines, the pertinent categorical exemption is Class 14, which covers "minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption." (Guidelines, § 15314.)

[23] The critical phrase here is *original student capacity*. (Guidelines, § 15314.) Because CEQA is concerned solely with physical changes to the environment,**151 "student capacity" must refer to the receptor school's physical space for housing students. (Cf., 2 Cal.Code of Regs. § 1859.35 ["existing school building capacity" is determined by multiplying number of classrooms times number of students]; compare, *East Peninsula, supra,* 210 Cal.App.3d at p. 175, 258 Cal.Rptr. 147 [in dicta, equating receptor school's original student capacity with "previous enrollment"].) We therefore interpret "student capacity" to mean the number of students that can be accommodated physically at the receptor school. That interpretation is bolstered by the juxtaposition of the term "original student *1388 capacity" with the portion of the guideline specifying the maximum number of classrooms. The exemption is available where the addition to the school "does not increase original student capacity by more than 25% *or* ten classrooms, *whichever is less.*" (Guidelines, § 15314, italics added.) By this juxtaposition, the guideline equates student capacity and number of classrooms. That comparison makes no sense unless "student capacity" refers to physical space for housing students. As for the modifier ("original"), we take that to mean the receptor school's capacity as it exists prior to any structural additions to the campus resulting from the project.

To sum up our legal interpretation of the pertinent exemption: A school closure and accompanying transfer of students is exempt from CEQA so long as any resulting physical changes are categorically exempt. (§ 21080.18.) Minor additions to the receptor school are categorically exempt. (Guidelines, § 15314.) A minor addition is defined as the lesser of: (1) the addition of 10 or fewer classrooms; or (2) an increase in original student capacity of 25 percent or less. (*Ibid.*) In this context, original student capacity means the receptor school's preexisting physical ability to house students.

With that interpretation in mind, we next examine the evidence supporting the District's exemption determination. As explained above, the substantiality of that evidence presents a question of law for our independent review. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731.)

To a large extent, the relevant evidence is contained in the March 2003 report of the SSCC task force, which made the closure recommendations. That report contains data about the four individual elementary schools, including their capacity, their student populations, and the number of additional portable classrooms that would be required at each campus for it to operate as a receptor school.

As for the north valley schools, BCE's "current capacity" was listed at 675. BCE's student population then stood at 403; adding Redwood's 288 students would bring the total to 691 pupils at the consolidated campus.[FN6] The transfer of Redwood students to BCE thus represented an increase in BCE's original student capacity amounting to less than 2.4 percent-far below the 25 percent ceiling spelled out in the Class 14 guideline. (Guidelines, *1389 § 15314.) In terms of classrooms, BCE would need one additional portable to **152 accommodate consolidation, plus replacements for two others in poor condition. That number likewise falls far below the ceiling of 10 additional classrooms in the guideline. (*Ibid.*)

FN6. The initial study, which was later prepared by the environmental consultant, reflects slightly different student population numbers than the SSCC reported. The initial study indicates that BCE would gain 249

> students, bringing its total enrollment to 649, while SLE would add 350 pupils, for a total enrollment of 718 students. These differences do not affect the availability of the Class 14 categorical exemption.

In the south valley, SLE's indicated capacity was 700. With a student population of 338, plus the transfer of Quail Hollow's 397 students, SLE would end up with 735 pupils.[FN7] The consolidation of students at SLE thus resulted in an increase in its original student capacity of 5 percent-again, well below the 25 percent maximum set forth in the guideline. (*Ibid.*) As for classrooms, SLE would need three additional portables to accommodate consolidation, plus replacements for another three. That number likewise is below the guideline's ceiling of 10 additional classrooms. (*Ibid.*)

FN7. See footnote 6, *supra*.

As a matter of law, the foregoing constitutes substantial evidence supporting the District's determination that its closure decision qualifies for a Class 14 categorical exemption from CEQA. (Cf., e.g., *Fairbank v. City of Mill Valley, supra*, 75 Cal.App.4th at p. 1259, 89 Cal.Rptr.2d 233 [proposed "5,855-square-foot retail/office" qualifies for Class 3 exemption, which allows up 10,000 square feet in urban area].)

Exception: The second step in the analytic process addresses exceptions to the categorical exemption.

[24] At the administrative level, once an agency "determines, based on substantial evidence in the record, that the project falls within a categorical exemption ..., the burden shifts to the challenging party ... to ' "produce substantial evidence..." ' ... that one of the exceptions to categorical exemption applies." (*Santa Monica Chamber of Commerce v. City of Santa Monica, supra*, 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731, internal quotation marks and citation omitted.)

[25] The exceptions are contained in Guidelines section 15300.2. As relevant here, that section provides: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Guidelines, § 15300.2, subd. (c).) Thus, a "party challenging an agency's exemption decision must produce substantial evidence that the project has the potential for a substantial adverse environmental impact." (*Ukiah, supra*, 2 Cal.App.4th at p. 728, 3 Cal.Rptr.2d 488.)

In order to warrant application of the exception, the claimed environmental impact must satisfy certain substantive requirements. First, the ***1390** impact must constitute a *change* in environmental conditions. (Guidelines, § 15382.) "When reviewing the evidence, we will not consider evidence or arguments about the impact from the *existent* [ ] plant." (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 993, 63 Cal.Rptr.2d 244 [affirming negative declaration, where there was no evidence that the project would alter the existing effects]. See also, e.g., *Ukiah, supra*, 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488 [affirming exemption, where there was "no evidence that construction of the house would have any additional effect on runoff"].) Second, the impact must affect the *environment*. For that reason, "we must differentiate between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general." (*Ukiah, supra*, 2 Cal.App.4th at p. 734, 3 Cal.Rptr.2d 488.) For the exception to apply, there must be evidence that the project "would adversely affect the environment of ****153** persons in general." (*Ibid.*) Third, the impact must constitute a *physical* environmental change, as opposed to a social or economic one. (See, e.g., *Citizen Action to Serve All Students v. Thornley, supra*, 222 Cal.App.3d at p. 758, 272 Cal.Rptr. 83.) "The decision to close a popular [...] school is a decision of educational policy with political and social overtones" but our review of that decision "is delimited by the confines of environmental law." (*Id.* at p. 759, 272 Cal.Rptr. 83.) Fourth, there must be a reasonable possibility that the environmental impact will be *significant*. As defined in the Guidelines, that means "a substantial, or potentially substantial, adverse change" resulting from the project. (Guidelines, § 15382.)

Moreover, for the exception to apply, there must be substantial evidence of qualifying environmental impacts. Under the rule generally applicable to CEQA issues, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."(§ 21080, subd. (e)(1).

See also Guidelines, § 15384, subd. (b).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly erroneous or inaccurate ...." (§ 21080, subd. (e)(2). See also Guidelines, § 15384, subd. (a).)

When disputes over the evidentiary basis for an exception become the subject of litigation, the proper review standard must be applied. "There is a split of authority on the appropriate standard of judicial review" when the issue is "the applicability of the Guidelines section 15300.2(c) exception to a project that has been found to fall within a categorical exemption." (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1259, 89 Cal.Rptr.2d 233.) "Some courts have relied on cases involving review of a negative declaration, holding that a finding of categorical exemption cannot be sustained if there is a 'fair argument' based on substantial evidence that the project will have significant environmental impacts, even where the agency is presented with substantial evidence to the contrary." (*Ibid.*)"Other courts apply an ordinary substantial evidence test ..., deferring to the express or implied findings of the local agency that has found a categorical exemption applicable." (*Id.* at **1391** pp. 1259-1260, 89 Cal.Rptr.2d 233. See also, e.g., *Ukiah, supra,* 2 Cal.App.4th at p. 728, fn. 7, 3 Cal.Rptr.2d 488; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 42 Cal.Rptr.3d 537, 545-546.) We need not resolve that dispute here.

In the case at hand, regardless of what review standard we apply, we find no substantial evidence to support the exception claimed by appellant SLV CARE here. (See *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731 [even under fair argument standard, challenger failed to demonstrate reasonable possibility of significant environmental effect]; *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233 [same].)

With respect to much of the evidence cited by SLV CARE in support of its claims of environmental impacts, it is not clear that it was part of the administrative record, which confines our review. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) The scope of our review is properly limited to the administrative**154 record, even though CEQA procedures may limit a challenger's "opportunity to create a record evidencing potential adverse impacts on the environment." (*Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 477, 129 Cal.Rptr.2d 344.) But as we now explain, even when all of appellant's evidence is considered, regardless of its source, it does not support a fair argument of significant environmental effects.

We address each ground put forth by SLV CARE as a basis for the claimed exception: (1) mold; (2) geologic hazards; (3) septic failure; and (4) traffic hazards and related issues (parking and emergency access).

(1) Mold: SLV CARE posits a potential "increase in mold due to more bodies [and] opening more rooms," as well as the "potential for adverse reactions to mold due to increase in sensitive receptors."As evidentiary support for those claims, SLV CARE points to a series of letters and reports concerning indoor air quality tests at BCE and other District schools, which were prepared by MACS Lab and signed by its Director of Field Services, Maheen B. Doctor. In early April 2003, Doctor confirmed "slightly elevated levels of some fungal elements," but stated that "the level of elevation is not considered significant." Acknowledging that there are "no established regulatory standards for the determination of 'acceptable' levels of mold" and that "individual sensitivities vary from person-to-person," Doctor continued to recommend "more vigilant housekeeping" to counteract the problem. The presence of mold and mildew in some portable classrooms at BCE also was noted by the SSCC task force in its report.

1392 Having analyzed the foregoing evidence, we conclude that neither the SSCC information nor the MACS Lab correspondence supports the environmental impact claim urged by SLV CARE. The cited evidence fails on three grounds. First, there is no indication that the presence of mold is a *change* in environmental conditions. The mold was a preexisting condition at BCE, and there is no evidence that it will be exacerbated by the presence of additional pupils. A change in physical conditions

is a necessary predicate for a finding of environmental impact. (See *Silveira v. Las Gallinas Valley Sanitary Dist., supra,* 54 Cal.App.4th at p. 993, 63 Cal.Rptr.2d 244; *Ukiah, supra,* 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488.) Second, as to the indoor air quality reports and letters, which were signed by Doctor on behalf of MACS Lab, while they suggest that particular individuals may have adverse reactions to mold, they do not demonstrate that school consolidation "would adversely affect the environment of persons in general." (*Ukiah,* at p. 734, 3 Cal.Rptr.2d 488.) Finally, there is no evidence that any possible environmental impact from the mold will be *significant.* In fact, the evidence is to the contrary-Doctor's letter states that the level of indoor spores "is not considered significant."

(2) Geologic Hazards: SLV CARE identifies geologic dangers as a significant environmental impact, citing a March 1990 letter to the District from a geological consultant, Woodward-Clyde. That letter acknowledges that the Ben Lomond fault lies approximately 100 feet southwest of the BCE campus. But under the heading "CONCLUSIONS," the letter states: "The information obtained during the course of our studies leading to this review appears to justify further downgrading the already minimal risk assigned to construction adjacent to the Ben Lomond fault, which traverses the general area in which the School District is located. We are no longer indicating it to be a potential earthquake source."

****155** Assuming that the cited 1990 letter was part of the administrative record, it does not constitute substantial evidence of environmental impact. Neither that letter nor anything else in the appellate record suggests that any geologic hazard is new, so as to constitute a change in environmental conditions. Nor is there any evidence suggesting that the closure decision amplifies any preexisting hazard, either because of the increase in student population at BCE or because of physical changes on that campus, including the addition of portable classrooms. (See *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at p. 757, 272 Cal.Rptr. 83 [finding "no evidence in the record" that the school closure "might cause an increased vulnerability to earthquake-related harm" and characterizing arguments to the contrary as mere speculation that "there *might* be such a danger, without hard fact"]; *Ukiah, supra,* 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488 [rejecting hearsay statements "that the site was on an earthquake fault" and finding that those statements did not constitute substantial evidence to overcome the categorical exemption].)

