

**ITEM 7**  
**FINAL STAFF ANALYSIS**

Statutes 1999, Chapter 50  
Statutes 2000, Chapter 52  
Statutes 2001, Chapter 106  
Statutes 2002, Chapter 379

Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002)

*Adult Education Enrollment Reporting (02-TC-37)*  
Berkeley, and Sacramento City Unified School Districts, Claimants

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**ITEM 7**  
**TEST CLAIM**  
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Statutes 1999, Chapter 50, line items 6110-156-0001 and 6110-156-0890  
Statutes 2000, Chapter 52, line items 6110-156-0001 and 6110-156-0890  
Statutes 2001, Chapter 106, line items 6110-156-0001 and 6110-156-0890  
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**EXECUTIVE SUMMARY**

**Background**

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis. The only exceptions are adult language classes in English and citizenship. Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level. Similarly, Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.

The Budget Act of 1998 appropriated federal and state funds for the California Department of Education (CDE) to allocate to school districts, county offices of education, and other agencies for adult education programs. School districts receiving budgeted funds were required to collect and submit specified data to the CDE. The 1998 Budget Act required the CDE to develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and to provide school districts with a list of the required data elements for the data and accountability system.

The test claim statutes are line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002.<sup>1</sup> These statutes contain many of the same provisions as the Budget Act of 1998. The test claim also includes three letters issued by the CDE. On July 6, 1999, the CDE issued a letter to "Adult Education Administrators," announcing that the CDE had developed a statewide data and accountability system, "Tracking of Programs and Students" (TOPSpro), as required by the Budget Act of 1998. The letter stated that adult schools providing programs funded through state apportionment were required to fully implement the TOPSpro system. The letter also outlined the state and federal sources of data and accountability requirements. On April 24, 2000 and August 1, 2002, the CDE issued letters similar to the July 6, 1999 letter. Unlike the July 6, 1999 letter, the April 24, 2000 letter only suggests the use of

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<sup>1</sup> Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, and Statutes 2002, chapter 379 (the Budget Acts of 1999, 2000, 2001, and 2002).

the TOPSpro system. The August 1, 2002 letter, however, requires the use of the TOPSpro system for all data collection requirements outlined by that letter.

Claimants allege that the test claim statutes and CDE letters constitute a reimbursable state-mandated program. Claimants argue that although data reporting occurred before the enactment of the test claim statutes and issuance of the CDE letters, the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system. Therefore, the test claim statutes and letters impose a new program or higher level of service and costs mandated by the state upon adult education schools and school districts.

The Department of Finance (Finance) disagrees with claimants' test claim allegations and asserts that the test claim statutes and letters do not constitute a reimbursable state mandate because the test claim statutes and letters: (1) do not mandate any activity upon school districts, (2) do not constitute a "new program" or "higher level of service," and (3) do not impose increased costs mandated by the state.

### **Staff Analysis**

Staff finds that based on the test claim filing date<sup>2</sup> and the plain language of the CDE letters, claimants are not eligible for reimbursement of costs incurred before July 1, 2001. Thus, Statutes 1999, chapter 50, Statutes 2000, chapter 52 (which enacted the Budget Acts of 1999 and 2000), are not subject to article XIII B, section 6 of the California Constitution because the provisions of the test claim statutes are effective only for the fiscal years of the enacted budget acts. Similarly, staff finds that the CDE letters dated July 6, 1999 and April 24, 2000 are not subject to article XIII B, section 6 of the California Constitution, because they were only effective until August 15, 2000.

Staff also finds that the plain language of line item 6110-156-0890 of Statutes 2001, chapter 106, Statutes 2002, chapter 379 (which enacted the Budget Acts of 2001 and 2002) does not require any activity of school districts, and therefore, does not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

In addition, staff finds under *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, that Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the CDE letter dated August 1, 2002, do not impose state-mandated activities upon claimants as they relate to the general provision of adult education, because adult education is provided on a voluntary basis pursuant to Education Code sections 52501-52503.

However, in specified situations, school districts are required to provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552. Although the 2001 and 2002 budget acts required school districts that provide adult English and citizenship classes to collect and report adult education data, staff finds that these statutes do not impose a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution because school districts were already required to collect and report adult education data prior to the enactment of Statutes 2001, chapter 106, and Statutes 2002, chapter 379.

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<sup>2</sup> See Government Code section 17557, subdivision (e).

The CDE letter dated August 1, 2002 requires school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 to implement the TOPSpro system. Since CDE did not require implementation of the TOPSpro system prior to this letter, staff finds that the CDE letter dated August 1, 2002 mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution from July 1, 2002 to August 15, 2003.

However, staff finds that claimants are not entitled to reimbursement of costs related to the implementation of the TOPSpro system for the provision of adult English and citizenship classes pursuant to Education Code sections 52540 and 52552.

During the course of the reimbursement period of July 1, 2001 to August 15, 2003, school districts, that may have been required to establish adult English classes and citizenship classes, have had available state funds not subject to specific use limitations to pay for required adult education program expenses. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

### **Conclusion**

Therefore, staff concludes that, Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the CDE letters dated July 6, 1999, April 24, 2000 and August 1, 2002, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends the Commission adopt this analysis and deny the test claim.

## STAFF ANALYSIS

### Claimants

Berkeley Unified School District and Sacramento City Unified School District

### Chronology

- 06/26/03 Spector, Middleton, Young and Minney, LLP files test claim with the Commission on State Mandates (Commission) on behalf of Berkeley, Elk Grove, and Sacramento City Unified School Districts
- 07/03/03 Commission issues incompleteness letter for Elk Grove Unified School District, test claim placed on hold
- 09/02/03 Commission receives electronic mail from claimant representative indicating removal of Elk Grove Unified School District as a co-claimant
- 09/08/03 Commission issues completeness letter for claimants and indicates deletion of Elk Grove Unified School District as a co-claimant
- 09/08/03 Commission receives Spector, Middleton, Young and Minney, LLP's notice of termination of claimant representation for test claim
- 09/10/03 Commission receives MCS Education Services, Inc.'s (MCSed) notice of claimant representation for test claim
- 09/29/03 Commission issues letter acknowledging MCSed as only an interested party
- 10/31/03 The Department of Finance (Finance) files request for an extension of time for comments
- 11/07/03 Commission staff grants extension of time for comments to February 7, 2004
- 02/13/04 Finance files request for an extension of time for comments
- 02/18/04 Commission staff grants extension of time for comments to March 19, 2004
- 06/22/04 Finance submits comments in response to test claim
- 05/01/07 Commission issues letter requesting identification of claimants' representatives
- 05/29/07 Commission staff issues draft staff analysis
- 07/12/07 Commission issues final staff analysis and proposed Statement of Decision

### Background

This test claim addresses the data collection and reporting requirements of school districts that provide state and/or federally funded adult education programs. The Legislature passed the Budget Act of 1998 by enacting Statutes 1998, chapter 324 (Assem. Bill No. (AB) 1656).<sup>3</sup> As part of the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 appropriated specified amounts from the General Fund and Federal Trust Fund, respectively, for local assistance to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.

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<sup>3</sup> Claimants did not plead Statutes 1998, chapter 324, in this test claim.

As one of several provisions to the funds appropriated for adult education programs in the Budget Act of 1998, provision 5(h) of line item 6110-156-0001 required the CDE to develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs. The CDE is also required to provide school districts with a list of the required data elements for the data and accountability system. School districts receiving funds provided in the line item are required to collect and submit specified data to the CDE.<sup>4</sup>

Other sources of data collection and reporting requirements for school districts receiving state and/or federal funds for adult education programs include Performance Based Accountability (PBA)<sup>5</sup> and the Workforce Investment Act of 1998 (WIA).<sup>6</sup> Prior to its repeal in 2006, PBA required school districts receiving state and/or federal funding from various sources for adult education programs to report information to the State Job Training Coordinating Council.<sup>7</sup> This information was used to develop an education and job training report card program that assessed the accomplishments of California's work force preparation system.

The United States Congress enacted the WIA with the purpose of creating "a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy services."<sup>8</sup> In order to receive a grant under the WIA, a state is required to submit a five-year plan setting forth, among other things, a description of how the CDE will evaluate annually the effectiveness of the adult education and literacy activities based on specified performance measures.<sup>9</sup> California's five-year plan requires school districts that wish to be eligible to receive WIA grant money to meet certain criteria, which includes submitting specified data to the CDE.<sup>10</sup>

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis.<sup>11</sup> The only exceptions are adult English classes and classes in citizenship. Education Code section 52540 requires a high school district to establish classes in

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<sup>4</sup> Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j).

<sup>5</sup> Statutes 1995, chapter 771 (SB 645), adding Unemployment Insurance Code section 15037.1; repealed by Statutes 2006, chapter 630, section 7 (SB 293).

<sup>6</sup> 112 Statutes 936, 20 U.S.C. section 9201 et seq.

<sup>7</sup> The State Job Training Coordinating Council membership includes the CDE.

<sup>8</sup> 20 U.S.C. 9201.

<sup>9</sup> 20 U.S.C. 9224.

<sup>10</sup> Cal. Dept. Of Education, Workforce Investment Act, Title II, Adult Education and Family Literacy Act, California State Plan 1999-2004, as revised January 10, 2002, p. 33-34 (CDE link to outside source: <<http://www.otan.us/webfarm/stateplan/PDF%27s%202004/Stateplan1999-2004.PDF>> [as of May 2, 2007]).

<sup>11</sup> Education Code section 52301 allows the county superintendent of schools of each county, with the consent of the state board, to establish and maintain a regional occupational center, or regional occupational program (ROC/P) in the county to provide education and training in career technical courses. Education Code sections 52501, 52502, and 52503 allow high school districts or unified school districts to establish and maintain adult education classes and/or schools.