***1393** (3) Septic: As yet another environmental impact, SLV CARE lists septic problems at both receptor schools. As evidentiary support, SLV CARE points to one of the District's five-year maintenance plans; it also cites a February 2002 letter to the District from the California Regional Water Quality Control Board. The maintenance plan, which covers school years beginning in 1997 and ending in 2002, describes the septic fields at SLE and BCE as "failing." The February 2002 letter from the Regional Water Quality Control Board refers to septic problems dating back to 1998 at the District's shared high school campus in Felton. But the administrative record also contains more recent information, which addresses the then-current condition of the septic systems at each of the receptor schools. One such document is an e-mail sent March 31, 2003, from Dave Elliott, the District's Director of Maintenance and Operations, to Julie Haff, the District's Superintendent. In that e-mail, Elliott states: "The septic system at Boulder Creek below the two-story building was replaced in August of 2001 and is working as designed." Elliott also states: "At this time, I see no need for any further improvements to the septic systems at Boulder Creek Elementary." In addition, information presented to the District's Board from the SSCC task force notes both BCE's "new septic" and SLE's "shared septic (new)."

The evidence offered by SLV CARE on this point is deficient in several regards. First, as indicated by the District's more current information, the evidence of septic problems is outmoded. As such, it is "clearly erroneous or inaccurate" and does not constitute substantial evidence. (§ 21080, subd. (e)(2); Guidelines, § 15384, subd. (a).) Second, as with appellant's other claims, the proffered evidence does not represent the requisite *change* in environmental conditions. SLV CARE argues that the District failed to "consider the impact of doubling SLE's enrollment on the already failing septic system." But it offers no *evidence* that the claimed problem would be exacerbated by the presence of additional pupils. (See *Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 477, 129 Cal.Rptr.2d 344 [rejecting challenger's arguments about potential impacts, as "based entirely

on speculation"].)

(4) Traffic, Parking, Emergency Access: SLV CARE posits the existence of traffic and parking hazards at both receptor schools, citing written public comments by parents of Redwood students. On the issue of traffic, a Redwood parent who routinely ferried children to both of the District's**156 north valley elementary schools wrote: "It takes longer to drop off 1 child at Boulder Creek Elementary (excluding travel time) than it does to drop off 7 children at Redwood (excluding travel time). The hills up to Boulder Creek Elementary are steep and very narrow. There are a lot of pedestrians (mostly children) walking on all sides of these roads.... I don't feel this is safe to add more children to this school (Boulder Creek Elementary)." On the issue *1394 of parking, another Redwood parent wrote: "Redwood Elementary has parking for dropping off and picking up students. Parking at Boulder Creek Elementary is minimal, and the facilities for dropping off or picking up students-especially if the student body swells-are both inadequate and dangerous. I expect cars will be lined up around the block." Information from the SSCC's transportation subcommittee reflects some of these same concerns. On the issue of emergency access, SLV CARE cites a letter with attachments, dated March 25, 2003, from Sam Robustelli, Chief of the Boulder Creek Fire Department. That document includes factual comparisons between the north valley schools based on emergency response, fire response, and highway access.

The data and opinions proffered by SLV CARE do not support its claim to the "significant effects" exception to the categorical exemption for school consolidation. As explained above, that exception applies "where there is a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances.*" (Guidelines § 15300.2, subd. (c), italics added.) To sustain the exception, the evidence must show "some feature of the project that distinguishes it" from others in the exempt class. (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233. See also, e.g., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 801, 124 Cal.Rptr.2d 731.)

SLV CARE offers no evidence that the traffic, parking, or access problems cited here are unusual circumstances in the context of school consolidations. In that respect, this case resembles *Fairbank v. City of Mill Valley.* There, the plaintiff cited "various comments from the administrative record, by which project opponents voiced concerns about the existing traffic and parking problems in downtown Mill Valley, and the prospect of the project exacerbating those problems." (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233.) The court rejected the opponent's claim to an exception, finding "no showing whatsoever of any 'unusual circumstances' surrounding the construction of this small commercial structure giving rise to any risk of 'significant' effects upon the environment. (Guidelines, § 15300.2(c).) While the addition of any small building to a fully developed downtown commercial area is likely to cause minor adverse changes in the amount and flow of traffic and in parking patterns in the area, such effects cannot be deemed 'significant' without a showing of some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use. Otherwise, no project that satisfies the criteria set forth in Guidelines section 15303(c) could ever be found to be exempt." (*Ibid.*) As the court concluded, "in the absence of any evidence of unusual circumstances nullifying the grant of a categorical exemption, there can be no basis for a claim of exception under Guidelines section 15300.2(c)." (*Id.* at pp. 1260-1261, 89 Cal.Rptr.2d 233. See also, e.g., *Ukiah, supra,* 2 Cal.App.4th at p. 736, 3 Cal.Rptr.2d 488 [the *1395 claimed "potential environmental impacts" were "normal and **157 common considerations in the construction of a single-family residence" and did not constitute unusual circumstances].) The same is true here-there is no evidence of unusual circumstances setting this school consolidation apart from others in the exempt class.

C. Summary of Conclusions

In this case, we are required to undertake only the first tier of the CEQA analysis. That analysis leads us the following conclusions: (1) The school consolidation decision at issue here constitutes a "project" for purposes of CEQA. (2) The District properly determined that its decision is exempt from CEQA. First, in making that determination, the District did not violate any procedural requirements of CEQA, because none apply. Moreover, as a matter

of law, substantial evidence supports the District's determination that its closure decision qualifies for categorical exemption from CEQA under section 21080.18 and Guideline section 15314. SLV CARE did not carry its burden of showing an exception to the categorical exemption; it failed to offer sufficient evidence of significant environmental impacts on any of the proffered grounds.

II. BOND LAW

SLV CARE next argues that the District violated constitutional and statutory provisions governing use of bond funds. At issue is the District's use of proceeds from Measure S, an $18.5 million school facilities bond issue approved by local voters in 2000. As before, we begin by setting forth the relevant legal principles.

A. General Principles

"The usual method of funding new school construction in California has been for school districts to obtain voter approval for the issuance of general obligation bonds. The bonds are repaid by an annual levy of an *ad valorem* tax on real (and certain personal) property located within the area of the district." (62 Ops.Cal.Atty.Gen. 209, 210 (1979), fn. and citations omitted.)

Various provisions of law govern school bond financing. Some are constitutional. (See, e.g., Cal. Const., art. XIIIA, § 1, subd. (b); *id.*, art XVI, § 18.) Others are statutory. (See, e.g., Ed.Code, §§ 15100 et seq.) [FN8]

> FN8. In this section of the opinion (II), which discusses bond law, further unspecified statutory references are to the Education Code.

[26] *1396 Generally speaking, school bond financing is restricted to projects of a capital or permanent character. (See *Marin U. Junior College Dist. v. Gwinn* (1930) 106 Cal.App. 12, 13-14, 288 P. 799;87 Ops.Cal.Atty.Gen. 157, 162 (2004).) That restriction is apparent from several constitutional provisions. We mention two such provisions, which are instructive because of their detail, although they do not apply directly to this case. First, under the constitutional provision added by Proposition 39, bond proceeds from voter-approved taxes or special assessments may be used only for "the construction, reconstruction, rehabilitation, or replacement of school facilities" and not "for any other purpose, including teacher and administrator salaries and other school operating expenses." (Cal. Const., art. XIIIA, § 1, subd. (b)(3).) [FN9] Similarly, bonds issued after**158 voter approval to exceed the debt limit may be used only for "the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities...." (Cal. Const., art XVI, § 18, subd. (b).)

> FN9. Proposition 39, enacted in November 2000, "amended the Constitution to allow the issuance of bonds for the construction of school facilities if approved by 55 percent of a school district's voters and if specified conditions are met." (87 Ops.Cal.Atty.Gen., *supra*, at p. 157.) "Normally, approval of a school district's bonded indebtedness would require a two-thirds approval vote of a district's voters." (*Id.* at p. 157, fn. 1.) Legislation implementing Proposition 39 is codified at sections 15264-15284.

There are additional restrictions, including some that are statutory; for example, proceeds "shall not be applied to any other purposes than those for which the bonds were issued."(§ 15146, subd. (b).)

1. Nature of the Relationship Between the District and the Electorate

According to appellant SLV CARE: "A bond proposition submitted to the voters of a school district is a contract between the district and its voters."

Appellant's characterization does not find universal support in the cases. "The relationship arising out of a bond election has been defined in a number of California cases." (*Associated Students of North Peralta Community College v. Board of Trustees* (1979) 92 Cal.App.3d 672, 676, 155 Cal.Rptr. 250(*Peralta*).) As explained in the *Peralta* case, some "early decisions" found "a contractual relationship between the public entity and individual

electors." (*Ibid.*)"However, a later decision, now regarded as the leading case on the subject, retreated from this classification of the relationship as contractual." (*Ibid.*, citing *Peery v. City of Los Angeles* (1922) 187 Cal. 753, 203 P. 992.) In that later decision, the California Supreme Court "concluded that it was unnecessary to consider the relationship between public entity and electorate as strictly contractual, the status being merely *analogous* to a contract." (*Peralta,* at pp. 676-677, 155 Cal.Rptr. 250.)

***1397** In any event, precise characterization of the relationship may be academic. "It is clear that proceeds of a bond issue may be expended only for the purpose authorized by the voters in approving issue of the bonds [citation]. Whether the limitation be deemed to be contractual [citation] or of a status analogous to such relation [citation] or a restriction implied by the requirement of popular approval of the bonds [citation], it does restrict the power of the public body in the expenditure of the bond issue proceeds, and hence in the nature of the project to be completed and paid for. The statutes and ordinances under which the public body acts in submitting the bond issue proposal to the voters must be considered with the ballot proposition in determining the extent of this restriction [citations]." (*Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668, 68 Cal.Rptr. 317.)

2. Elements of the Relationship

In *Peralta,* the court identified four elements that typically comprise the relationship between the entity issuing a bond and its voters. (*Peralta, supra,* 92 Cal.App.3d at pp. 677-678, 155 Cal.Rptr. 250.) First, there are the authorizing statutes, which are "presumptively within the knowledge of each elector...."(*Id.* at p. 677, 155 Cal.Rptr. 250.) Second, the "resolution by which the bonding entity resolves to submit the issue to the District's electors has also been regarded as part of the 'contract' between the entity and its electors." (*Ibid.*)"A third element of the 'contract' is the ballot proposition submitted to the voters." (*Ibid.*)"The fourth and final element is assent or ratification" by the voters. (*Id.* at p. 678, 155 Cal.Rptr. 250.)

****159** Depending on the circumstances of the particular case, there may be other factors beyond the four basic elements described above. (*Peralta, supra,* 92 Cal.App.3d at p. 678, 155 Cal.Rptr. 250.) "Extrinsic documents may be added to the primary elements comprising the relationship." (*Ibid.*) But "no case or statutory authority supports the proposed incorporation into the 'bond contract' of the ballot argument submitted to the voters prior to the election." (*Id.* at pp. 678-679, 155 Cal.Rptr. 250.) To the contrary, at least one case has held that "statements 'disseminated to the general public' before the election ... cannot be deemed to modify the intentionally broad language of the proposition in fact submitted to the voters, the call of election published to them, and the statutes authorizing the procedure adopted [citation]." (*Mills v. S.F. Bay Area Rapid Transit Dist., supra,* 261 Cal.App.2d at p. 669, 68 Cal.Rptr. 317. Cf., *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 203, 182 Cal.Rptr. 324, 643 P.2d 941 [in the case of statewide voter initiatives, "ambiguities may be resolved by referring to the ballot summary, the arguments and analysis presented to the electorate, and the contemporaneous construction of the Legislature"]; *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 52, 184 Cal.Rptr. 713, 648 P.2d 935 [same].)

***1398B. Application**

The *Peralta* case provides a useful approach for assessing appellant's argument that the District violated its bond obligations. We therefore begin our analysis by applying each of the elements identified in *Peralta* to the relationship between the District and the voters arising out of the November 2000 bond election. (See *Peralta, supra,* 92 Cal.App.3d at pp. 677-679, 155 Cal.Rptr. 250.) We then discuss the specific violations claimed by SLV CARE. Because the relevant facts are not in dispute, the issues presented are questions of law, which we review de novo. (See, e.g., *Service Employees Internat. Union v. Board of Trustees* (1996) 47 Cal.App.4th 1661, 1665, 55 Cal.Rptr.2d 484 [interpreting Education Code provisions].)