English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.<sup>12</sup> Similarly, Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.<sup>13</sup>

The test claim statutes are line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002 that were enacted by Statutes 1999, chapter 50; Statutes 2000, chapter 52; Statutes 2001, chapter 106; and Statutes 2002, chapter 379. Like the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001; and 2002, appropriate specified amounts from the General Fund and Federal Trust Fund to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.<sup>14</sup> The appropriated amounts are subject to many of the same provisions found in the Budget Act of 1998, including the requirements that the CDE develop a data and accountability system, and that school districts receiving funding for adult education collect and report specified data to the CDE.<sup>15</sup>

On July 6, 1999, the CDE issued a letter to "Adult Education Administrators," indicating that the CDE had developed a statewide data and accountability system "Tracking of Programs and Students" (TOPSpro), as requested in the Budget Act of 1998. Provided by Comprehensive Adult Student Assessment System (CASAS), TOPSpro is a computerized database system that automatically scores CASAS tests; tracks student and program outcomes and progress; generates reports for students, teachers, and program administrators; provides individual, class and agency-wide profiles of skills; collects student demographics; and manages data for state and federal accountability.<sup>16</sup>

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<sup>12</sup> Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

<sup>13</sup> Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

<sup>14</sup> Statutes 1999, chapter 50, line items 6110-156-0001 and 6110-156-0890 appropriate \$542.4 million and \$42.3 million respectively; Statutes 2000, chapter 52, line items 6110-156-0001 and 6110-156-0890 appropriate \$573.6 million and \$48.3 million respectively; Statutes 2001, chapter 106, line items 6110-156-0001 and 6110-156-0890 appropriate \$610.7 million and \$74.1 million respectively; and Statutes 2002, chapter 379, line items 6110-156-0001 and 6110-156-0890 appropriate \$605 million and \$91.8 million respectively.

<sup>15</sup> Statutes 1999, chapter 50, line item 6110-156-0001, provisions 5(g)(h)(i); Statutes 2000, chapter 52, line item 6110-156-0001, provisions 4(g)(h); Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4(g)(h); and Statutes 2002, chapter 379, line item 6110-156-0001, provisions 4(g)(h).

<sup>16</sup> Description provided by the Comprehensive Adult Student Assessment System website at <<https://www.casas.org/home/index.cfm?fuseaction=home.showContent&MapID=125>>, as of May 2, 2007.

The CDE letter further states, "Due to the enormous increase in state and federal demands for data collection and accountability, the [CDE] suggest using one accountability system that can be used for all data collection requirements."<sup>17</sup> The TOPSpro system has the ability to be used for all adult data collection requirements, which consist of: (1) State Budget Act Language, (2) CalWORKs, (3) PBA, and (4) WIA.<sup>18</sup> When discussing the "State Budget Act Language" in the outline of data and accountability requirements the letter provides:

**[B]eginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.]**<sup>19</sup>

The letter further indicates the date and location where collected data must be sent. Additionally, the letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge.

On April 24, 2000 and August 1, 2002, the CDE issued letters similar to the July 6, 1999 letter. Unlike the July 6, 1999 letter, the April 24, 2000 letter only suggests the use of the TOPSpro system, stating:

The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.<sup>20</sup>

This language is not coupled with language requiring the full implementation of the TOPSpro system, as was done in the July 6, 1999 letter.

The August 1, 2002 letter requires the use of the TOPSpro system for all data collection requirements outlined by the August 1, 2002 letter, providing:

CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.<sup>21</sup>

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<sup>17</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>18</sup> Claimants did not plead the enacting statutes of CalWORKs, the PBA, or WIA.

<sup>19</sup> CDE letter, *supra*, p. 2, original emphasis.

<sup>20</sup> CDE letter, dated April 24, 2000, p. 1.

<sup>21</sup> CDE letter, dated August 1, 2002, p. 2.

## Claimants' Position

Claimants, Berkeley Unified School District and Sacramento City Unified School District, contend that the test claim statutes and letters issued by the CDE constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants assert the test claim statutes and the letters issued by the CDE mandate the following activities:

- the completion of required forms for each student in each program at the school site level;
- input of the form data collected on each student in each program at the school site level;
- transmission of the aggregate school site data to the District;
- comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
- annual reporting of data to Comprehensive Adult Student Assessment System (CASAS);
- obtaining necessary computer hardware and software to properly implement the TOPSpro system;
- training district staff regarding the test claim activities;
- drafting or modifying policies and procedures to reflect the test claim activities; and
- any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Claimants argue that use of the TOPSpro system to report adult education data to the CDE constitutes a "program" because "[p]ublic education in California is a peculiarly governmental function administered by local agencies as a service to the public."<sup>22</sup> In addition, the test claim statutes and letters only apply "to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state."<sup>23</sup>

Claimants also assert that use of the TOPSpro system constitutes a "new program" or "higher level of service," stating:

While data reporting occurred before the enactment of the test claim [statutes] and issuance of the [letters from the CDE], the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system.<sup>24</sup>

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<sup>22</sup> Test Claim, p. 7. Claimant cites *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172, as support for this contention. However, the court's statement that education is a peculiarly governmental function was made in regard to Kindergarten through 12<sup>th</sup> grade education, and not adult education.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

In addition, claimants contend that the test claim statutes and letters are not subject to any of the "exceptions" listed in Government Code section 17556. Therefore, the test claim statutes and letters impose costs mandated by the state upon adult education schools and school districts.

### **Department of Finance's Position**

The Department of Finance (Finance) filed comments dated June 21, 2004 disagreeing with claimants' test claim allegations. Finance asserts that the test claim statutes and letters do not constitute a reimbursable state mandate because the test claim statutes and letters: (1) do not mandate any activity upon school districts, (2) do not constitute a "new program" or "higher level of service," and (3) do not impose increased costs mandated by the state.

Finance contends that the plain language of the test claim statutes and letters do not mandate any activity upon school districts, stating, "The actual language [of the test claim statutes] does not place any requirements upon the [school districts]. Instead the language places a specific requirement upon the [CDE]."<sup>25</sup> Finance argues that the July 6, 1999, and April 24, 2000 letters only "suggest" the use of TOPSpro. In regard to the August 1, 2002 letter, Finance contends that although the letter requires the use of TOPSpro, the requirement is only a condition of receiving funds and the CDE does not have the statutory authority to enforce the submission of data or the use of TOPSpro. Thus, the language of the test claim statutes and letters do not mandate any activity upon school districts.

Finance also argues that any data collection and reporting requirements contained in the test claim statutes and letters are not mandated upon claimants. Finance states that with two exceptions,<sup>26</sup> "adult education classes are voluntary and are conducted at the discretion of the [school district]. Therefore, any incidental reporting or claiming required are costs incurred at the [school district's] option."<sup>27</sup> In regard to the two exceptions, English classes and citizenship classes, Finance states that those requirements were "not created after 1975 and [are] not subject to reimbursement."<sup>28</sup>

In addition, Finance asserts that the test claim statutes and letters do not impose requirements that constitute a "new program" or "higher level of service." Finance contends:

As a condition of receipt of funding, districts have historically been required to report on the number of [average daily attendance] served along with other information standards established by the [CDE]. ... Therefore, the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding.<sup>29</sup>

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<sup>25</sup> Finance comments to the test claim dated June 21, 2004, p. 2.

<sup>26</sup> Education Code section 52540 requires school districts to offer classes for adults for whom English is a second language upon the demand of 20 or more students. Education Code section 52552 requires school districts to offer classes in United States citizenship upon the demand of 25 or more students.

<sup>27</sup> Finance comments to the test claim dated June 21, 2004, p. 3.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

Finance further contends that the test claim statutes and letters should not impose increased costs mandated by the state. Finance argues:

The Budget Act of 2003 provided \$550.8 million in Proposition 98 General Fund and \$82.2 million in federal funds for adult education programs. Thus the State provides more than adequate funding to be used to offset any costs associated with adult education reporting.<sup>30</sup>

Finance indicates that the CDE, through CASAS, provides all school districts with a free set of TOPSpro software and all of the forms that the system uses. CASAS has indicated that they have worked with many districts to ensure that their individual school and district attendance systems work with TOPSpro in order to make the system as seamless as possible. CASAS also provides free training on the use of the TOPSpro system. Finance concludes that “the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding.”<sup>31</sup>

### Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>32</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>33</sup> “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.”<sup>34</sup> 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.<sup>35</sup> In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.<sup>36</sup>

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “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.”

<sup>33</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>34</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>35</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>36</sup> *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*).

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.<sup>37</sup> 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.<sup>38</sup> A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”<sup>39</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>40</sup>

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.<sup>41</sup> 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.”<sup>42</sup>

**Issue 1: Are the test claim statutes and letters issued by the CDE subject to article XIII B, section 6 of the California Constitution?**

Government Code section 17500 et seq., implements article XIII B, section 6 of the California Constitution. Government Code section 17557, subdivision (e), establishes the reimbursement period for reimbursable state-mandated programs and provides that “[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”

Here, claimants submitted the test claim on June 26, 2003, during the 2002-2003 fiscal year. As a result, claimants are eligible for possible reimbursement beginning on July 1, 2001, the start of the 2001-2002 fiscal year. Any costs for activities associated with the alleged state-mandated program incurred before July 1, 2001 are not reimbursable.

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<sup>37</sup> *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 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>38</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>39</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

<sup>40</sup> *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.

<sup>41</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>42</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Claimants have pled line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, and three letters issued by the California Department of Education (CDE) dated July 6, 1999, April 24, 2000, and August 1, 2002, as test claim statutes and alleged executive orders, respectively. The provisions of test claim statutes were effective only for the fiscal year for which the Budget Acts were enacted. Similarly the CDE letters were effective for limited durations.

The July 6, 1999 and April 24, 2000 CDE letters were both issued during the 1999-2000 fiscal year (July 1, 1999 through June 30, 2000). The July 6, 1999 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools beginning July 1, 1999."<sup>43</sup> This outline consisted of: (1) the language of the Budget Act of 1999, (2) CalWORKs, (3) PBA, and (4) WIA. Under the heading for the Budget Act language of 1999, which is only effective for July 1, 1999 through June 30, 2000 (the 1999-2000 fiscal year), the letter provides:

**[B]eginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.]**<sup>44</sup>

Under the CalWORKs and PBA headings, the July 6 letter requires the submission of data collected between January 1, 1999 through June 30, 1999, no later than August 15, 1999. Under the WIA heading, the July 6 CDE letter requires submission of data collected during 1999-2000 no later than August 15, 2000. The April 24, 2000 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools for fiscal year 1999-2000."<sup>45</sup> The letter proceeds to outline the same requirements outlined in the July 6, 1999 CDE letter, however, only suggests the use of the TOPSpro system, providing:

The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.<sup>46</sup>

The April 24, 2000 CDE letter also provides that adult education data collected for the 1999-2000 fiscal year for the State Budget Act, CalWORKs, PBA, and WIA requirements are due no later than August 15, 2000.