1. Elements

[27] The first of the elements that make up the entity-electorate relationship is the authorizing legislation. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250.) Here, the relevant statute is section

15100, which permits school districts to seek bond financing for a variety of purposes, including: (a) buying school land; (b) buying or constructing school buildings; (c) making "alterations or additions" to school buildings other than "current maintenance, operation, or repairs"; (d) "repairing, restoring, or rebuilding [ ] any school building damaged, injured, or destroyed by fire or other public calamity"; (e) acquiring "furniture, equipment, or necessary apparatus of a permanent nature"; and (f) permanently improving school grounds. (§ 15100, subds.(a)-(f).) [FN10] The ****160** statutorily authorized purposes thus are broad but not limitless, being generally restricted to capital or permanent items.

> FN10. Section 15100 provides in full as follows: "Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:
>
> (a) The purchasing of school lots.
>
> (b) The building or purchasing of school buildings.
>
> (c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.
>
> (d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.
>
> (e) The supplying of school buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature.
>
> (f) The permanent improvement of the school grounds.
>
> (g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.
>
> (h) The carrying out of the projects or purposes authorized in Section 17577 or 81613.
>
> (i) The purchase of schoolbuses the useful life of which is at least 20 years.
>
> (j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.
>
> Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition."

The second element is the District's formal resolution to submit the issue to the electors. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250; see § 5322.) In the preamble of its July 2000 resolution, the District indicated its desire "to improve school facilities to benefit students in the District." In the body of the resolution, the District formally determined to submit to the electorate "the question of whether the Bonds shall be issued and sold for the purpose of raising money to finance the School Facilities and paying costs incident thereto." The stated purpose of the election was "for the voters in the District to vote on a proposition, a copy of which is attached hereto ... containing the question of whether the District shall issue the Bonds for the purposes stated therein." The resolution thus speaks broadly of funding school facilities and incidental costs.

***1399** The third consideration is the ballot proposition itself. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250; see § 15122 [requirements as to the form of the ballot].) Measure S, put before

the voters in the November 2000 election, was phrased as follows: "To acquire, construct, and modernize school facilities, build new classrooms to replace 30-year-old portables, construct a permanent Junior High at the current site, upgrade drainage, replace deteriorating plumbing and inadequate electrical systems, improve student access to classroom computers and technology, and make the District eligible to receive over $8 million in state-matching funds, shall the San Lorenzo Valley Unified School District be authorized to issue $18,500,000 of bonds at an interest rate below the legal limit?"

Those three elements-the statute, the resolution, and the ballot proposition-were before the voters considering Measure S. "The fourth and final element is assent or ratification by the electors, which, of course, is present here." (*Peralta, supra,* 92 Cal.App.3d at p. 678, 155 Cal.Rptr. 250.)

[28] In this case, there are no other factors that bear on the District-electorate relationship. (See *Peralta, supra,* 92 Cal.App.3d at pp. 678-679, 155 Cal.Rptr. 250.) More specifically, contrary to the contentions of appellant SLV CARE, ballot arguments are not part of the analysis. (*Ibid.; Mills v. S.F. Bay Area Rapid Transit Dist., supra,* 261 Cal.App.2d at p. 669, 68 Cal.Rptr. 317; cf., *Los Angeles County Transportation Com. v. Richmond, supra,* 31 Cal.3d at p. 203, 182 Cal.Rptr. 324, 643 P.2d 941 [state voter initiatives].)

****161*1400***2. Claimed Violations*

a. Promise of Matching Funds

[29] As set forth in the ballot, one of the purposes of Measure S was to "make the District eligible to receive over $8 million in state-matching funds...." According to appellant SLV CARE, that language triggered the application of section 15122.5, which requires a statement in the sample ballot advising voters that the project is subject to discretionary state approval. In appellant's words: "In promising that approval of the bond measure would bring 'over $8 million in state-matching funds' without the required discretionary approval language, Respondent violated [ ] § 15122.5."

To properly assess appellant's contention, we begin with the statute. In pertinent part, section 15122.5 provides: "Whenever ... the project to be funded by the bonds will require state matching funds for any phase of the project, the sample ballot shall contain a statement ... advising the voters that the project is subject to the approval of state matching funds and, therefore, passage of the bond measure is not a guarantee that the project will be completed."(§ 15122.5, subd. (a).) [FN11]

FN11. The full text of section 15122.5 reads: "(a) Whenever an election is called on the question of whether bonds of a school district shall be issued and sold for the purposes specified in Section 15100 and the project to be funded by the bonds will require state matching funds for any phase of the project, the sample ballot shall contain a statement, as provided in subdivision (b), advising the voters that the project is subject to the approval of state matching funds and, therefore, passage of the bond measure is not a guarantee that the project will be completed.

"(b) The words to appear in the sample ballot in satisfaction of the requirements of subdivision (a) are as follows:

'Approval of Measure _____ does not guarantee that the proposed project or projects in the _____ School District that are the subject of bonds under Measure _____ will be funded beyond the local revenues generated by Measure _____. The school district's proposal for the project or projects may assume the receipt of matching state funds, which could be subject to appropriation by the Legislature or approval of a statewide bond measure.'

"(c) This section does not apply to any election to incur bonded indebtedness pursuant to the Mello-Roos Community Facilities Act of 1982 contained in Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code."

Based on the statute's plain language, we reject

appellant's contention. Section 15122.5 requires voter advisement when "the project to be funded by the bonds *will require state matching funds*...." (§ 15122.5, subd. (a), italics added.) Neither the language of Measure S, nor any other evidence in the record, suggests that the bond-financed projects *required* state matching funds. Becoming "eligible to receive" state funds for Measure S projects is not the same as requiring such funds.

In short, we find no violation of section 15122.5.

*1401*b. Expenditures*

SLV CARE challenges a number of the District's expenditures as unauthorized uses of the bond funds.[FN12] To streamline **162 our discussion of this issue, we group the challenged expenditures into logical categories.

> FN12. In its opening brief, SLV CARE lists the following items as unauthorized expenditures: "a demographic study and 'geocoding' of student addresses used for the school closure project; printing the bond measure materials; deferred maintenance ... [¶] costs associated with consolidation [of] schools including moving and leasing portable [ ] classrooms, consultants, mold reports, and the belated CEQA study; the salary of the ex-Principal of Redwood Elementary, who was hired as Bond Manager, including his attendance and training at conferences, and 15% of the salary of the CFO; payments to consultants, attorneys, and other professionals; and repair of the Felton campus septic system."

[30] *Administrative costs:* The resolution adopted by the District identified the purpose of the bond as "raising money to finance the School Facilities and paying costs incident thereto."

Incidental costs include the expense of administering and overseeing construction projects to be funded with bond money. As stated in a 2004 Attorney General opinion, which concerned the use of Proposition 39 bond funds: "Administrative oversight work is an integral part of the construction process." (87 Ops.Cal.Atty.Gen., *supra,* at p. 163.) As the Attorney General further explained, "the phrase 'the construction, reconstruction, rehabilitation, or replacement of school facilities' embraces project administrative costs, such as monitoring contracts and project funding, overseeing construction progress, and performing overall project management and accounting that facilitates timely completion of the construction project. A construction project generates not only the costs of materials and equipment, architectural and engineering design work, and construction worker salaries, but also costs of project administration-work that the school district would not be required to undertake or to fund *but for* the existence of the construction project." (*Id.* at p. 160.)

As the Attorney General recognized, analogous statutes bolster that conclusion. (See 87 Ops.Cal.Atty.Gen., *supra,* at pp. 162-163.) Among them is Government Code section 16727, which concerns issuance of the state's general obligation bonds. (*Ibid.*) According to subdivision (a) of that section: "Proceeds from the sale of any bonds ... shall be used only for the following purposes: (a) The costs of construction or acquisition of capital assets." (Gov.Code § 16727, subd. (a).) After defining capital assets, subdivision (a) continues: "Costs allowable under this section include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and *1402 assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements." (*Ibid.*) Under subdivision (d), proceeds also may be used to "pay the costs of a state agency with responsibility for administering the bond program." (*Id.*, subd. (d).)

As relevant to the challenges raised here, permissible administrative costs would include the salaries of in-house personnel acting as construction project administrators. (87 Ops.Cal.Atty.Gen., *supra,* at p. 158.) Administering the project "is an integral part of the construction process." (*Id.* at p. 163.) Administration may be provided by outside contractors or in-house personnel. "School district employees with the requisite expertise may be able to perform project management work at less cost to the district than if the work were performed by private consultants." (*Id.* at p. 162.) For these reasons, the prohibition against the use of "Proposition 39 school

bond proceeds for 'teacher and administrator salaries and other school operating expenses' " does not apply "to the payment of salaries of school district employees who perform administrative oversight work on construction projects authorized by a voter approved bond measure." (*Id.* at p. 158, quoting Cal. Const., art. XIIIA, § 1, subd. (b)(3)(A). Cf., § 17074.10 [school modernization funds available under the Leroy F. Green School Facilities Act of 1998 "do not include**163 funding for administrative and overhead costs"].)

In sum, costs that are "incidentally but directly related to construction or acquisition" may be paid from proceeds of the state's general obligation bonds. (Gov.Code § 16727, subd. (a).) That includes administrative costs, such as salaries for personnel engaged in construction management and oversight. (87 Ops.Cal.Atty.Gen., *supra*, at pp. 162-163.)

Applying those concepts here, to the District's general obligation bonds, we reject the claim by SLV CARE that the salaries and associated training costs of the District's personnel were improper. There is no evidence that those expenditures were made for purposes other than management and oversight of those District construction projects that were funded by bond money. To the contrary, the unrebutted trial testimony shows that the challenged salary expenses in fact represent construction management. For example, District Superintendent Julie Haff testified that the facilities manager was "paid with bond funds" because "his job is strictly to supervise the spending of the construction funds, and it's totally dedicated to construction and our efforts to acquire and modernize our school facilities." The facilities manager's own testimony was to the same effect: Bryan Loehr stated that his job was to "manage all of the construction and modernization projects that are funded by the general obligation bonds and by the State modernization fund." In explaining the use of bond funds to pay 15 percent of the salary of the District's assistant superintendent of business services, Edith Henden, *1403 Superintendent Haff testified, "that's her time dedicated to the expenditure of these bond funds for acquiring and modernizing our facilities."

[31] *Bond preparation costs:* Appellant SLV CARE also challenges expenses incurred in preparing the bonds, such as printing and attorney fees. According to appellant: "Bond proceeds may not be used to pay even the 'soft costs' of the bond measure such as printing, publication and even the bond attorney's opinion."

In support of its argument, appellant relies on a 1958 opinion of the Attorney General. (32 Ops.Cal.Atty.Gen. 249 (1958).) That opinion concludes that the expenses of printing the bonds and related publications, and the cost of the bond attorney's opinion, are "payable out of the general funds of the district, not out of bond proceeds." (*Id.* at p. 249.)

We do not find the proffered authority persuasive. The 1958 Attorney General opinion cited by appellant was based on quoted language of a provision of the 1943 Education Code, which has since been repealed. (Former § 7435; see now § 15145.) Under the repealed provision, expenses incurred for preparation of the bond constituted "a legal charge against the funds of the school district issuing the bonds." (Former § 7435.) The Attorney General interpreted the statutory reference to funds to mean the district's *general* funds, not *bond* proceeds. (32 Ops.Cal.Atty.Gen., *supra*, at p. 250.) But the Attorney General did "concede that the matter is not free from doubt." (*Ibid.*) More to the point, subsequent changes in the statutory language completely undermine the Attorney General's interpretation.