Accordingly, the requirements of the July 6, 1999 CDE letter, which cover the same areas as the April 24, 2000 CDE letter, were effective only until the issuance of the April 24, 2000 CDE letter. Also, as indicated in the April 24, 2000 CDE letter, the requirements of the letter were applicable to the 1999-2000 fiscal year and were effective until August 15, 2000.

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<sup>43</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>44</sup> CDE letter, *supra*, p. 2, original emphasis.

<sup>45</sup> CDE letter, dated April 24, 2000, p. 1.

<sup>46</sup> CDE letter, dated April 24, 2000, p. 1.

Given that claimants are not eligible for reimbursement of costs incurred before July 1, 2001, and that the provisions of the test claim statutes are effective only for the fiscal year that the Budget Acts were enacted, the Budget Acts of 1999 and 2000 are not subject to article XIII B, section 6 of the California Constitution. Similarly, the July 6, 1999 and April 24, 2000 CDE letters are not subject to article XIII B, section 6 of the California Constitution, because they were only effective until August 15, 2000.

The August 1, 2002 CDE letter provides as its subject, "FY 2002-03 Accountability Requirements."<sup>47</sup> The letter subsequently provides that adult education data collected for the 2002-2003 fiscal year is due no later than August 15, 2003. Thus, the requirements in the August 1, 2002 CDE letter were applicable to the 2002-2003 fiscal year and effective until August 15, 2003.

Staff therefore, finds that the Budget Acts of 2001 and 2002, and the August 1, 2002 CDE letter are subject to article XIII B, section 6 of the California Constitution. However, because the August 1, 2002 CDE letter is effective only until August 15, 2003, and claimants have not pled any subsequent Budget Acts or alleged executive orders, the possible reimbursement period begins July 1, 2001 and ends August 15, 2003.

**Issue 2: Do the line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002, and the CDE letter dated August 1, 2002, mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?**

In order for a test claim statute and/or executive order to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

Line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002 indicate the amounts appropriated from the State General Fund and Federal Trust Fund to be distributed to school districts that provide adult education programs. For example, line item 6110-156-0001 of the Budget Act of 2001, which appropriates \$610.7 million General Fund, provides:

For local assistance, [CDE] (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute.<sup>48</sup>

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<sup>47</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>48</sup> Statutes 2001, chapter 106, line item 6110-156-0001.

Line item 6110-156-0001 of the Budget Act of 2001 then “schedules” the amount appropriated into four categories (three adult education program areas and reimbursements). The \$610.7 million in General Fund is scheduled amongst the four categories as follows:

- (1) 10.50.010.001 - Adult Education.....574,705,000
- (2) 10.50.010.008 - Remedial education services  
for participants in the CalWORKs.....18,293,000
- (3) 10.50.010.009 - Local Education Agencies—Education  
Services for participants in CalWORKs.....26,447,000
- (4) Reimbursements - CalWORKs.....-8,739,000

These “scheduled” amounts are then subject to several “provisions” that limit the use of the funds or require certain activities if any appropriated funds are received. For example, line item 6110-156-0001 of the Budget Act of 2001 provides:

As a condition of receiving funds provided in Schedules (2) and (3) of this item or any other General Fund appropriation made to the [CDE] specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the [CDE]. The [CDE] shall require that local providers submit to the state aggregate data for the period July 1, 2001, through June 30, 2002.<sup>49</sup>

The Budget Act of 2002 contains the same provision with minor technical changes.<sup>50</sup> Thus, as a condition of receiving appropriated funds, line item 6110-156-0001 of the Budget Acts of 2001 and 2002 require school districts to collect and report data to the CDE.

The language of line item 6110-156-0890 of the Budget Acts of 2001 and 2002 appropriates money from the Federal Trust Fund for adult education. However, the language of line item 6110-156-0890 does not require any activity of school districts (claimants). Therefore, line item 6110-156-0890 of the Budget Acts of 2001 and 2002 do not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. Hereafter, “test claim statutes” will refer only to line item 6110-156-0001 of the Budget Acts of 2001 and 2002.

In addition to the test claim statutes, on August 1, 2002, the CDE issued a letter that claimants have alleged to be an executive order that imposes a reimbursable state-mandated program. An “executive order” is defined as any order, plan, requirement, rule, or regulation issued by:

- (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.<sup>51</sup>

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<sup>49</sup> Statutes 2001, chapter 106, line item 6110-156-0001, provision 4(h).

<sup>50</sup> Statutes 2002, chapter 379, line item 6110-156-0001, provision 4(h).

<sup>51</sup> Government Code section 17516.

The August 1, 2002 CDE letter indicates that the CDE is required to collect and report statewide accountability data for adult education programs as directed by federal and state law which include: (1) the Workforce Investment Act (WIA), (2) the State Budget Act, and (3) the California State Plan 1999-2004. In addition the CDE letter specifically requires the implementation of the TOPSpro system for all data collection requirements outlined in the letter, providing:

CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.<sup>52</sup>

The letter further indicates that data reported is for the period of July 1, 2002 through June 30, 2003, and should be submitted to CASAS no later than August 15, 2003.

Thus, the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult education data to CASAS on a specified date, and, therefore, constitutes an executive order within the definition of Government Code section 17516.

Although the test claim statutes require the collection and reporting of adult education data to the CDE and the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult data to CASAS on a specified date, the test claim statutes and the August 1, 2002 CDE letter do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for general adult education classes established pursuant to Education Code section 52501, 52502, and 52503 for the reasons stated below.

#### Adult Education Under Education Code Sections 52501-52503

Generally, adult education programs are provided by school districts and other local education agencies on a voluntary basis pursuant to Education Code sections 52501-52503. The only exceptions are adult language classes in English and citizenship pursuant to Education Code sections 52540 and 52552, which are discussed in the next section of this analysis (beginning on page 18).

In *Kern High School Dist.*, the California Supreme Court considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.<sup>53</sup> Within its discussion, the court addressed whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

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<sup>52</sup> CDE letter, dated August 1, 2002, p. 2.

<sup>53</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

When analyzing the term “state mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is required or forced to do.”<sup>54</sup> The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”<sup>55</sup>

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.<sup>56</sup> The 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. (Emphasis in original.)<sup>57</sup>

Thus, the court held:

[W]e reject claimant’s 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 [sic] participation in the underlying program is voluntary or compelled.* [Emphasis added.]<sup>58</sup>

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 to participate in eight of the nine underlying programs.<sup>59</sup>

The school districts in *Kern High School Dist.*, however, urged the court to define “state mandate” broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a construction to the definition of a federal mandate in the case of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, where the state’s failure to comply with federal legislation that extended mandatory coverage under the state’s unemployment insurance law would result in

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<sup>54</sup> *Id.* at p. 737.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Id.* at p. 743.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.* at p. 731.

<sup>59</sup> *Id.* at p. 744-745.

California businesses facing “a new serious penalty – full, double unemployment taxation by both state and federal governments.” After reflecting on the purpose of article XIII B, section 6, which is to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue, the court stated that it “would not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.”<sup>60</sup> However, based on the facts presented in *Kern High School Dist.*, the court declined to find a state mandate, holding:

Finally, we reject claimants’ alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter, they have been compelled to do so and hence to incur notice-and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program – claimants here faced no such practical compulsion. Instead, although claimants argue that they have had “no true option or choice” other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstances that claimants have found the benefits of various funded programs “too good to refuse” - even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the costs of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.<sup>61</sup>

Thus, under the facts in *Kern High School Dist.*, the court found that requirements imposed on a claimant due to the claimant’s participation in an underlying voluntary program do not constitute a reimbursable state mandate. In addition, the court held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion, such as the imposition of “‘certain and severe ... penalties’ such as ‘double ... taxation’ and other ‘draconian’ consequences.”<sup>62</sup> For the reasons below, *Kern High School Dist.* is applicable here.

Education Code sections 52501, 52502, and 52503, *authorize*, but do not require, high school districts or unified school districts to establish and maintain adult education classes and/or schools. School districts that elect to establish adult education classes are eligible to apply for and receive funding for these classes through various sources (such as CalWORKs and the WIA). As a condition of receiving funding through these sources, state and federal law require the collection and reporting of adult education data. These laws include: (1) The State Budget Acts, and (2) the California State Plan 1999-2004 which is required by the WIA.

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<sup>60</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

<sup>61</sup> *Id.* at p. 731, emphasis in original.

<sup>62</sup> *Id.* at p. 751, quoting *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

The State Budget Acts (test claim statutes) appropriate funds subject to various provisions. These provisions require that funds are used for specific purposes (such as CalWORKs and WIA programs), and that certain activities occur (including data collection and reporting) if funds are received. Therefore, school districts that offer and provide adult education classes pursuant to Education Code sections 52501-52503 may avoid being subject to the provisions of the test claim statutes and August 1, 2002 CDE letter by electing to forgo receipt of these funds. Similarly, the California State Plan 1999-2000, which is required by the WIA, provides, "Local providers will be eligible to receive funds if they meet [specified] criteria," which includes submitting data to the CDE.<sup>63</sup> As with the test claim statutes, school districts elect to receive WIA funding, subjecting school districts to conditions attached to the funds. As a result, any data collection and reporting requirements, for which the test claim statutes and the executive order require the implementation of the TOPSpro system, are only conditions to receive funding from these various sources and are not mandated unless the school district *elects* to offer adult education and to receive funding from these sources. Thus, school districts are not legally compelled to comply with the requirements because the underlying activity is not required.

In addition, a school district's failure to establish adult education programs pursuant to Education Code sections 52501-52503, comply with data collection and reporting requirements, and implement the TOPSpro system does not result in any certain and severe penalties independent of the program funds at issue. Instead, similar to the claimants in *Kern High School Dist.*, a school district only faces forgoing the benefits of various voluntary adult education programs funded by the state and federal governments, which the court in *Kern High School Dist.* found did not constitute certain and severe penalties. Thus, school districts have not, as a "practical" matter, been compelled to establish adult education programs, or incur costs associated with adult education data collection and reporting and the implementation of the TOPSpro system.

Accordingly, staff finds with respect to the requirements to implement the TOPSpro system and to collect and submit adult education data for general adult education under Education Code sections 52501-52503, Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 do not impose a state-mandated program on school districts, and thus, are not reimbursable pursuant to article XIII B, section 6 of the California Constitution. Therefore, the remaining discussion involves whether the test claim statutes and the executive order impose a reimbursable state-mandated program as they relate to adult English and citizenship classes.

#### Adult Language Classes in English and Citizenship Classes Pursuant to Education Code Sections 52540 and 52552

Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.<sup>64</sup> Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon

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<sup>63</sup> Cal. Dept. Of Education, Workforce Investment Act, Title II, *supra*, p. 33.

<sup>64</sup> Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

application of 25 or more persons.<sup>65</sup> As a result, a school district's provision of adult English and citizenship classes is not voluntary. School districts must comply with the test claim statutes and the August 1, 2002 CDE letter, which require the collection and reporting of adult education data and the implementation of the TOPSpro system, to receive funding for these requested classes. Therefore, staff finds that Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 constitute a state-mandated program for school districts providing English and citizenship classes pursuant to Education Code sections 52540 and 52552.

The courts have held that legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.<sup>66</sup> To make this determination, the test claim statutes and the August 1, 2002 CDE letter's requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.<sup>67</sup>

Prior to the enactment of line item 6110-156-0001 of the Budget Acts of 2001 and 2002, line item 6110-156-0001 of the Budget Acts of 1998, 1999, and 2000 already required the collection and reporting of adult education data to the CDE.<sup>68</sup> Thus, the collection and reporting of adult education data to the CDE is not a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

After the CDE issued the August 1, 2002 letter, all adult schools that received funding through state apportionment and/or WIA were required to fully implement the TOPSpro system. Immediately prior to the August 1, 2002 CDE letter, the CDE only suggested implementing the TOPSpro system, which could be used for all data collection requirements.<sup>69</sup> Thus, the implementation of the TOPSpro system constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

However, even if the implementation of the TOPSpro system is considered a mandated new program or higher level of service imposed upon school districts that are required to provide adult English classes and/or citizenship classes, the August 1, 2002 CDE letter must also impose costs mandated by the state in order to constitute a reimbursable state-mandated program as defined by article XIII B, section 6 of the California Constitution.

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<sup>65</sup> Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

<sup>66</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>67</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>68</sup> Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j); Statutes 1999, chapter 50, line item 6110-156-0001, provisions (h) and (i); Statutes 2000, chapter 52, line item 6110-156-0001, provision (h).

<sup>69</sup> CDE letter, dated April 24, 2000, p. 1.

**Issue 3: Does the CDE letter dated August 1, 2002, impose “costs mandated by the state” on school districts within the meaning of the article XIII B, section 6 of the California Constitution and Government Code section 17514?**

In order for an executive order to impose a reimbursable state-mandated program under the California Constitution, the executive order must impose costs mandated by the state.<sup>70</sup> Government Code section 17514 defines costs mandated by the state as:

[A]ny 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 XIII B of the California Constitution.

When discussing costs resulting from funded underlying programs that may have been mandated on claimants, the court in *Kern High School Dist.* held:

[A]ssuming (without deciding) that claimants have been legally compelled to participate in *one* of nine [underlying] programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses- including the notice and agenda costs here at issue.<sup>71</sup>

Finance indicates that the Budget Act of 2003 provided “\$550.8 million in Proposition 98 General Fund and \$82.2 million in federal funds for adult education programs.”<sup>72</sup> Like the Budget Act of 2003, and as noted above, the test claim statutes appropriated General Fund and federal funds for adult education programs. The test claim statutes funded adult education programs as follows:

	Budget Act of 2001	Budget Act of 2002
General Fund (GF)	\$610.7	\$605
Federal Trust Fund (FTF)	\$74.1	\$91.8

(Amounts in millions)

These General Fund appropriations are scheduled into separate categories (adult education program areas and reimbursements). These categories are subject to various provisions, some of which limit the use of a portion of the funds for specified purposes. Similarly, the Federal Trust Fund appropriations are subject to various provisions limiting the use of the funds appropriated.

<sup>70</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>71</sup> *Kern High School Dist., supra*, 30 Cal.4th 727, 731, original emphasis.

<sup>72</sup> Finance comments to the test claim dated June 21, 2004, p. 3.

The \$610.7 million General Fund and the \$74.1 million Federal Trust Fund appropriated by the Budget Act of 2001 are scheduled between CalWORKs reimbursements (Reimbursements) and three program areas which include: (1) 10.50.010.001 – Adult Education (Adult Education), (2) 10.50.010.008 – Remedial education services for participants in the CalWORKs (CalWORKs remedial education), (3) 10.50.010.009 – Local Education Agencies—Education Services for participants in CalWORKs (LEA CalWORKs). The amounts appropriated for each program and the amounts limited for specific purposes are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	\$574.7	--	--	\$74.1	\$12.6 <sup>73</sup>	--
CalWORKs remedial education	\$18.3	\$18.3 <sup>74</sup>	--	--	--	--
LEA CalWORKs	\$26.4	\$26.4 <sup>75</sup>	--	--	--	--
Reimbursements	-\$8.7	--	--	--	--	--
	--	Misc.-- \$37.1 <sup>76</sup>	--	--	--	--
<b>Total:</b>	<b>\$610.7</b>	<b>\$81.8</b>	<b>\$528.9</b>	<b>\$74.1</b>	<b>\$12.6</b>	<b>\$61.5</b>

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least \$528.9 million General Fund<sup>77</sup> and \$61.5 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2001-2002 fiscal year.

<sup>73</sup> Statutes 2001, chapter 106, line item 6110-156-0890, provision 1.

<sup>74</sup> Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4 and 4(i). The federal government, pursuant to the Personal Responsibility Act of 1996 (P.L. 104-193), provides grants to the state for Temporary Assistance for Needy Families (TANF). CalWORKs is California's TANF program.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Id.*, provision 5. Reserving from the total \$610.7 General Fund appropriated, \$14.3 million for increases in average daily attendance and \$22.8 million for cost-of-living adjustments.

<sup>77</sup> TANF allows for a portion of TANF funds to be used for administrative costs. (45 CFR § 263.2(a)(5)(i).)

The \$605 million General Fund and the \$91.8 million Federal Trust Fund appropriated by the Budget Act of 2002 are scheduled for each program and the amounts limited for a specific purpose are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	\$582	--	--	\$91.8	\$5 <sup>78</sup>	--
CalWORKs remedial education	\$31.7	\$31.7 <sup>79</sup>	--	--	--	--
Reimbursements	-\$8.7	--	--	--	--	--
	--	Misc.-- \$27.3 <sup>80</sup>	--	--	--	--
Total:	\$605	\$59	\$546	\$91.8	\$5	\$86.8

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least \$546 million General Fund and \$86.8 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2002-2003 fiscal year.

Claimants have stated in the test claim that, "It is estimated that the claimant will/has incurred significantly more than \$1000.00 to implement these new state mandated activities..."<sup>81</sup> However, there is no evidence in the record that indicates why the funds that were not subject to use limitations (\$528.9 million GF and \$61.5 million FTF for the 2001-2002 fiscal year and \$546 million GF and \$86.8 million FTF for the 2002-2003 fiscal year) were not sufficient to cover costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes.

Thus, during the course of the reimbursement period of July 1, 2001 to August 15, 2003, school districts, that may have been required to establish adult English classes and citizenship classes, have had available state funds not subject to specific use limitations to pay for required adult education program expenses. As a result, under *Kern High School Dist.*, school districts are not

<sup>78</sup> Statutes 2002, chapter 379, line item 6110-156-0890, provision 6, which reserves \$5 million for the Naturalization Services Program, but does not expressly prohibit the use of these funds for data collection and implementation of the TOPSpro system as it relates to the Naturalization Services Program.

<sup>79</sup> Statutes 2002, chapter 379, line item 6110-156-0001, provision 4.

<sup>80</sup> *Id.*, provision 5. Reserving from the total \$605 General Fund appropriated, \$15 million for increases in average daily attendance and \$12.3 million for cost-of-living adjustments.

<sup>81</sup> Test Claim, declarations Margaret Kirkpatrick, p.2; and Joan Polster, p.2.

entitled to reimbursement from the state for costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes because there is no evidence in the record of increased costs mandated by the state as defined by Government Code section 17514.

It should be noted that the court in *Kern High School District* states that a "compulsory program participant likely would be able to establish the existence of a reimbursable state mandate"<sup>82</sup> in situations where:

[I]ncreased compliance costs imposed by the state ... become so great-or funded program grants ... become so diminished that funded program benefits would not cover the compliance costs, or ... expenditure of granted program funds on administrative costs ... violate a spending limitation set out in applicable regulations or statutes.<sup>83</sup>

However, there is no evidence in the record that the increased costs resulting from the implementation of the TOPSpro system are so great, or program grants have become so diminished that funded program benefits would not cover the costs of implementing the TOPSpro system. In fact, provisions 6 and 7 of line item 6110-156-0001 of the Budget Act of 2001 provide for the use of unencumbered funds from the prior fiscal year. Similarly, provision 5 of line item 6110-156-0890 of the Budget Act of 2002 states that \$18 million of the \$91.8 million appropriated in the item is available as a one-time carryover of unexpended funds from the 2001-2002 fiscal year. In addition, the August 1, 2002 CDE letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge to school districts.<sup>84</sup>

Thus, staff finds that claimants are not entitled to reimbursement of costs related to the CDE letter dated August 1, 2002, for the provision of adult English and citizenship classes. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

### **Conclusion**

Therefore, staff concludes that, Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the CDE letters dated July 6, 1999, April 24, 2000 and August 1, 2002, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends the Commission adopt this analysis and deny the test claim.