In pertinent part, the governing statute now reads: "All expense incurred for the preparation, sale, and delivery of the school bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing and distribution of the official statement, the obtaining of a rating, the purchase of insurance**164 insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school district or community college district issuing the bonds are legal charges against the funds of the district issuing the bonds and *may be paid from the proceeds of sale of the bonds.*"(§ 15145, subd. (a), italics added. Cf., Gov.Code § 16727, subd. (e) [proceeds from the state's general obligation bonds may be applied to the "costs of the Treasurer's office

directly associated with the sale and payment of the bonds, including, but not limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees of trustees"].)

*1404 Based on the statute's plain language, we find no merit in appellant's broad challenge to bond preparation expenses such as printing and counsel fees. Nor does SLV CARE offer evidence that particular expenditures within that category were improper. We therefore reject appellant's claim that these expenditures were unauthorized.

[32] *Construction costs:* Appellant SLV CARE takes issue with the District's use of bond funds for certain construction projects, characterizing them as unauthorized uses of the bond proceeds. Specifically, appellant cites deferred maintenance and repair of the septic system on the Felton campus.

An underlying theme of these challenges is the distinction between permanent, capital improvements on the one hand, and operation and maintenance on the other. (*Marin U. Junior College Dist. v. Gwinn, supra,* 106 Cal.App. at pp. 13-14, 288 P. 799 [school bonds restricted to capital projects].) In urging that distinction, appellant directs us to article XIIID of the California Constitution, which defines both concepts: " 'Capital cost' means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency." (Cal. Const., art. XIIID, § 2, subd. (c).) " 'Maintenance and operation expenses' means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement." (*Id.*, subd. (f).)

Armed with those concepts, appellant SLV CARE mounts a general challenge to District expenditures that it categorizes as deferred maintenance. As authorized elsewhere in the Education Code, a school district "may establish a restricted fund to be known as the 'district deferred maintenance fund' for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings," for removing asbestos and lead, and for "other items of maintenance approved by the State Allocation Board."(§ 17582, subd. (a).) Money deposited to the deferred maintenance fund "may be received from any source whatsoever," but it must "be accounted for separately from all other funds and accounts...."(*Ibid.*)

According to appellant, the District "made no effort to determine which, if any deferred maintenance projects might qualify for use of bond moneys. Bond money transferred into the deferred maintenance account was used indiscriminately for anything that qualified as deferred maintenance." SLV CARE does not identify specific improper items, however.

*1405 We reject appellant's unfocused substantive challenge, which fails to identify-much less support-specific improper deferred maintenance expenses. Dealing in generalities, as we must, we conclude that **165 the expenditures for deferred maintenance were proper. First, under the governing statute, authorized bond projects include "alterations or additions to the school building or buildings other than as may be necessary for *current* maintenance ...." (§ 15100, subd. (c), italics added.) Appellant fails to demonstrate that the District paid for any *current* maintenance items with *deferred* maintenance bond funds. Second, as to the ballot language, Measure S specifically sought money for "modernization." There is no evidence that any deferred maintenance project falls outside that rubric.

Appellant SLV CARE also alleges the District's misuse of bond funds based on transfers between its accounts. In its opening brief, SLV CARE charges that "a large portion of the bond money transferred into the deferred maintenance account was again transferred into the general fund where it was used for general operational expenses, including salaries." In its reply brief, SLV CARE asserts that the District once "transferred $85,905 in bond money into the general fund to cover a deficit." In support of that assertion, appellant cites testimony by Edith Henden, the District's assistant superintendent of business services, who testified concerning entries in the District's June 2002 audited financial statements.

While the cited evidence does show that funds were transferred between accounts, it does not demonstrate impropriety. As SLV CARE points out, Henden did acknowledge that $104,000 in bond funds had been "transferred out of the building fund and into deferred maintenance account" and also that there had been a transfer "from the deferred maintenance

fund to the general fund" amounting to nearly $86,000. But as she explained, the transfer represented an "audit adjustment" entry to avoid an impermissible year-end deficit, and the money was transferred back.[FN13] SLV CARE cites no other evidence of impropriety, and the trial court found none. Appellant's claim of statutory violations in connection with the District's transfers of deferred maintenance funds thus fails for lack of evidentiary support.

> FN13. Henden was asked: "Would it have been possible to transfer $85,905 into the general account from deferred maintenance if, in fact, this 104,000 from the bond money hadn't been there?" She responded: "I want to say yes, but I think I need to expand a little bit. You can't have-you can't end the year with a deficit in this fund. So the general fund would have-essentially, the transfer would have been made because it's an audit exception, an audit adjustment that needed to be made. So we would have booked it; then we would have transferred funds back from-to the general fund to cover it."

Apart from its deferred maintenance claims, SLV CARE also takes issue with the use of bond funds to repair the septic system at the Felton campus.

*1406 We reject that contention as well. As before, we look first to the statute. Among the permissible purposes for bond funds is the "carrying out of the projects or purposes authorized in Section 17577 ...." (Ed. Code, § 15100, subd. (h).) That section in turn provides that a "school district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property."(§ 17577.) It further provides: "The cost thereof may be paid from the building fund, including any bond moneys therein." (*Ibid.*) Repair of the septic system thus is proper under the statute. It is also proper under the language of Measure S, either as a means to "modernize school facilities" or under the measure's plan to "replace deteriorating plumbing."

[33] *Consolidation costs:* Appellant's final challenge is to expenses associated with the school closures and consolidation: **166 demographic and geo-coding studies; consultants; mold reports; the CEQA study; and the moving and leasing of portable classrooms.

With respect to the consultants and studies, we again find guidance in the state's general obligation bond law. (See Gov.Code § 16727.) It permits bond funds to be used for "costs incidentally but directly related to construction or acquisition, *including, but not limited to, planning,* engineering, construction management, architectural, and other design work, *environmental impact reports and assessments,* required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements." (*Id.*, subd.(a), italics added.) Applying that statute here, the costs for studies and consultants must be upheld. The demographic studies represented planning expenses, which helped the District determine where to construct or improve facilities. The mold reports served a similar planning function. And the CEQA study falls within the rubric of an environmental impact assessment.

As for the moving and leasing of portable classrooms, SLV CARE argues: "Bond law does not allow Measure S money to be used to *lease* anything."

That argument cannot be supported. As explained in a 1979 Attorney General opinion, there are various methods of "funding new school construction in California...." (62 Ops.Cal.Atty.Gen., *supra,* at p. 210.) One "alternative for constructing new school facilities has been the use of 'lease-purchase agreements.' "(*Ibid.*, citing Ed. Code, §§ 39300-39305 [repealed; see now Ed. Code, §§ 17400-17404, 17406].) As that opinion suggests, school districts may acquire new school facilities through leasing arrangements. Section 17400 thus authorizes "leases and agreements relating to real property and buildings." Section 17405 provides that "relocatable" structures may constitute school buildings, and it authorizes the lease of such structures subject to enumerated statutory requirements. *1407 Other sections likewise implicitly recognize that "construction of a school building" may be accomplished with a "factory-built school building." (§ 17357. See also, e.g., §§ 17352, 17358.)

In short, there is no legal basis for appellant's argument that the installation of leased portable classrooms does not qualify as construction of school

facilities. Under the statute, it constitutes the "building ... of school buildings." (§ 15100, subd. (b).) Under the language of Measure S, it falls within the stated purpose to "acquire [or] construct [ ] school facilities."

C. Summary of Conclusions

We find no violation of bond law in connection with Measure S. Contrary to the contention of appellant SLV CARE, the fact that one of the express purposes of Measure S was to "make the district eligible to receive over $8 million in state matching funds" did not trigger the advisory requirements of section 15122.5. On the separate question of the District's expenditures from bond proceeds, we likewise reject appellant's challenges to administrative costs, including salaries, bond preparation expenses, specific construction projects, and school consolidation expenses. Neither the law nor the record supports those claims.

III. DISCLOSURE OF PUBLIC RECORDS

SLV CARE next contends that the District violated two state statutes requiring the disclosure of public records: the California Public Records Act (CPRA) and the Ralph M. Brown Open Meeting Act **167 (Brown Act).[FN14] As with our analysis of the preceding issues, we start by describing the governing legal principles.

> FN14. In this section of the opinion (III), which concerns the CPRA and the Brown Act, further unspecified statutory references are to the Government Code.

A. General Principles

1. The California Public Records Act

"In 1968, the Legislature clarified the scope of the public's right to inspect public records by enacting the CPRA."(*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564.) The Act is codified at sections 6250 et seq.

a. Policy and Operation

[34][35] The CPRA "was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession *1408 of public agencies." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425-426, 121 Cal.Rptr.2d 844, 49 P.3d 194, citing *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651, 230 Cal.Rptr. 362, 725 P.2d 470.) "The CPRA embodies a strong policy in favor of disclosure of public records...."(*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831, 108 Cal.Rptr.2d 870.) Public records are broadly defined. (*Id.* at p. 824, 108 Cal.Rptr.2d 870; see § 6252, subd. (e).)

"A state or local agency, upon receiving a request by any person for a copy of public records, generally must determine within 10 days whether the request seeks public records in the possession of the agency that are subject to disclosure." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, citing § 6253, subd. (c).) "The Act includes protections and incentives for members of the public to seek judicial enforcement of their right to inspect public records subject to disclosure." (*Id.* at p. 427, 121 Cal.Rptr.2d 844, 49 P.3d 194. See *id.* at pp. 427-428, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6259 [fee provisions].)

[36] Despite the strong legislative policy favoring access, "the public's right to disclosure of public records is not absolute. In California, the Act includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exception' of section 6255, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017, 88 Cal.Rptr.2d 552, fns. omitted.) But "unless exempted, all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity." (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125, 97 Cal.Rptr.2d 439.)

b. Judicial Review

"The Act sets forth specific procedures for seeking a judicial determination of a public agency's obligation

to disclose records in the event the agency denies a request by a member of the public." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6258.) The Act includes a provision "directing the trial court in a proceeding under the Act to reach a decision as soon as possible (§ 6258)," as well as a "provision for expedited appellate review (§ 6259, subd. (c))," which "reflect a clear legislative intent that the determination**168 of the obligation to disclose records requested from a public agency be made expeditiously." (*Id.* at p. 427, 121 Cal.Rptr.2d 844, 49 P.3d 194.)

[37][38] *1409 As for appellate review, "an order of the trial court under the Act, which either directs disclosure of records by a public official or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ." (*City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1016, 88 Cal.Rptr.2d 552.) "The standard for review of the order is 'an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence.' "(*Ibid.*, citing *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336, 283 Cal.Rptr. 893, 813 P.2d 240. Accord, *California State University, Fresno Assn., Inc. v. Superior Court, supra,* 90 Cal.App.4th at p. 824, 108 Cal.Rptr.2d 870.)

2. The Brown Act

[39] "The Brown Act (§ 54950 et seq.) provides for open meetings for local legislative bodies such as city councils, boards of supervisors and school boards." (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1287, 89 Cal.Rptr.2d 60.)

a. Policy and Operation

[40] As the Legislature explicitly declared in enacting the Brown Act, "public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."(§ 54950.) "A major objective of the Brown Act is to facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic process by secret legislation by public bodies." (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555, 35 Cal.Rptr.2d 782.)

"Numerous provisions of the Act combine to ensure public notice of and access to meetings of legislative bodies." (*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60.) As relevant here, the Brown Act accords public record status to certain writings distributed for consideration at the public meeting of an agency's legislative body, including the agenda. (§ 54957.5.)

b. Judicial Review

Several avenues of judicial relief are available to address violations of the Brown Act. "To assist in enforcement of the open meeting laws, the Act provides for criminal penalties and civil injunctive or declaratory relief. (§§ 54959, 54960.)" (*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60. See also, e.g., *California Alliance for Utility etc. Education v. City of San Diego**1410 (1997) 56 Cal.App.4th 1024, 1030, 65 Cal.Rptr.2d 833 [plaintiff is entitled to declaratory relief where an actual controversy exists over "past compliance with the Brown Act"].) "In addition, actions taken in violation of the Brown Act may be declared null and void by a court. (§ 54960.1.)"(*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60.)