---

<sup>82</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 747-748.

<sup>83</sup> *Id.* at p. 747.

<sup>84</sup> CDE letter, dated August 1, 2002, p. 3.

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STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES  
NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
(916) 323-3562

RECEIVED JUN 26 2003 COMMISSION ON STATE MANDATES
TEST CLAIM NUMBER: <u>02-TC-37</u>

**TEST CLAIM FORM**

**LOCAL AGENCY OR SCHOOL DISTRICT SUBMITTING CLAIM**

Berkeley, Elk Grove, and Sacramento City Unified School Districts

**CONTACT PERSON**

David E. Scribner, Esq.  
Attorney for MCS Education Services

**TELEPHONE NO.**

(916) 646-1400

**ADDRESS**

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
7 Park Center Drive  
Sacramento, California 95825

**REPRESENTATIVE ORGANIZATION TO BE NOTIFIED**

MCS Education Services  
Attn.: Steve Smith  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, California 95670

THIS TEST 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 CHARTERED BILL OR EXECUTIVE ORDER ALLEGED TO CONTAIN A MANDATE, INCLUDING THE PARTICULAR STATUTORY CODE SECTION(S) WITHIN THE CHARTERED BILL, IF APPLICABLE.

Statutes of 1999, Chapter 50	July 6, 1999 Letter from California Department of Education
Statutes of 2000, Chapter 52	April 24, 2000 Letter from California Department of Education
Statutes of 2001, Chapter 106	
Statutes of 2002, Chapter 379	August 1, 2002 Letter from California Department of Education

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

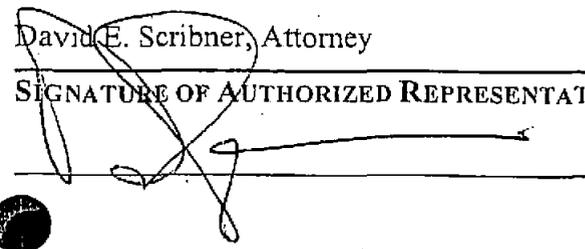
**NAME AND TITLE OF AUTHORIZED REPRESENTATIVE**

David E. Scribner, Attorney

**TELEPHONE NO.**

(916) 646-1400

**SIGNATURE OF AUTHORIZED REPRESENTATIVE**



**DATE**

June 25, 2003

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
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7 Park Center Drive  
Sacramento, California 95825  
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Facsimile: (916) 646-1300

Attorneys for MCS Education Services and  
Authorized Representative of Co-Claimants

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In Re Test Claim of:

Berkeley Unified School District;  
Elk Grove Unified School District; and  
Sacramento City Unified School District

CSM No. \_\_\_\_\_

Statutes of 1999, Chapter 50  
Statutes of 2000, Chapter 52  
Statutes of 2001, Chapter 106  
Statutes of 2002, Chapter 379

July 6, 1999, April 24, 2000, and August 1,  
2002 Letters from California Department of  
Education

*Adult Education Enrollment Reporting*

# ADULT EDUCATION ENROLLMENT REPORTING

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## TEST CLAIM EXECUTIVE SUMMARY

### SUMMARY OF THE TEST CLAIM LEGISLATION

The 1999, 2000, 2001, and 2002 California State Budget Acts include identical provisions related to reporting requirements the State Department of Education is required to develop related to the provision of adult education in the state. In response to this mandate, the California Department of Education implemented the TOPSpro system for data collection and reporting. Beginning July 1, 1999, all adult education schools must use the TOPSpro system to report specific data to the California Department of Education.

### OVERVIEW OF MANDATES LAW

For the Commission to find that the test claim legislation imposes a reimbursable state mandated program, the legislation: (1) must be subject to article XIII B, section 6 of the California Constitution, or in other words, the legislation must impose a "program" upon local governmental entities; (2) the "program" must be new, thus constituting a "new program," or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated within the meaning of Government Code section 17514.

### QUESTIONS PRESENTED

1. **Does the Test Claim Legislation Impose a "Program" Upon School Districts Within the Meaning of the Article XIII B, Section 6 of the California Constitution by Requiring Adult Education Schools to use the TOPSpro system to Report Data to the California Department of Education?**

**Short Answer:** YES. The test claim legislation requires adult education schools and school districts to use the TOPSpro system to report data to the California Department of Education. Public education in California is a peculiarly governmental function

administered by local agencies as a service to the public. Furthermore, the test claim legislation only applies to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the claimed activities constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. **Does the Test Claim Legislation's "Program" Impose a "New Program" or a "Higher Level of Service" Upon School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Requiring Adult Education Schools to use the TOPSpro System to Report Data to the California Department of Education?**

**Short Answer:** YES. The claimed activities are in excess of the requirements outlined in prior law, which did not require the implementation, training, and use of the TOPSpro system to report data to the California Department of Education. Therefore, the claimed activities impose a "new program" or "higher level of service" upon adult education schools and school districts within the meaning of article XIII B, section 6 of the California Constitution.

3. **Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon School Districts Within the Meaning of Government Code Section 17514?**

**Short Answer:** YES. None of the "exceptions" listed in Government Code section 17556 apply and state law was not enacted in response to any federal requirement requiring the state to impose the claimed activities upon adult education schools and school districts. Therefore, the test claim legislation does impose costs mandated by the state upon adult education schools and school districts.

## CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon adult education schools and school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. The completion of required forms for each student in each program at the school site level;
  2. Input of the form data collected on each student in each program at the school site level;
  3. Transmission of the aggregate school site data to the District;
  4. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
  5. Annual reporting of data to CASAS;
  6. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
  7. Training district staff regarding the test claim activities;
  8. Drafting or modifying policies and procedures to reflect the test claim activities; and
  9. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.
-

## TEST CLAIM ANALYSIS

### SUMMARY OF THE TEST CLAIM LEGISLATION

The 1999, 2000, 2001, and 2002 California State Budget Acts include identical provisions related to reporting requirements the State Department of Education is required to develop related to the provision of adult education in the state. The Budget Acts at section 6110-156-001, provision 5(g) provide:

“The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The State Department of Education shall provide local providers with a list of required data elements. . . . The department shall work with the Department of Finance and Legislative Analyst’s Office in determining specific data elements of the system. . . .”<sup>1</sup>

In response to this mandate, the California Department of Education implemented the TOPSpro system for data collection and reporting.<sup>2</sup> Beginning July 1, 1999, all adult education schools must use the TOPSpro system to reporting specific data to the California Department of Education.

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a “program” upon local governmental entities; (2) the program must be new, thus constituting a “new program,” or it must create an increased or “higher level of service” over the former required level of service; and (3) the newly required “program” or “increased level of service” must be state mandated.

---

<sup>1</sup> See Provision 4(g) for the 2002 Budget Act.

<sup>2</sup> See July 6, 1999 letter from the California Department of Education.

The court has defined the term "program" to mean programs that carry out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state. To determine if a program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>3</sup> To determine if the new program or higher level of service is state mandated, a review of state and federal statutes, regulations, and case law must be undertaken.<sup>4</sup>

### ANALYSIS

1. **Does the Test Claim Legislation Impose a "Program" Upon School Districts Within the Meaning of the Article XIII B, Section 6 of the California Constitution by Requiring Adult Education Schools to use the TOPSpro system to Report Data to the California Department of Education?**

The test claim legislation added provisions to State Budget Acts requiring the State Department of Education to implement a data processing system related to adult education schools. As a result of this mandate, the California Department of Education adopted the TOPSpro system as the reporting system adult education schools and school districts must use to report the required data to the state. As a result of the test claim legislation and the executive orders issued by the California Department of Education, adult education schools and school districts are required to perform the following mandated activities:

- A. The completion of required forms for each student in each program at the school site level;

---

<sup>3</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>4</sup> *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

- B. Input of the form data collected on each student in each program at the school site level;
- C. Transmission of the aggregate school site data to the District;
- D. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
- E. Annual reporting of data to CASAS;
- F. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
- G. Training district staff regarding the test claim activities; and
- H. Drafting or modifying policies and procedures to reflect the test claim activities.

The California Supreme Court in *County of Los Angeles v. State of California*, defined

“program” as:

“Programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”<sup>5</sup>

The California Appellate Court in *Carmel Valley Fire Protection District v. State of California*,

found the following regarding the *County of Los Angeles* “program” holding:

“The [Supreme] Court concluded that the term ‘program’ has two alternative meanings: ‘programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.’ (Citation omitted.) [O]nly one of these findings is necessary to trigger reimbursement.”<sup>6</sup> (Emphasis added.)

The test claim legislation clearly passes both tests outlined by *County of Los Angeles* and reiterated in *Carmel Valley*. First, the claimed activities are deemed necessary to implement the Legislature’s mandate and the California Department of Education’s mandate concerning the reporting of student enrollment data in adult education schools. Public education in California is

<sup>5</sup> *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

<sup>6</sup> *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537.

a peculiarly governmental function administered by local agencies as a service to the public.<sup>7</sup>

Second, the test claim legislation only applies to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the claimed activities constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. **Does the Test Claim Legislation's "Program" Impose a "New Program" or a "Higher Level of Service" Upon School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Requiring Adult Education Schools to use the TOPSpro System to Report Data to the California Department of Education?**

To determine if a required program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>8</sup> Before the enactment of the test claim legislation and the executive orders issued by the California Department of Education, adult education schools were not required to use the TOPSpro system to report data to the state. While data reporting occurred before the enactment of the test claim legislation and issuance of the executive orders, the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system. Therefore, the claimed activities represent a new program or higher level of service imposed upon adult education schools and school districts within the meaning of article XIII B, section 6 of the California Constitution.

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<sup>7</sup> *Long Beach Unified School Dist., supra* (1990) 225 Cal.App.3d 155, 172 (The court found that although numerous private schools exist, education in the state is considered a peculiarly governmental function and public education is administered by local agencies to provide a service to the public. Based on these findings, the court held that public education constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.)