[41] Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Brown Act violations will not necessarily "invalidate a decision. [Citation.] Appellants must show prejudice." (*Cohan v. City of Thousand Oaks, supra,* 30 Cal.App.4th at pp. 555-556, 35 Cal.Rptr.2d 782 [no prejudice shown from violation of § 54954.2, subd. (a), which "requires that an agenda be posted at least 72 hours before a regular **169 meeting and forbids action on any item not on that agenda"].)

B. Application

With those principles in mind, we turn to the three specific contentions raised by appellant SLV CARE: (1) that the trial court erred in failing to find violations of the California Public Records Act; (2) that the trial court should have granted relief under the Brown Act; and (3) that the trial court committed prejudicial error in excluding testimony from David Churchill about those violations.

1. Background

SLV CARE made a number of written requests for public records relating to the closure decision, initially through its first attorney Steven A. Greenburg. The District responded to those requests. In its statement of decision, the trial court detailed the relevant chronology of request and response. To summarize, Greenburg wrote letters in June, July, and August 2003 requesting documents and demanding that the District cure its claimed disclosure violations. The District forwarded more than 400 pages of records to Greenburg in July, and it provided him with additional documents the following month. A separate request for documents was e-mailed to the District by David Churchill.

There was trial evidence concerning the scope of the requests and the extent of the District's compliance. SLV CARE sought to elicit Churchill's testimony about his request for public records and the District's refusal to comply, but the trial court excluded that evidence because Churchill did not identify himself as a member of SLV CARE when he made the request.

*1411 In its statement of decision, the trial court observed: "There were no complaints of incomplete production in any of the correspondence except Mr. Greenburg's unexplained continued requests for the same exhibits already produced to Greenburg" and to appellant's trial counsel. After describing the District's compliance with respect to specific requested items, the trial court expressly found "insubstantial evidence of failure to produce documents in a timely manner" under either the CPRA or the Brown Act.

2. The California Public Records Act

[42] As to disclosure under the CPRA, SLV CARE asserts that there is "unrebutted evidence" that the District "refused to fully comply with its obligations."

Based on our review of the evidentiary record, we disagree.

As one example of disclosure violations, SLV CARE cites the testimony of the District's superintendent, Julie Haff, asserting: "She admitted to producing e-mails at her deposition that she had not produced in response to the Records Act request." But in the cited testimony, Haff clarified that she had "a practice of reading e-mails and deleting them." As a result of that practice, Haff believed that she "had no e-mails." But she later discovered that her laptop computer "was actually saving some e-mails that I had received that I sent a response to. Those were the only e-mails I had. I did not know that I had them."

As the trial court properly determined, the cited testimony is insubstantial evidence of failure to timely produce available documents.

As a second example, appellant SLV CARE points to testimony by Facilities Manager Loehr that "he had custody of the bond budget file" but that Superintendent Haff "did not ask him to produce that file in response to the record request." Appellant likewise asserts that the District's assistant superintendent, Don Fox, **170 "had financial documents that were responsive to the records request [ ] but he failed to produce them."

The problem with these contentions is that nothing about the bond budget file or related financial information was ever mentioned in any of the requests made by attorney Greenburg, who was the only person purporting to represent SLV CARE. (David Churchill did request information about bond expenditures, but he did so without mentioning any relationship to SLV CARE.) Initially, Greenburg specified only documents relating to two board meetings: the one in April 2003, when the Board made its closure decision, and the one in June 2003, when the Board rejected private funding to keep *1412 Redwood Elementary open for another year. His later requests sought tapes, agendas, and minutes from all meetings of the SSCC task force and of the Board held between June 2002 and August 2003. But at no time did Greenburg's correspondence indicate that he was seeking information about the bond or other financial issues. In the absence of evidence that SLV CARE requested financial documents, there can be no statutory violation with respect to this information.

SLV CARE also charges the District with unlawfully refusing to turn over available geologic reports. As

evidentiary support for that claim, appellant again cites testimony by Julie Haff, the District's superintendent. As appellant characterizes that testimony, "her maintenance director had geologic reports that were responsive to Appellant's records request. She asked for these reports, but never obtained them." Haff's trial testimony does not support appellant's characterization. After being shown a 1985 geologic report, Haff was asked whether she had ever seen it before. She responded: "I don't believe I have, no." She was then asked, "where you would likely find that?" Her response was: "This would most likely be found with the Director of Maintenance." Haff then confirmed that she had asked the maintenance director to "turn over his files" prior to the school closures, but that he had not done so.

Significantly, however, there is no evidence that the maintenance director's files contained the requested 1985 geologic report. Haff testified only that such a report "likely" would be in those files. There is no evidence that it was.

The final asserted instance of violation relates to internal documents. According to appellant SLV CARE, it "sought internal documents used to evaluate the schools being targeted for closure. Ms. Haff testified that she did not produce any internal records in response to the record request." SLV CARE further maintains: "Not until shortly before trial were any internal records produced."

Again, however, the record fails to support appellant's contention. Turning first to the superintendent's testimony, she stated that she had no additional internal documents to produce. She was asked at trial: "Are there no internal District documents on the issue of the closure of Redwood School other than what's in the public record?" She answered: "No, there are no other records. I've taken what I-I mean, a year and a half ago, I took what I had and I put it into power point presentations. Those became part of the public record. That's what I maintained." Turning next to appellant's claim that responsive internal documents were available but withheld until shortly before trial, SLV CARE offers no citation to the record to support that claim, and our review of the record reveals no such evidence.

*1413 As explained above, on appellate review of claims under the California Public Records Act, we uphold the trial court's **171 factual findings to the extent that they are based on substantial evidence. (*City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1016, 88 Cal.Rptr.2d 552.) Here, the trial court determined that SLV CARE produced "insubstantial evidence" of CPRA violations. On this record, we agree.

3. The Brown Act

Appellant SLV CARE asserts Brown Act violations based on its claim that it was not provided with all of the public records given to members of the District's Board at public meetings. (See § 54957.5.)

Appellant's Brown Act claim fails for the same reasons as its CPRA claim. As just explained, the trial court determined that the District had complied with all of the relevant public records requests, and that determination finds adequate support in the record.

4. Excluded Testimony

[43] Appellant SLV challenges the trial court's decision to exclude David Churchill's proffered testimony to the extent that it concerned his requests to the District for public records.

The trial court's decision was made in response to a defense objection on relevance grounds. The District's counsel urged a "foundational requirement" that Churchill was acting on behalf of SLV CARE, asserting: "Without that, he doesn't have standing to testify here."

In sustaining the defense objection, the court explained that it considered Churchill's request "as being from an individual and not from the plaintiff in this action." The court acknowledged "that citizens have the right to invoke the protections of the statutes that we've been talking about"; but it concluded that "the evidence must be in some way related to the association [SLV CARE] or described as being from the association; and that's not the case in the instance of the e-mails." The trial court reiterated its reasoning in its statement of decision: "Mr. Churchill wrote his requests as an individual. He never identified himself as a member of SLV CARE. Any failure to produce

documents pursuant to the Public Records Act may be actionable by *1414 him as an individual. However, Mr. Churchill can't request records as an individual and then come into court as a representative of SLV CARE and complain of a failure to produce documents by the District in this action. The court's analysis had nothing to do with Mr. Churchill having to identify himself in order to obtain documents; it was merely a finding of lack of standing to pursue this action (in which he is not a party plaintiff) based on what he did individually."

Appellant assigns the trial court's decision as prejudicial error. According to appellant, its "members had no obligation to notify the District that they were representing themselves as individuals or were acting as members of SLV CARE."It further asserts: "Mr. Churchill had an absolute right to request and obtain public records."In appellant's view, the court's decision "makes sense only if Mr. Churchill had a duty to identify himself ... as an individual or as a member of SLV CARE," which he did not.

[44][45][46] We review the trial court's ruling for an abuse of discretion. "Broadly speaking, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence. Speaking more particularly, it examines for abuse of discretion a decision on admissibility that turns on the relevance of the evidence in question." (*People v. Waidla* (2000) 22 Cal.4th 690, 717-718, 94 Cal.Rptr.2d 396, 996 P.2d 46,**172 citations omitted.) Put another way: "The trial court retains broad discretion in determining the relevance of evidence." (*People v. Garceau* (1993) 6 Cal.4th 140, 177, 24 Cal.Rptr.2d 664, 862 P.2d 664.) Relevance is statutorily defined as "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid.Code, § 210.) Though not directly germane, a "matter collateral to an issue in the action may nevertheless be relevant to the credibility of a witness who presents evidence on an issue...."(*People v. Rodriguez* (1999) 20 Cal.4th 1, 9, 82 Cal.Rptr.2d 413, 971 P.2d 618.)But the admissibility of such collateral matter also lies within the trial court's discretion. (*Id.* at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

We first consider the factual component of the trial court's ruling. (Cf., *Johns v. City of Los Angeles* (1978) 78 Cal.App.3d 983, 998, 144 Cal.Rptr. 629 [consideration of the evidence "is essential to a proper exercise of judicial discretion"].) As to that component, "evaluating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling." (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067, 24 Cal.Rptr.2d 654.) Here, the pertinent finding is that Churchill did not purport to act in his capacity as a member of SLV CARE when he requested the documents. Substantial evidence in the record supports that finding, in that Churchill's e-mails did not indicate that he was acting on appellant's behalf.

*1415 We next consider the legal basis for the trial court's evidentiary ruling. (Cf., *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297, 255 Cal.Rptr. 704 [court must exercise its discretion within the "confines of the applicable principles of law"]; *In re Robert L.*, *supra*, 21 Cal.App.4th at p. 1067, 24 Cal.Rptr.2d 654 ["scope of discretion lies in the particular law to be applied"].) Here, the trial court concluded that any failure on the part of the District to provide documents to Churchill is actionable by him, but not by SLV CARE. We agree.

In affirming the trial court's decision, we acknowledge that "any person" may enforce the CPRA. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 611, 65 Cal.Rptr.2d 738.) "Thus, when section 6253 declares *every* person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to *any* person on request, and when section 6258 expressly states *any* person may institute proceedings to enforce the right of inspection, they mean what they say." (*Id.* at pp. 611-612, 65 Cal.Rptr.2d 738.)

[47] By the same token, however, the relevant statutory provision authorizes a plaintiff "to enforce *his or her right* to inspect or to receive a copy of any public record or class of public records under this chapter."(§ 6258, italics added.) That provision "contemplates a declaratory relief proceeding commenced only by an individual or entity seeking disclosure of public records...."(*Filarsky v. Superior Court*, *supra*, 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6258.) The statute provides neither explicit nor implicit authority for

one person to enforce another's inspection rights. (Cf., § 6264 [order allowing inspection or copying of public records by district attorney].) Churchill thus could enforce his own statutory rights, but not those of appellant SLV CARE.

In light of this legal authority, we conclude, the court properly determined that the proffered testimony was irrelevant to *appellant's* claim of disclosure violations. Nor did it have relevance as impeachment evidence relating to the superintendent's **173 credibility, since Churchill's written requests for public records were not addressed to her. (Cf., *People v. Rodriguez, supra,* 20 Cal.4th at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

In sum, the trial court had both an adequate factual basis and appropriate legal justification for its decision to exclude Churchill's testimony on this point. We therefore find no abuse of discretion in the challenged evidentiary ruling.

*1416C. Summary of Conclusions

Based on the evidence in the record, we affirm the trial court's determination that SLV CARE did not sustain its claim of CPRA and Brown Act violations. We also affirm the court's decision to exclude Churchill's testimony on this point.

IV. COMMUNITY INVOLVEMENT STATUTES

SLV CARE argues that the District violated provisions of the Education Code that mandate community involvement in decisions involving school closures and the use of surplus property. As before, we begin by summarizing the applicable law.

A. Governing Statutes

The applicable provisions are contained in the Education Code, Part 10.5 (School Facilities), Chapter 4 (Property: Sale, Lease, Exchange), Article 1.5 (Advisory Committees).[FN15] That article comprises sections 17387 through 17391.

FN15. In this section of the opinion (IV), further unspecified statutory references are to the Education Code.