<sup>8</sup> *Lucia Mar Unified School Dist., supra* (1988) 44 Cal.3d 830, 835 (The court found that legislation that shifts activities from the state to a local entity represents a new program especially when the local entity was not required

3. **Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon School Districts Within the Meaning of Government Code Section 17514?**

None of the "exceptions" listed in Government Code section 17556 apply<sup>9</sup> and state law was not enacted in response to any federal requirement. Therefore, the test claim legislation does impose costs mandated by the state upon adult education schools and school districts.

CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon adult education schools and school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

- A. The completion of required forms for each student in each program at the school site level;
- B. Input of the form data collected on each student in each program at the school site level;
- C. Transmission of the aggregate school site data to the District;
- D. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
- E. Annual reporting of data to CASAS;
- F. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
- G. Training district staff regarding the test claim activities;
- H. Drafting or modifying policies and procedures to reflect the test claim activities; and

---

to perform that activity at the time the legislation was enacted. The court concluded that under these circumstances the activity is "new" insofar as the local entity is concerned.)

<sup>9</sup> Government Code section 17556 provides several exceptions to reimbursement. Specifically, section 17556 provides that the Commission shall not find costs mandated by the state if it concludes that the test claim legislation: (1) is issued in response to a specific request by a local governmental entity; (2) implements a court mandate; (3) implements federal law; (4) can be financed through a fee or assessment charged by a local governmental entity; (5) provides for offsetting savings that result in no net costs to local governmental entities or includes additional revenue specifically intended to fund the costs of the mandate in an amount sufficient to fund the mandate; (6) implements a ballot proposition; or (7) creates a new crime or infraction, eliminates a crime or infraction, or changed the penalty for a crime or infraction related to the enforcement of the crime or infraction.

I. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

AUTHORITY FOR THE TEST CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551, subdivision (a), to hear and decide a claim by a local agency or school district that the local agency or school district is entitled to reimbursement by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. The co-claimants are "school districts" as defined in Government Code section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations, section 1183.

ESTIMATED COSTS RESULTING FROM THIS MANDATE

It is estimated that each co-claimant will incur costs in excess of \$1000.00 to comply with the requirements outlined in the *Adult Education Enrollment Reporting* Test Claim.

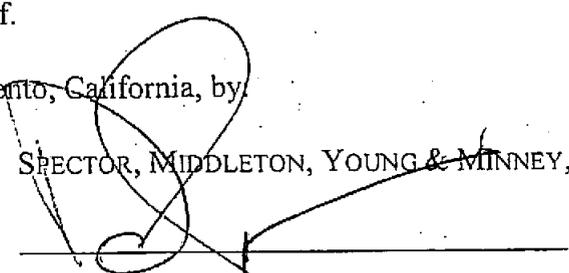
APPROPRIATIONS

No funds are appropriated by the test claim legislation for reimbursement of these new costs mandated by the state and there is no other provision of law for recovery of costs for these activities.

CLAIM CERTIFICATION

I certify under penalty of perjury by my signature below that the statements made in this document are true and correct of my knowledge, and as to all other matters, I believe them to be true and correct based on information or belief.

Executed on June 25, 2003 at Sacramento, California, by

  
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

\_\_\_\_\_  
DAVID E. SCRIBNER, ESQ.  
Attorney for MCS Education Services and  
Authorized Representative of Co-Claimants

AUTHORIZATION TO ACT AS REPRESENTATIVE  
FOR BERKLEY UNIFIED SCHOOL DISTRICT'S TEST CLAIM

ADULT EDUCATION ENROLLMENT REPORTING

I, Margaret Kirkpatrick, hereby authorize David E. Scribner (or designee) of the Law Office of SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP to act as the representative and sole contact of Berkeley Unified School District in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.  
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
7 Park Center Drive  
Sacramento, California 95825  
Telephone: (916) 646-1400  
Facsimile: (916) 646-1300

Dated: 7/24/03

*Margaret Kirkpatrick*  
Margaret Kirkpatrick  
Director of Adult Education

AUTHORIZATION TO ACT AS REPRESENTATIVE  
FOR ELK GROVE UNIFIED SCHOOL DISTRICT'S TEST CLAIM

**ADULT EDUCATION ENROLLMENT REPORTING**

I, Tim Taylor, hereby authorize David E. Scribner (or designee) of the Law Office of SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP to act as the representative and sole contact of Elk Grove Unified School District in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.  
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
7 Park Center Drive  
Sacramento, California 95825  
Telephone: (916) 646-1400  
Facsimile: (916) 646-1300

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tim Taylor  
Director of Adult Education

AUTHORIZATION TO ACT AS REPRESENTATIVE  
FOR SACRAMENTO CITY UNIFIED SCHOOL DISTRICT'S TEST CLAIM

ADULT EDUCATION ENROLLMENT REPORTING

I, Joan Polster, hereby authorize David E. Scribner (or designee) of the Law Office of SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP to act as the representative and sole contact of Sacramento City Unified School District in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.  
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
7 Park Center Drive  
Sacramento, California 95825  
Telephone: (916) 646-1400  
Facsimile: (916) 646-1300

Dated: 6/25/03



Joan Polster  
Assistant Superintendent

Margaret Kirkpatrick, Director of Adult Education  
Berkeley Unified School District  
1222 University Avenue  
Berkeley, California 94702

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
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Telephone: (916) 646-1400  
Facsimile: (916) 646-1300

Attorney for Mandated Cost Systems, Inc. and  
Authorized Representative of Co-Claimants

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In Re Test Claim:

Berkeley Unified School District;  
Elk Grove Unified School District; and  
Sacramento City Unified School District

CSM No. \_\_\_\_\_

DECLARATION OF MARGARET  
KIRKPATRICK

*Adult Education Enrollment Reporting*

I, Margaret Kirkpatrick, make the following declaration and statement. As Director of Adult Education, I have knowledge of Berkeley Unified School District's ("claimant's") adult education reporting activities as they are required under the new TOPSpro system. I am familiar with the provisions and requirements of the budget acts listed within this test claim and all of the executive orders and directives issued by the California Department of Education, which require adult education schools and school districts to perform the following activities:

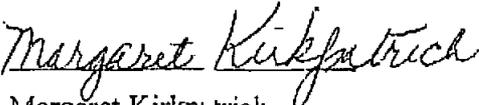
adult education schools and school districts to perform the following activities:

1. The completion of required forms for each student in each program at the school site level;
2. Input of the form data collected on each student in each program at the school site level;
3. Transmission of the aggregate school site data to the District;
4. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
5. Annual reporting of data to CASAS;
6. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
7. Training district staff regarding the test claim activities; and
8. Drafting or modifying policies and procedures to reflect the test claim activities.

I am informed and believe that before the test claim legislation there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$1000.00 to implement these new state-mandated activities for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

I know the foregoing facts personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California 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 on 6/24/03 in Berkeley, California.

  
Margaret Kirkpatrick  
Director of Adult Education

Tim Taylor, Director of Adult Education  
Elk Grove Unified School District  
8401 Gerber Road  
Sacramento, California 95828

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP  
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Attorney for Mandated Cost Systems, Inc. and  
Authorized Representative of Co-Claimant

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In Re Test Claim:

Berkeley Unified School District;  
Elk Grove Unified School District; and  
Sacramento City Unified School District

CSM No. \_\_\_\_\_

DECLARATION OF TIM TAYLOR

*Adult Education Enrollment Reporting*

I, Tim Taylor, make the following declaration and statement. As Director of Adult Education, I have knowledge of Elk Grove Unified School District's ("claimant's") adult education reporting activities as they are required under the new TOPSpro system. I am familiar with the provisions and requirements of the budget acts listed within this test claim and all of the executive orders and directives issued by the California Department of Education, which require adult education schools and school districts to perform the following activities:

1. The completion of required forms for each student in each program at the school site level;
2. Input of the form data collected on each student in each program at the school site level;
3. Transmission of the aggregate school site data to the District;
4. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
5. Annual reporting of data to CASAS;
6. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
7. Training district staff regarding the test claim activities; and
8. Drafting or modifying policies and procedures to reflect the test claim activities.

I am informed and believe that before the test claim legislation there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$1000.00 to implement these new state-mandated activities for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

I know the foregoing facts personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California 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 on \_\_\_\_\_ in Sacramento, California.

---

Tim Taylor  
Director of Adult Education

Joan Pollster, Assistant Superintendent, Adult and Alternative Education  
Sacramento City Unified School District  
520 Capitol Mall  
Sacramento, California 95812

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Attorney for Mandated Cost Systems, Inc. and  
Authorized Representative of Co-Claimant

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In Re Test Claim:

Berkeley Unified School District;  
Elk Grove Unified School District; and  
Sacramento City Unified School District

CSM No. \_\_\_\_\_

DECLARATION OF JOAN POLLSTER

*Adult Education Enrollment Reporting*

I, Joan Pollster, make the following declaration and statement. As Assistant Superintendent, Adult and Alternative Education, I have knowledge of Sacramento City Unified School District's ("claimant's") adult education reporting activities as they are required under the new TOPSpro system. I am familiar with the provisions and requirements of the budget acts listed within this test claim and all of the executive orders and directives issued by the California Department of Education, which require adult education schools and school districts to perform the following activities:

1. The completion of required forms for each student in each program at the school site level;
2. Input of the form data collected on each student in each program at the school site level;
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6. Obtaining necessary computer hardware and software to properly implement the TOPSpro system;
7. Training district staff regarding the test claim activities; and
8. Drafting or modifying policies and procedures to reflect the test claim activities.

I am informed and believe that before the test claim legislation there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$1000.00 to implement these new state-mandated activities for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

I know the foregoing facts personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California 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 on 6/25/03 in Sacramento, California.



Joan Polster  
Assistant Superintendent

# Exhibit A

Senate Bill No. 160

CHAPTER 50

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1999. Filed with  
Secretary of State June 29, 1999.]

I object to the following appropriations contained in Senate Bill 160.

Item 0250-001-0001—For support of Judiciary. I reduce this item from \$239,105,000 to \$239,104,000 by reducing:

(c) 30-Judicial Council from \$58,996,000 to \$58,995,000,  
and by deleting Provision 6.