Section 17387 provides in pertinent part: "It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires."(§ 17387.) Section 17388 sets forth the instances in which advisory committees may or must be used. It states: "The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes."(§ 17388.) Requirements for the make-up of advisory committees are set forth in section *1417 17389.[FN16] The duties of such committees are described in section 17390.[FN17] Finally, section**174 17391 authorizes the decision not to appoint a committee in certain limited circumstances, which are not pertinent here.

FN16. Section 17389 reads as follows: "A school district advisory committee appointed pursuant to Section 17388 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

(g) Persons with expertise in

environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located."

FN17. Section 17390 provides: "The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property."

B. Application

SLV CARE asserts the violation of these provisions, based on the District's appointment of two committees: the Superintendent's School Closure Committee (SSCC), which was convened prior to the April 2003 school closure decision; and the Surplus Property Advisory Committee (SPAC), which the District's Board appointed in October 2003.

1. Superintendent's School Closure Committee

[48] SLV CARE contends that the SSCC "did not comply with [§] 17387 et seq. The Committee was directed to evaluate four schools, but was given incorrect and incomplete information."

We reject that contention on both procedural and substantive grounds.

First, as to procedure, appellant failed to support its argument in its opening brief. Evidentiary support for appellant's contention is offered for the *1418 first time in its reply brief. As a matter of appellate procedure, we generally do not consider points first raised in an appellant's reply brief. (See, e.g., *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10, 93 Cal.Rptr.2d 364.)

Second, on the merits, the contention is not persuasive. For one thing, the statute does not dictate what types or sources of information must be provided to an advisory committee. For that reason alone, SLV CARE has not shown a statutory violation. For another thing, it appears that the District made a good faith attempt to provide the committee with information that was complete and accurate. Although the SSCC might not have received every report in existence addressing the physical condition of the four schools, the committee's own reports demonstrate that it had evidence on some of the cited problems, such as the presence of mold in some classrooms and the current condition of the septic systems. Furthermore, with respect to particular reports that the committee did not have, SLV CARE fails to demonstrate prejudice from their absence. To the contrary, we find nothing in the cited reports to suggest that they would have affected the committee's recommendations. For example, the 1990 geotechnical report dismissed the Ben Lomond fault as "a potential earthquake source."

In short, we find no statutory violation by the District in connection with its Superintendent's School Closure Committee.

2. Surplus Property Advisory Committee

SLV CARE attacks the District's use of the SPAC on two grounds. First, it asserts, the District should not

have made the decision to declare the property surplus; rather, that decision should have been left up to the committee. (See § 17390.) Second, it contends, the District violated the statute by failing to include representatives from all of the listed **175 groups. (See § 17389.) On that point, SLV CARE observes, the District made a purposeful decision not to solicit socioeconomic information from the applicants.

In its statement of decision, the trial court refused to rule on the issues, concluding that the claim was not yet ripe. As the court explained: "Education Code [sections] 17387-[173]90 relate to the creation of an Advisory Committee prior to and relating to the 'sale, lease or rental of excess real property....' Those circumstances have not yet arisen."

We agree with the trial court that appellant has no current cognizable claim under the statute. In pertinent part, section 17388 provides that a school district's governing board "*may,* and ... prior to the sale, lease, or rental of any excess real property ...*shall,* appoint a district *1419 advisory committee ...." (§ 17388, italics added.) Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory. (See § 75 ["may" is permissive; "shall" is mandatory].) Because the SPAC was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties.

C. Summary of Conclusions

As to appellant's claims concerning the Superintendent's School Closure Committee, even if they are not forfeited, they lack merit. The governing statute does not dictate what information must be provided to an advisory committee, and the record does not support the contention that the information provided was inaccurate or incomplete. Concerning appellant's complaints about the Surplus Property Advisory Committee, they are not cognizable under the statute. Under the circumstances presented here, the District's use of that committee was discretionary, not mandatory.

V. EVIDENTIARY RULINGS

Appellant SLV CARE next takes issue with the trial court's evidentiary rulings. It contends that the court erroneously sustained objections, by relying on grounds other than those stated in counsel's objection, and by relying on grounds that are not recognized under the Evidence Code, such as overbreadth. Taken as a whole, appellant asserts, those rulings demonstrate bias. SLV CARE also contends that the court committed error by allowing the District's bond counsel to testify to legal conclusions.

[49] As explained above, "an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Waidla, supra,* 22 Cal.4th at p. 717, 94 Cal.Rptr.2d 396, 996 P.2d 46. See also, e.g., *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1523, 3 Cal.Rptr.2d 833 [expert testimony].) "A trial court's exercise of discretion in admitting or excluding evidence ... will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice...." (*People v. Rodriguez, supra,* 20 Cal.4th at pp. 9-10, 82 Cal.Rptr.2d 413, 971 P.2d 618, citations omitted. See Evid.Code, §§ 353, 354.)

Applying those principles in this case, we find no basis for reversal.

[50] We first address appellant's claim that the court sustained numerous objections on erroneous grounds. Simply put, the record does not support that claim. In nearly all of the cited instances, either the objection or the ruling *1420 had a cognizable **176 basis, such as hearsay or lack of foundation. In cases where a question was challenged as overbroad, the court often asked counsel to narrow or rephrase it. Nor did the court's sua sponte rulings exceed the scope of its discretion. "It is well established that where questions are asked which are improper, the court acts within the scope of its duty in refusing to allow them to be answered, even though no objection be made." (*People v. White* (1954) 43 Cal.2d 740, 747, 278 P.2d 9. See also, e.g., *Kimic v. San Jose-Los Gatos Etc. Ry. Co.* (1909) 156 Cal. 379, 390, 104 P. 986, criticized on another point in *Lane v. Pacific Greyhound Lines* (1945) 26 Cal.2d 575, 583, 160 P.2d 21.)

We next consider the assertion that the court demonstrated bias against SLV CARE. The record

also belies that assertion. Far from exhibiting bias, the court showed admirable patience and even-handedness. The record is replete with instances where the court accommodated appellant's trial counsel, giving them considerable latitude, accommodating them, and occasionally even suggesting alternate approaches for presenting evidence.

[51] Finally, we turn to appellant's argument that the court erred in permitting the District's bond counsel, William Kadi, to testify about the propriety of bond expenditures. We reject that contention. In this case, "there is no basis for concluding that the trial court relied on [the witness's] alleged legal conclusions...."(*Hankins v. El Torito Restaurants, Inc.* (1998) 63 Cal.App.4th 510, 530, 74 Cal.Rptr.2d 684.) Instead, it appears that "the relevant portion of [his] testimony [was] his percipient testimony." (*Ibid.*) In ruling on the objection by appellant's trial counsel to the proffered testimony, the trial court acknowledged appellant's "right to object to Mr. Kadi expressing an opinion as to what I should find to be the law." But the court also noted Kadi's ability to address "factual issues in the case" and it therefore permitted his testimony. In its statement of decision, the court described Kadi's "opinions" as "somewhat self-serving" but characterized his "testimony" as "instructive to the court nonetheless." Given its comments, the trial court plainly understood its role as arbiter of the law. And because this was a bench trial, there was no danger of jury confusion. In short, we find no error in the court's decision to allow bond counsel to testify. Because we find no error, we need not consider prejudice. (*People v. Rodriguez, supra,* 20 Cal.4th at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

To sum up, this record discloses no abuse of discretion by the trial court in connection with the challenged evidentiary rulings.

*1421VI. ATTORNEY FEES

[52] Appellant SLV CARE claims entitlement to an award of attorney fees, citing three different statutory provisions. As we now explain, none of those provisions supports appellant's claim for fees.

Appellant first relies on Code of Civil Procedure section 1021.5. That provision, sometimes called the "private attorney general" statute, authorizes an award of attorney fees to the "successful party" in certain actions resulting in the "enforcement of an important right affecting the public interest." (Code Civ. Proc., § 1021.5. See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565, 21 Cal.Rptr.3d 331, 101 P.3d 140.) Here, however, appellant is not the successful party in this litigation. For that reason, there is no basis for a fee award in its favor under this statute.

[53] SLV CARE next claims entitlement to statutory fees under a provision of the California Public Records Act: Government**177 Code section 6259, subdivision (d). That provision mandates an award of fees and costs to prevailing plaintiffs in CPRA actions, and it also insulates unsuccessful plaintiffs from liability for the agency's defense costs, unless the action is "clearly frivolous." (Gov.Code, § 6259, subd. (d). See *Filarsky v. Superior Court, supra,* 28 Cal.4th at. pp. 427-428, 121 Cal.Rptr.2d 844, 49 P.3d 194.) "A plaintiff prevails within the meaning of the statute 'when he or she files an action which results in defendant releasing a copy of a previously withheld document.' "(*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1391, 107 Cal.Rptr.2d 29.) In other words, "if a public record is disclosed only because a plaintiff filed a suit to obtain it, the plaintiff has prevailed." (*Ibid.*) Conversely, for purposes of the CPRA fee statute, a plaintiff has *not* prevailed where "substantial evidence supported a finding that the 'litigation did *not* cause the [agency] to disclose any of the documents ultimately made available....' "(*Ibid.*)This case falls into the latter category. Although SLV CARE contends that its action against the District resulted in the release of previously withheld public records, it offers no citation to the evidentiary record to support that contention. We therefore affirm the trial court's implied determination that SLV CARE did not prevail on its CPRA claims. We also affirm the trial court's award of costs to the District, as SLV CARE offers no argument that the cost award was improper under the statute. (Gov.Code § 6259, subd. (d).)

In its third and final fee claim, SLV CARE seeks statutory attorney fees pursuant to Government Code section 800. The factual predicate for an award of fees under that provision is "arbitrary or capricious action or conduct by a public entity." (Gov.Code, §

800.) In light of our affirmance of *1422 the judgment in the District's favor, there is no basis for concluding that the District's actions were arbitrary or capricious, and thus no basis for an award of statutory fees under Government Code section 800.

In sum, there is no basis for any of appellant's claims to attorney fees.

DISPOSITION

The judgment is affirmed. The District shall recover its costs on appeal.

WE CONCUR: ELIA, Acting P.J., and MIHARA, J.
Cal.App. 6 Dist.,2006.
San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.
139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128, 209 Ed. Law Rep. 290, 06 Cal. Daily Op. Serv. 4493, 2006 Daily Journal D.A.R. 6509

END OF DOCUMENT

EXHIBIT C

DEPARTMENT OF FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 25, 2003

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

Dear Ms. Higashi:

The Department of Finance has received and reviewed test claim No. 02-TC-36, Surplus Property Advisory Committee, submitted by the Clovis Unified School District (CUSD). Based on our review of the claim and the relevant State statutes, we believe that a school district's appointment of a Surplus Property Advisory Committee is the result of a discretionary action taken by the governing board of the district. As a result, we conclude that the cited State laws do not create a State-mandated reimbursable activity; therefore the test claim should be denied.

The school district correctly states that Education Code Section (ECS) 39296 (currently ECS 17388) requires the governing board of each school district, prior to the sale, lease, or rental of any excess real property, to appoint a district advisory committee to advise the governing board in the development of policies and procedures regarding the use of or disposition of school buildings that are not needed for school purposes. However, we found nothing in State statute that directs the governing board to sell, lease or rent any excess real property. In the absence of such a statute, a governing board's decision to sell, lease or rent excess real property is a local discretionary decision and not one imposed by the State. Therefore, even though a district is required to appoint an advisory board prior to the sale, lease, or rental of excess property, it is a local discretionary action that caused the requirement of an advisory board, not a State-mandated activity.

Although the school district correctly cites ECS 39297 (currently ECS 17389), which defines the member composition of the advisory board, we do not believe that a district would incur any costs due to this statute. Further, although ECS 39298 (currently ECS 17390) specifies the requirements of the advisory committee, it is unclear to us and CUSD does not indicate which requirements, if any, would create a cost to a district. In addition, we believe that in the absence of the requirement that a district appoint an advisory committee, a school district through its facilities or business manager and staff would perform all or similar duties specified of the advisory committee in the normal conduct of good school district policies. Thus, the statutes merely ensure the Legislature's intent that community involvement would facilitate making the best possible judgments about the use of excess school property. Nevertheless, should a district incur any new costs due to the requirements of the advisory committee, to the extent allowable under existing law, we believe that a district may use the proceeds resulting from the sale, lease, or rental of excess property to offset such costs.