I am deleting Provision 6 which would require the Judicial Council to develop and support a strategic committee on drug court strategy in the Judicial Council's drug court program and the Department of Alcohol and Drug Programs (DADP) Partnership Program. The DADP Partnership Program already has an existing committee assigned to determining administration of the Partnership Program, and the Judicial Council administers the drug court program. Therefore, this language is unnecessary because it would create duplicative activities that can best be handled by existing resources and their mutual coordination.

I am reducing \$1,000 from this item to reflect savings that will be achieved based on vetoing Provision 6 of this Item.

Item 0250-101-0001—For local assistance, Judiciary. I reduce this item from \$11,875,000 to \$11,775,000 by reducing the following:

(b) 30.20-California Drug Court Project from \$1,958,000 to \$1,858,000.

I am deleting the \$100,000 legislative augmentation which would have supported establishment of a drug court program in the City of Fontana. This proposal would have created a local exception to the statewide application process to the Department of Alcohol and Drug Programs' Partnership Program and the Judicial Council's drug court program. Such an exception is not conducive to the already existing support program and evaluation system that is in place. However, if the County of San Bernardino wishes to tailor its own drug court program for the City of Fontana, the authority to do so exists pursuant to Chapter 1132, Statutes of 1996.

I am sustaining the \$10,000,000 legislative augmentation to this item for the Equal Access Fund which will provide legal services for indigents in civil matters; however, I am sustaining this augmentation on a one-time basis.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from \$1,776,178,000 to \$1,771,678,000 by reducing:

(d) 45-Court Interpreters from \$51,619,000 to \$47,119,000.

I am reducing the \$7,000,000 legislative augmentation, which would have increased trial court interpreter compensation from the current level of \$200 per day to \$250 per day, by \$4,500,000 and sustaining \$2,500,000 of the augmentation. This will provide sufficient funding to allow the Judicial Council to ensure certified and registered interpreters are available for trial court criminal proceedings only to avoid criminal trials from being dismissed or re-tried due to lack of available certified interpreters.

Item 0450-111-0001—For transfer by the Controller to the Trial Court Trust Fund. I reduce this item from \$890,370,000 to \$885,870,000.

I am reducing this item to conform to the actions I have taken in Item 0450-101-0932.

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acquisition of school library materials pursuant to Article 7 (commencing with Section 18180) of Chapter 2 of Part 11 of the Education Code.	
6110-150-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, K-4 Classroom Libraries. Provisions:	25,000,000
1. The funds appropriated in this item are available to fund classroom libraries in kindergarten and grades 1 to 4, inclusive, pursuant to the program created by legislation enacted during the 1999-2000 Regular Session that becomes operative on or before January 1, 2000.	
6110-151-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.050—California Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code..... Provisions:	3,123,000
1. Of the funds appropriated in this item, \$45,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.47 percent and \$43,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 1.41 percent.	
6110-152-0001—For local assistance, Department of Education, Program 10.30.050 ..... Provisions:	376,000
1. Funds appropriated in this item for Indian Education Centers are to carry out the provisions of Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code.	
6110-156-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute.... Schedule:	542,426,000
(a) 10.50.010.001-Adult Education.....	508,687,000
(b) 10.50.010.008-Remedial education services for participants in the CalWORKs.....	17,478,000

Item	Amount
(c) 10.50.010.009-Local Education Agencies—Education Services for participants in CalWORKs.....	25,000,000
(d) Reimbursements-CalWORKs.....	-8,739,000
Provisions:	
1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.	
2. The funds appropriated in Schedule (b) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Art. 3.2 (commencing with Sec. 11320) Ch. 2, Pt. 3, Div. 9, W.I.C.). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and Regional Occupational Centers and Programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. However, of the funds appropriated by Schedule (b) of this item, an amount not to exceed \$10,000,000, as negotiated through an interagency agreement between the State Department of Education and the State Department of Social Services, shall be provided for Adult Education Programs, and ROC/Ps for the purpose of providing instructional and training supportive services for CalWORKs eligible members. These services shall include any of the following: (a) career and educational guidance and counseling; (b) training related assessment; (c) transportation to the classroom or worksite during training; (d) job readiness training and services; (e) job development and placement; (f) post-employment support and followup to ensure job retention; (g) coordination and referrals to other services provided through the State Department of Social Services, the Employment Development Department, the Private Industry Council, community colleges, the Department of Rehabilitation, the Economic Development Agency, and other community resources; (h) curriculum and instruction development to provide short-term in-	

Item	Amount
<p>tegrated programs leading to employment; (i) staff development costs resulting from policy development and training occurring between instructional staff and county welfare agencies in the coordination of the program; and (j) one-time excess program start up costs. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, with no county receiving less than \$25,000, based on the number of CalWORKs eligible family members served in the county, and subject to the instructional and training support services needed annually by each agency as identified in the county CalWORKs Instruction and Job Training Plan required by Section 10200 of the Education Code.</p>	
<p>3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) citizenship testing; (f) naturalization preparation and assistance; and (g) regional and state coordination and program evaluation.</p>	
<p>4. Of the federal reimbursements appropriated in Schedule (b), \$290,000 shall be available for transfer to Item 6110-001-0001 of Section 2.00 of this act for state operations to continue activities related to the development of a data collection system to obtain information on education and job training services provided to welfare recipient students and those in transition off of welfare through Adult Education and ROC/Ps. The State Department of Education shall work with the State Department of Social Services to ensure the data collection system meets the state's CalWORKs information needs regarding education and job training services provided to welfare re-</p>	

Item	Amount
recipient students and those in transition off of welfare. The State Department of Education shall work with the Department of Finance and the Legislative Analyst in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.	
5. The funds appropriated in Schedule (d) of this item shall be subject to the following:	
(a) The funds shall be used only for educational activities for welfare recipient students and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These activities shall be carried on in accordance with each local education agency's plan approved and developed pursuant to Chapter 2 (commencing with Section 10200) of Part 7 of the Education Code. These funds shall be used to supplement and not supplant existing funds and services provided for welfare recipient students and those in transition off of welfare.	
(b) Notwithstanding any other provision of law, each local education agency's individual cap for adult education and regional occupational center and programs (ROC/P's), average daily attendance shall not be increased as a result of the appropriations made by this section.	
(c) Funds may be claimed by local education agencies for services provided to welfare recipient students and those in transition off of welfare pursuant to this section only if all of the following occur:	
(1) Each local education agency has met the terms of the interagency agreement between the State Department of Education and the Department of Social Services pursuant to Provision 2 of this item.	
(2) Each local education agency has fully claimed its respective adult education or ROC/P average daily attendance cap for the current year.	
(3) Each local education agency has claimed the maximum allowable funds available	

Item	Amount
	under the interagency agreement pursuant to Provision 2 of this item.
(d)	Each local education agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or pursuant to Item 6110-105-0001 of Section 2.00 of this act, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education Code, and ROC/P requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of, Part 28 of the Education Code, respectively.
(e)	Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.
(f)	The Legislature finds the need for good information on the role of local education agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local education programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.
(g)	The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The department shall work with the Department of Finance and Legislative Analyst in determining the specific data elements of the system and shall

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meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.

- (h) As a condition of receiving funds provided in Schedule (d) of this item or any other General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 1999, through June 30, 2000.
- (i) Beginning July 1, 1999, local providers shall provide data to the State Department of Education that permits a disaggregation of data to permit the identification for subgroups of participants of (1) types and levels of services, and (2) outcomes. The State Department of Education shall provide to local providers by July 1, 1999, a description of the specific reporting requirements needed to permit the disaggregation of data.
- (j) Funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance of effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance of effort expenditure.

6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund..... 42,284,000

Provisions:

- 1. Of the funds appropriated in this item, \$12,570,000 shall be used for adult basic education for citizenship and naturalization services for legal permanent residents who are eligible for naturalization.

Item	Amount
<p>Citizenship and naturalization services shall include, for this purpose, to the extent consistent with federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) citizenship testing; (f) naturalization preparation and assistance; and (g) regional and state coordination and program evaluation. The providers of the citizenship and naturalization services, for the purposes of this provision, shall be those community-based organizations, community colleges, and adult education programs approved for this purpose by the State Department of Education and the federal Immigration and Naturalization Service.</p>	
<p>2. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.</p>	
<p>3. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.</p>	
<p>All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Department of Education's staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if</p>	

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the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.

The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

- (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all sub-recipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organizational wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited scope audits shall include agreed upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attesta-

Item	Amount
<p>tion standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.</p> <p>The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.</p> <p>4. On or before March 1, 2000, the State Department of Education shall report to the appropriate subcommittees of the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee on the following aspects of the implementation of Title II of the federal Workforce Investment Act: (a) the make-up of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school district, community colleges, community-based organizations, other local entities); (b) the results of a mid-year report on the extent to which participating programs were able to meet planned performance targets; and (c) a breakdown of the types of courses (ESL, ESL citizenship, ABE, ASE) included in the performance targets of participating agencies. It is the intent of the Legislature that the Legislature and State Department of Education utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.</p> <p>6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002—Adults in Correctional Facilities .....</p>	<p>16,293,000</p>

# Exhibit B

Assembly Bill No. 1740

CHAPTER 52

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 2000. Filed with  
Secretary of State June 30, 2000.]

I object to the following appropriations contained in Assembly Bill 1740.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I am deleting Provisions 6 and 9.

I am deleting Provision 6, which would require that any funds for salary increases for trial court judicial officers only be distributed to those trial courts that are unified to the fullest extent of the law.

I am also deleting Provision 9, which would require that funding for new trial court judicial officers shall be provided to those courts that are unified to the fullest extent of the law.

The 56th and final eligible county has recently unified, and this language is no longer necessary.

Item 0505-001-0001—For support of Department of Information Technology. I delete Provision 2.

I am deleting Provision 2 which would require \$500,000 of the funds appropriated in this item to be used to conduct a study that will research, analyze, and report on the lack of access to advanced technologies among low-income and minority communities, otherwise known as the "digital divide". While a study of this issue may be meritorious, I am deleting this language because when it was added, \$500,000 was available for this purpose. However, this item no longer contains resources for this study. Additionally, several national studies have been conducted on this issue.