Based on the abovementioned findings and issues, we conclude that the statutes relating to the appointment of a Surplus Property Advisory Committee do not create a State-mandated activity.

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 July 1, 2003, letter 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 Walt Schaff, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: Surplus Property Advisory Committee
Test Claim Number: CSM-02-TC-36

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, CA 95814.

On July 25, 2003, 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 nonstate 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
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-08
Department of Education
Attention: Gerald Shelton
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Clovis Unified School District
Attention: Bill McGuire
1450 Herndon
Clovis, CA 93611-0599

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

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 July 25, 2003, at Sacramento, California.

Jennifer Nelson

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT D

H B. PETERSEN, MPA, JD, President
52 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858)514-8605
Fax: (858)514-8645
E-Mail: Kbpsixten@aol.com

August 15, 2003

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

Re: Test Claim 02-TC-36
Clovis Unified School District
Surplus Property Advisory Committee

Dear Ms. Higashi:

I have received the Response of the Department of Finance ("DOF") dated July 25, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

A. **The Response of the DOF is Incompetent and Should be Excluded**

Test claimant objects to the Response of the DOF, in total, as being legally incompetent and move that it be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall 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 or information and belief."

The DOF Response does not comply with this essential requirement.

B. **The Appointment of an Advisory Committee is not Discretionary**

Although DOF agrees that a district is required to appoint an advisory board prior to the sale, lease, or rental of excess property, it argues that nothing in the statute directs the governing board to sell lease or rent any excess real property. Therefore, argues DOF, the whole process is discretionary.

This argument is pure nonsense and suggests that school districts should permit the underutilization of district assets. Migrating populations, changes in the population density of school age children, and other socio-economic conditions dictate the sale or disposal of surplus school property. The decision to act is not discretionary, demographic conditions beyond the control of governing boards dictate those decisions. And once the decision is dictated, the appointment of an advisory committee is a mandated activity for which reimbursement is required.

C. **A District Does Incur Costs By the Appointment of a Committee**

DOF next "does not believe" that a district would incur any costs due to the test claim legislation. DOF states no factual basis for this conclusion, so it is incompetent.

First of all, the district is obligated to provide administrative support to the Committee. For example, Education Code Section 17390(a) requires the district to provide "projected school enrollment and other data". In addition, the district would provide the space, secretarial support and supplies necessary for the Committee to function.

Secondly, Education Code Section 17389(d) and (e) requires that the committee composition include teachers and administrators. It would be necessary to compensate these teachers and administrators and reimburse any other reasonable expenses incurred by them or by other committee members.

D. **There is no Authority to Permit or Require Use of Proceeds**

Finally, DOF "believes" that district may use the proceeds resulting from the sale, lease or rental of excess property to offset such costs". This "belief" is not supported by any authority in the test claim legislation or otherwise that would permit or require such use, therefore, it is incompetent.

E. **Conclusion**

For the reasons set forth herein, test claimant submits that DOF has presented no

reason for the test claim to be denied, in whole or in part. Therefore, test claimant requests the Commission to approve the test claim as filed.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Surplus Property Advisory Committee
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of August 15, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 8/15/03, at San Diego, California.

Diane Bramwell

Original List Date: 6/26/2003 Mailing Information: Other
Last Updated:
List Print Date: 07/01/2003
Claim Number: 02-TC-36
Issue: Surplus Property Advisory Committees

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen SixTen & Associates 1252 Balboa Avenue, Suite 807 San Diego, CA 92117	Claimant Representative Tel: (858) 514-8605 Fax: (858) 514-8645
Mr. Bill McGuire Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93611-0599	Claimant Tel: (559) 327-9000 Fax: (559) 327-9129
Dr. Carol Berg Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825	Tel: (916) 646-1400 Fax: (916) 646-1300
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963
Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734

Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Fax:	(916) 669-0888 (916) 669-0889
Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3159 San Diego, CA 92103-8363	Tel: Fax:	(619) 725-7565 (619) 725-7569
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8316 Red Oak Street, Suite 101 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2642 (866) 481-5383
Mr. Michael Havey State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 445-8757 (916) 323-4807
Mr. Gerald Shelton California Department of Education (E-08) Fiscal and Administrative Services Division 1430 N Street, Suite 2213 Sacramento, CA 95814	Tel: Fax:	(916) 445-0554 (916) 327-8306
Mr. Keith Gmeinder Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913 (916) 327-0225

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
(916) 323-3562
FAX (916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit E

July 29, 2008

Michael Johnston
Assistant Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599

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

RE: Draft Staff Analysis and Hearing Date
Surplus Property Advisory Committees, 02-TC-36
Education Code Sections 17387, 17388, 17389, 17390, 17391
Statutes 1982, Chapter 689, Statutes 1984, Chapter 584,
Statutes 1986, Chapter 1124, Statutes 1987, Chapter 655,
Statutes 1996, Chapter 277
Clovis Unified School District, Claimant

Dear Mr. Johnston:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Thursday, **August 28, 2008**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) Please note changes to the mailing list. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Friday, September 26, 2008**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about September 12, 2008. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-8221 with any questions.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Enclosures

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 17387, 17388, 17389, 17390, 17391

Statutes 1982, Chapter 689, Statutes 1984, Chapter 584, Statutes 1986, Chapter 1124, Statutes 1987, Chapter 655, Statutes 1996, Chapter 277

Surplus Property Advisory Committees
02-TC-36

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

This test claim alleges reimbursable state-mandated costs for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school buildings or space in school buildings.

Staff finds that the reasoning of the Court of Appeal in *City of Merced v. State of California,*[1] and of the Supreme Court in *Kern High School District,*[2] applies to this claim, so it is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution. That is, because there is no legal or practical compulsion for school district governing boards to designate as surplus or transfer (sell, lease or rent) school district property, staff finds that there is no state mandate to perform the activities in the test claim statutes.

As an alternative ground for denial, staff finds that Education Code section 17388 is not a new program or higher level of service. Claimant pled the test claim statutes beginning with Statutes 1982, chapter 689. The advisory committee's formation, however, was first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.). Although this program was not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010), it was enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and amended in 1980 (Stats. 1980, ch. 1354). Because section 17388 provided for the formation of the advisory committee before the 1982 test claim statute, staff finds that section 17388 is not a new program or higher level of service.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

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

[2] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

STAFF ANALYSIS

Claimants

Clovis Unified School District

Chronology

6/25/02	Claimant Clovis Unified School District files test claim
7/25/03	Department of Finance files comments on the test claim
8/15/03	Claimant files rebuttal comments on the test claim
7/29/08	Commission staff issues draft staff analysis

Background

This test claim alleges a state-mandate for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school property.

Test Claim Statutes

The intent behind the test claim statutes is expressed by the Legislature as follows:

> It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.
>
> It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires. (Ed. Code, § 17387.)[3]

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[3] The original legislative intent language (Stats. 1976, ch. 606 & Stats. 1977, ch. 36)) stated: "(a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs. It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation. It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use

The original 1976 legislation (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.),[4] in addition to creating the advisory committee, repealed a prohibition against joint occupancy of school buildings used for classroom purposes. The intent of the bill was to help districts offset revenue losses due to declining enrollment. The revenue from renting unused facilities could be used to supplement the school districts' regular educational program.[5]

The test claim statute that creates the advisory committee has changed very little since its first enactment.[6] It authorizes the school district to appoint a district advisory committee to help develop "districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes." The school district is required to appoint the advisory committee "prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days."[7]

The advisory committee has seven to 11 members that represent the ethnic, age-group, and socioeconomic composition of the district, as well as the business community, landowners or renters, teachers, administrators, parents, and persons with expertise in specified areas (§ 17389).[8]

According to section 17390, the advisory committee shall perform the following duties:

> (a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
>
> (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
>
> (c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to

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that is compatible with the community's needs and desires." (Former Ed. Code § 39384, Stats. 1977, ch. 36, § 448.)

[4] The test claim statutes were first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.) but were not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010). They were enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and were amended in 1980 (Stats. 1980, ch. 1354).

As pled by claimant, the test claim statutes were moved (to former §§ 39295 et seq.) and amended again in 1982 (Stats. 1982, ch. 689) and amended again by Statutes 1984, chapter 584, Statutes 1986, chapter 1124, and Statutes 1987, chapter 655. They were moved to their present location (§§ 17387 et seq.) in 1996 (Stats. 1996, ch. 277).

[5] Assembly Office of Research, Analysis of Assembly Bill No. 2882 (1975-1976 Reg. Sess.) as amended June 9, 1976 (concurrence in Senate amendments).

[6] Education Code section 17388. The word "sale" was amended out of the 1980 version (Stats. 1980, ch. 1354, former Ed. Code, § 39384 et seq.) but was amended back in by Statutes 1982, chapter 689.

[7] *Ibid.*

[8] All references are to the Education Code unless otherwise indicated.

the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

Section 17391 states that the "governing board may elect not to appoint an advisory committee in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district."

The Advisory Committee in other Statutes

In addition to appointment of the advisory committee for the purpose stated in the test claim statutes ("prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days" § 17388) the committee may be used in acquiring property. Section 17211 provides:

> Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the **district's advisory committee established pursuant to Section 17388** to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing. [Emphasis added.]

Additionally, a district governing board that seeks to sell or lease surplus real property may first offer the property to a "contracting agency" (§ 17458), which is an entity that is authorized to establish, maintain, or operate services pursuant to the Child Care and Development Services Act (see § 8200 et seq., including the definition of "contracting agency" in § 8208, subd. (b)). Specified conditions must be met in order to offer the property under the Act, including hearings by the advisory committee: "No sale or lease of the real property of any school district, as authorized under subdivision (a), may occur until the school district advisory committee has held hearings pursuant to **subdivision (c) of Section 17390.**" (§ 17458, subd. (b)); Emphasis added.)

School-District Surplus Property Law

The test claim statutes apply only to disposal of surplus or "excess real property"[9] so a discussion of school district surplus property law is warranted.

Generally, school district governing boards have power to sell or lease "any real property belonging to the school district ... which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession." (§ 17455.)

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[9] Education Code section 17388.

In addition to using surplus property for childcare facilities discussed above (§ 17458), the governing board may sell surplus property for less than fair market value to a park district, city or county for recreational purposes or open-space purposes under certain conditions (§ 17230).[10]

Most transfers of school-district surplus property fall under the Naylor Act,[11] which governs offers to sell or lease schoolsites[12] to public agencies ("Notwithstanding Section 54222 of the Government Code").[13] The Act also governs retention of part of a schoolsite, sales price or rate of lease, public agencies buying or leasing the land, maintenance by public agencies, uses of the land, reacquisition by the school district, and limitations on the right of acquisition or lease.

The legislative intent of the Naylor Act is "to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes."[14] In accordance with this intent, the Naylor Act applies to schoolsites in which all or part of the land is used for a school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes, and has been used for one of these purposes for at least eight years before the governing board decides to sell or lease the schoolsite (§ 17486). The Act also applies if no other available publicly owned land in the vicinity of the schoolsite would be adequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes, as determined by the purchasing or leasing public agency (*Ibid).*

School districts with more than 400,000 pupils in average daily attendance are not included in the Naylor Act (§ 17500), and it does not apply if other public agencies do not wish to purchase the surplus land (§ 17493, subd. (b)). Also, a school district may exempt property from the Act under certain conditions (§ 17497).

Claimants' Position

Claimant alleges that the test claim statutes constitute a reimbursable mandate under article XIII B, section 6 of the California Constitution because they require claimant to:

A) Develop, adopt and implement policies and procedures for community involvement in the disposition of school buildings or space in school buildings

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[10] Section 17230 states that it is in addition to requirements placed on school districts pursuant to Section 54222 of the Government Code, which requires making written offers to specified government entities when selling surplus land. The entities to which the offers are made depend on the intended or suitable purpose for the land.

[11] Education Code sections 17485-17500. For the Supreme Court's summary and interpretation of the Naylor Act, see *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921.

[12] Schoolsite is defined in the Naylor Act as "a parcel of land, or two or more contiguous parcels, which is owned by a school district." (§ 17487.)

[13] Section 54222 of the Government Code requires, when selling surplus land, making written offers to specified government entities, depending on the land's intended or suitable purposes.

[14] Education Code section 17485.

which is not needed for school purposes prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, pursuant to Education Code Section 17388.

B) Appoint, supervise and consult with a district advisory committee established to advise the governing board in the use and disposition of surplus space and real property, pursuant to Education Code Section 17388.

C) Appoint an advisory committee consisting of not less than seven nor more than 11 members, and that is representative of each of the criteria required by Education Code Section 17389.

D) For the school district advisory committee appointed pursuant to Education Code Section 17388 to implement all of the following duties, pursuant to Education Code Section 17390:
   1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;
   2) Establish a priority list of use of surplus space and real property that will be acceptable to the community;
   3) Circulate throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;
   4) Make a final determination of limits of tolerance of use of space and real property; and
   5) Forward to the district governing board a report recommending uses of surplus space and real property, pursuant to education Code Section 17390 (e).

Claimant estimates that it will incur more than $1000 in staffing and other costs to implement these duties.

Claimant, in its August 2003 comments, argues that the July 25, 2003 comments by the Department of Finance should be excluded because they are not accompanied by a signed declaration that the comments are true and complete to the best of the representative's personal knowledge or information and belief, as required by section 1183.02(d) of the Commission's regulations.[15] Claimant also argues that (1) the appointment of an advisory committee is not

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[15] Section 1183.02, subdivision (d), 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, and that any assertions of fact are to be supported by documentary evidence. 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 (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied on by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The Finance comments are regarding whether the

discretionary; (2) A district does incur costs in appointing a committee; and (3) that Finance is incorrect in stating that the district may use the proceeds resulting from the sale, lease or rental of excess property to offset the costs of the committee.

State Agency Positions

The Department of Finance, in its July 2003 comments, states:

> [W]e believe that a school district's appointment of a Surplus Property Advisory Committee is the result of a discretionary action taken by the governing board of the district. As a result, we conclude that the cited State laws do not create a State-mandated reimbursable activity; therefore the test claim should be denied.

Finance elaborates that it finds nothing in the statute that directs the governing board to sell, lease or rent excess real property. And according to Finance, "even though a district is required to appoint an advisory board prior to the sale, lease or rental of excess property, it is a local discretionary action that caused the requirement of an advisory board, not a State-mandated activity."

Finance also states that it does not believe a district would incur any costs due to the statute, and that in the absence of the requirement for an advisory committee, a district facilities or business manager and staff would perform all or similar duties specified of the advisory committee in the normal conduct of good school district policies. Finally, Finance believes that should a district incur costs in complying with the test claim statutes, that it may use the proceeds from the sale, lease or rental of excess property to offset the costs.[16]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[17] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[18] "Its

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Commission should approve this test claim and are, therefore, not stricken from the administrative record.

[16] Education Code section 17462 requires the proceeds from the sale of surplus school district property to be used for "capital outlay or for costs of maintenance of school district property that the governing board of the school district determines will not recur within a five-year period."

[17] Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) 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.

[18] *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

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."[19] 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.[20]

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.[21]

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 policy, but does not apply generally to all residents and entities in the state.[22] 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.[23] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[24]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[25]

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.[26] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an

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

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

[21] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[25] *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

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

"equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[27]

I. Are the test claim statutes state mandates within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute 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.[28] The issue is whether the test claim statutes mandate a school district to form an advisory committee to perform specified duties.

As a preliminary matter, staff finds that the test claim statutes that require discussion are sections 17388, which forms the advisory committee, and 17390, which enumerates its duties (see pp. 3-4). The remaining statutes merely define the advisory committee's scope, in that they specify the membership of the advisory committee (§ 17389), and excuse its formation for a specified purpose (§ 17391). Thus, the sole issue is whether sections 17388 and 17390 constitute a state mandate. Section 17388 reads:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (§ 17388.)

The plain language of this single-sentence statute indicates two things. First, that the governing board may form an advisory committee. And second, that prior to the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee.

As to the first part of the sentence (formation of the committee when there is no excess property), the plain meaning the word "may" indicates that section 17388 is not mandatory.[29] An appellate court decision confirms this interpretation. The case, *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.*,[30] involved a school district accused of failing to comply with various statutes in closing two elementary schools. The court interpreted section 17388 as follows:

> Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory. (See § 75 ["may" is permissive;

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[27] *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.

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

[29] Education Code section 75: ""Shall' is mandatory and 'may' is permissive."

[30] *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.* (2006) 139 Cal.App.4th 1356 ("*San Lorenzo Valley*").

> "shall" is mandatory].) Because the SPAC [surplus property advisory committee] was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties.[31]

Based on the plain language of section 17388, and the interpretation of it by the *San Lorenzo Valley* court, staff finds section 17388 is not a state mandate within the meaning of article XIII B, section 6 if there is no surplus property involved.

The second part of section 17388 states that before the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee. The issue is whether this is a state mandate.

In 2003, the California Supreme Court, in the *Kern High School Dist.* case,[32] considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. In *Kern*, school districts participated in various education-related programs that were funded by the state and federal government. Each of the underlying funded programs required school districts to establish and use school site councils and advisory committees. State open meeting laws later enacted in the mid-1990s required the school site councils and advisory bodies to post a notice and an agenda of their meetings. The school districts requested reimbursement for the notice and agenda costs pursuant to article XIII B, section 6.[33]

In analyzing the concept of "state mandate," the court reviewed the ballot materials for article XIII B, which defined state mandate as "something that a local government entity is required or forced to do" and "requirements imposed on local governments by legislation or executive orders."[34]

The *Kern* court also reviewed and affirmed the holding of *City of Merced v. State of California*,[35] where the city, under its eminent domain authority condemned privately owned real property and was required by statute to compensate the property owner for the loss of business goodwill. Upon review, the Supreme Court determined that, when analyzing state mandates, the underlying program must be reviewed to determine whether the claimant's participation in the underlying program is voluntary or legally compelled.[36] The *Kern* court stated:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue

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[31] *San Lorenzo Valley, supra,* 139 Cal.App.4th 1356, 1419.

[32] *Kern High School Dist., supra*, 30 Cal.4th 727.

[33] *Id.* at page 730.

[34] *Id.* at page 737.

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

[36] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[37] (Emphasis in original.)

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.*[38] [Emphasis added.]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws.

One of the underlying programs the Supreme Court discussed in *Kern* was the American Indian Early Childhood Education Program (Ed. Code § 52060 et seq.) which, as part of participation, requires a districtwide American Indian advisory committee for American Indian early childhood education. The court stated:

> Plainly, a school district's initial and continued participation in the program is voluntary, and the obligation to establish or maintain an advisory committee arises only if the district elects to participate in, or continue to participate in, the program. ... [T]he obligation to establish or maintain a site council or advisory committee arises only if a district elects to participate in, or continue to participate in, the particular program.[39]

In this claim, as with the eminent domain in *City of Merced* and the advisory committee in *Kern High School Dist.*, there is no state requirement for the school district to declare property surplus or excess, or to participate in what the *Kern* court calls the "underlying program." It is the local school district officials who make the triggering decision to designate property as surplus or transfer it. Therefore, there is no legal compulsion that creates a state mandate.[40]

In addition to the test claim statutes, the other school district surplus property statutes do not legally compel property to be designated as surplus or excess, or to be transferred. For example, the Naylor Act (§§ 17485-17500) states that "The governing board of any school district may sell or lease any schoolsite containing land described in Section 17486, and, if the governing

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[37] *Ibid.*

[38] *Id.* at 731.

[39] *Id.* at 744.

[40] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

board decides to sell or lease such land, it shall do so in accordance with this article."[41] A second example is in Education Code section 17458, which requires the advisory committee to hold hearings before selling or leasing real property to contracting agencies under the Child Care and Development Services Act (see p. 4 above). But there is no requirement to sell or lease the property, as stated in part: "[T]he governing board of any school district ... seeking to sell or lease any real property it deems to be surplus property **may** first offer that property for sale or lease to any contracting agency, as defined in Section 8208 of the Education Code, pursuant to the following conditions ..."[42] One of the conditions is the advisory committee hearing, which is contingent on the initial decisions to deem the property surplus and offer it to a contracting agency.

Legal compulsion aside, in the *Kern High School Dist.* case, the California Supreme Court found that state mandates could be found in cases of practical compulsion on the local entity when a statute imposes "certain and severe penalties such as double taxation or other draconian consequences"[43] for not participating in the programs. The court also described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."[44]

Claimant, in August 2003 rebuttal comments, argues that school districts are practically compelled to use the advisory committee as follows:

> This argument is pure nonsense and suggests that school districts should permit the underutilization of district assets. Migrating populations, changes in the population density of school age children, and other socio-economic conditions dictate the sale or disposal of surplus school property. The decision to act is not discretionary; demographic conditions beyond the control of governing boards dictate those decisions. And once the decision is dictated, the appointment of an advisory committee is a mandated activity for which reimbursement is required.[45]

Local governments could make the same argument about use of eminent domain at issue in *City of Merced*, i.e., that conditions beyond the control of local government make the use of eminent domain necessary. The *City of Merced* court, however, did not find this a compelling reason for making the cost of eminent domain reimbursable. The decision to invoke eminent domain, just like the decision to designate property as surplus, is made at the local level.[46]

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[41] Education Code section 17488.

[42] Education Code section 17458. Emphasis added.

[43] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[44] *Id.* at p. 731.

[45] Letter from claimant, August 18, 2003, page 2.

[46] Cf. *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

There is no evidence in the record of practical compulsion, in that there are no "certain and severe penalties such as double taxation or other draconian consequences"[47] for school districts' failing to designate or transfer property as surplus or excess.

Therefore, staff finds that the reasoning of *City of Merced* and *Kern High School Dist.* control this claim. That is, because there is no legal or practical compulsion to designate as surplus or transfer (sell, lease, or rent) school district property, neither formation of the advisory committee (§ 17388), nor its activities (§ 17390), are state mandates imposed on a school district. Accordingly, the test claim statutes (§§ 17387-17389) do not constitute a state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

II. Does Education Code section 17388 constitute a new program or higher level of service?

As an alternative ground for denial, staff finds that section 17388 is not a new program or higher level of service.[48] Claimant pled the test claim statutes starting with Statutes 1982, chapter 689. The advisory committee statute, however, was first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.). Although it was not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010), it was enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and amended in 1980 (Stats. 1980, ch. 1354).

The 1977 statute, former section 39384, subdivision (c), read as follows:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

Because this statute provided for the formation of the advisory committee before the 1982 test claim statute pled by claimant, staff finds that section 17388 is not a new program or higher level of service.

CONCLUSION

For the reasons discussed above, staff finds that the test claim statutes (Ed. Code, §§ 17387, 17388, 17389, 17390, 17391) are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

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[47] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835-836.

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 07/29/2008
Claim Number: 02-TC-36
Issue: Surplus Property Advisory Committees

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Exhibit F

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

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August 28, 2008

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 dated July 29, 2008, the Department of Finance has reviewed the draft staff analysis for test claim No. 02-TC-36, Surplus Property Advisory Committee, submitted by the Clovis Unified School District. Based on our review, we concur with the draft staff analysis's recommendation to deny the test claim since the test claim statutes are not a reimbursable state-mandated program. As indicated in our letter submitted on July 25, 2003, we believe that a school district's appointment of a Surplus Property Advisory Committee is the result of a discretionary action taken by the governing board of the district.

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 July 29, 2008 letter, 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 Lenin Del Castillo, Principal Program Budget Analyst, at (916) 445-0328.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF LENIN DEL CASTILLO
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-36

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2/28/03
at Sacramento, CA

Lenin Del Castillo

PROOF OF SERVICE

Test Claim Name: Surplus Property Advisory Committees
Test Claim Number: 02-TC-36

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, CA 95814.

On August 28, 2008, 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 nonstate 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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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 August 28, 2008 at Sacramento, California.

Annette Waite

Annette Waite