Item 0505-101-0001—For local assistance, Department of Information Technology. I reduce this item from \$190,000 to \$150,000 by deleting:

(a) Sacramento Police Department—Racial Profiling Technology (\$40,000)

Consistent with my action in Item 2720-101-0001, which provides \$5,000,000 for grants to local law enforcement agencies that collect racial profiling data, I am deleting the \$40,000 legislative augmentation to the Sacramento Police Department for Racial Profiling Technology. Since it is my intention that the grant funds be used to offset a portion of local agency costs to report data to the Highway Patrol, the additional funding provided in this item is unnecessary.

Item 0530-001-0001—For support of Secretary for California Health and Human Services Agency. I reduce this item from \$2,274,000 to \$1,874,000 by reducing:

(a) 10-Secretary for California Health and Human Services Agency from \$3,272,000 to \$2,872,000,

and by revising Provision 1.

I am deleting \$400,000 and 0.9 personnel years of the \$600,000 and 0.9 personnel years legislative augmentation to implement Chapter 990, Statutes of 1999 (SB 480) and conduct a study regarding universal health care coverage options. While these resources were added for the purpose of conducting an additional study, Chapter 990 does not require such a study. Instead, Chapter 990 requires the Agency to examine and use the results of an existing University of California study, meet with interested parties, and report back to the Legislature on options regarding universal health care coverage. Given that Chapter 990 contained no appropriation and requires no additional study, \$200,000 is sufficient funding for the Agency to complete the required tasks.

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poses of providing instructional and training supportive services for CalWORKs eligible members. These services shall include any of the following: (a) career and educational guidance and counseling; (b) training related assessment; (c) transportation to the classroom or worksite during training; (d) job readiness training and services; (e) job development and placement; (f) post-employment support and followup to ensure job retention; (g) coordination and referrals to other services provided through the State Department of Social Services, the Employment Development Department, the Private Industry Council, community colleges, the Department of Rehabilitation, the Economic Development Agency, and other community resources; (h) curriculum and instruction development to provide short-term integrated programs leading to employment; (i) staff development costs resulting from policy development and training occurring between instructional staff and county welfare agencies in the coordination of the program; and (j) one-time excess program start up costs. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, with no county receiving less than \$25,000, based on the number of CalWORKs eligible family members served in the county, and subject to the instructional and training support services needed annually by each agency as identified in the county CalWORKs Instruction and Job Training Plan required by Section 10200 of the Education Code.

3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) citizenship testing; (f) natural-

Item	Amount
<p>ization preparation and assistance; and (g) regional and state coordination and program evaluation.</p> <p>4. The funds appropriated in Schedules (b) and (c) of this item shall be subject to the following:</p> <p>(a) The funds shall be used only for educational activities for welfare recipient students and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These activities shall be carried on in accordance with each local education agency's plan approved and developed pursuant to Chapter 2 (commencing with Section 10200) of Part 7 of the Education Code. These funds shall be used to supplement and not supplant existing funds and services provided for welfare recipient students and those in transition off of welfare.</p> <p>(b) Notwithstanding any other provision of law, each local education agency's individual cap for adult education and regional occupational center and programs (ROC/P's), average daily attendance shall not be increased as a result of the appropriations made by this section.</p> <p>(c) Funds may be claimed by local education agencies for services provided to welfare recipient students and those in transition off of welfare pursuant to this section only if all of the following occur:</p> <p>(1) Each local education agency has met the terms of the interagency agreement between the State Department of Education and the Department of Social Services pursuant to Provision 2 of this item.</p> <p>(2) Each local education agency has fully claimed its respective adult education or ROC/P average daily attendance cap for the current year.</p> <p>(3) Each local education agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2 of this item.</p> <p>(d) Each local education agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this</p>	

Item	Amount
<p>item or pursuant to Item 6110-105-0001 of Section 2.00 of this act, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education Code, and ROC/P requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of, Part 28 of the Education Code, respectively.</p> <p>(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.</p> <p>(f) The Legislature finds the need for good information on the role of local education agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local education programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.</p> <p>(g) The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The department shall work with the Department of Finance and Legislative Analyst in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.</p> <p>(h) As a condition of receiving funds provided in Schedules (b) and (c) of this item or any other</p>	

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<p>General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2000, through June 30, 2001.</p> <p>(i) Funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance of effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.</p> <p>5. Of the funds appropriated in this item \$13,651,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 2.50 percent and \$17,625,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.17 percent.</p>	
<p>6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund.....</p>	48,322,000
<p>Provisions:</p> <p>1. Of the funds appropriated in this item, \$12,570,000 shall be used for adult basic education for citizenship and naturalization services for legal permanent residents who are eligible for naturalization.</p> <p>Citizenship and naturalization services shall include, for this purpose, to the extent consistent with federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) naturalization preparation and assistance; and (f) regional and state coordination and program evaluation. The providers of the citizenship and naturalization services, for the purposes</p>	

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of this provision, shall be those as defined by applicable federal law, and consistent with the state plan.	
2. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.	
3. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.	
All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Department of Education's staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.	
The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.	

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Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

- (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all sub-recipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organizational wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited scope audits shall include agreed upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.

The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

Item	Amount
<p>4. On or before March 1, 2001, the State Department of Education shall report to the appropriate subcommittees of the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee on the following aspects of the implementation of Title II of the federal Workforce Investment Act: (a) the make-up of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school district, community colleges, community-based organizations, other local entities); (b) the results of a mid-year report on the extent to which participating programs were able to meet planned performance targets; and (c) a breakdown of the types of courses (ESL, ESL citizenship, ABE, ASE) included in the performance targets of participating agencies. It is the intent of the Legislature that the Legislature and State Department of Education utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.</p>	
<p>6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities .....</p>	16,936,000
<p>Provisions:</p>	
<p>1. Notwithstanding any other provision of law, the amount appropriated in this item and any amount allocated for this program in this act shall not exceed, in the aggregate, the maximum amount allocated for the purposes of Section 41841.5 of the Education Code.</p>	
<p>2. Notwithstanding Section 41841.5 of the Education Code or any other provision of law, the amount appropriated in this item shall be allocated based upon prior-year rather than current-year expenditures.</p>	

# Exhibit C

Senate Bill No. 739

CHAPTER 106

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 26, 2001. Filed with Secretary of State July 26, 2001.]

I object to the following appropriations contained in Senate Bill 739.

Item 0160-001-0001—For support of Legislative Counsel Bureau. I revise this item by deleting Provision 1.

I am deleting Provision 1 of this item, which would authorize the continuance of a salary differential approved by the Department of Personnel Administration (DPA) in 1998, in spite of its termination for all other State departments on July 1, 2001. Though I am aware that this language would address a salary compaction problem between supervisory and staff attorney positions at the Legislative Counsel Bureau, it would be inappropriate to authorize the continuation of this program for one department to the exclusion of others. I am directing the DPA to work with the Legislative Counsel Bureau on identifying administrative solutions to this problem.

Item 0250-001-0001—For support of Judiciary. I reduce this item from \$282,689,000 to \$282,394,000 by reducing:

- (2) 20-Courts of Appeal from \$166,633,000 to \$166,588,000, and
- (3) 30-Judicial Council from \$74,126,000 to \$73,876,000.

I am deleting the legislative augmentation of \$45,000 for a half-time Legal Editorial Assistant to post unpublished legal opinions of the Courts of Appeal on the California Courts Website. It is not clear that this is a priority of the Judiciary, and the need for funds to provide this service has not been demonstrated.

I am reducing the funding for administrative support of the Equal Access Fund by \$250,000 to conform to the action taken in Item 0250-101-0001.

Item 0250-101-0001—For local assistance, Judiciary. I reduce this item from \$18,482,000 to \$13,707,000 by reducing:

- (9) 30.90-Equal Access Fund from \$14,250,000 to \$9,500,000, and
- (10.5) 97.20.004-Local Projects from \$75,000 to \$50,000 by reducing the following subschedule:

- (a) County of San Joaquin: Child Advocacy Center and Visitation Center at Mary Graham Children's Shelter from (\$75,000) to (\$50,000).

I am reducing the local assistance funding for the Equal Access Fund by \$4,750,000. California is heading into a difficult year with its softening economy and substantial revenue decreases. Consequently, the General Fund expenditures in this Budget are down 1.7 percent over the prior year. I am open to considering funding for this worthy program in the future when the economy improves.

I am reducing the legislative augmentation to establish a new facility for the Child Advocacy Center and Visitation Center at Mary Graham Children's Shelter by \$25,000. This action is essential due to fiscal constraints and limited resources in the General Fund. However, I am sustaining \$50,000 of this augmentation on a one-time basis.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from \$2,082,060,000 to \$2,081,310,000 by reducing:

- (1) 10-Support for operation of the Trial Courts from \$1,773,533,000 to \$1,772,783,000.

I am deleting the \$750,000 legislative augmentation to establish a truancy court pilot project in Los Angeles County. Actions related to truancy, family issues, and juvenile

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Section 53050) of Chapter 16 of Part 28 of the Education Code.	
2: The funds appropriated in Schedule (2) of this item shall be used for the California Reads Program.	
6110-149-0001—For transfer by the Controller to the Public Library Protection Fund, pursuant to Section 18182 of the Education Code (Proposition 98) .....	158,500,000
Provisions:	
1. Funds appropriated in this item shall be transferred to Item 6110-101-0975 to provide funding for the acquisition of school library materials pursuant to Article 7 (commencing with Section 18180) of Chapter 2 of Part 11 of the Education Code.	
6110-150-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, K-4 Classroom Libraries pursuant to Article 8 (commencing with Section 18200) of Chapter 2 of Part 11 of the Education Code .....	25,000,000
6110-151-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.050-American Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code.....	3,654,000
Provisions:	
1. Of the funds appropriated in this item, \$49,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.40 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, \$136,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 3.87 percent.	
6110-152-0001—For local assistance, Department of Education, Program 10.30.050-American Indian Education Centers pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code. ....	376,000
6110-156-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for	

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the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute....	610,706,000
Schedule:	
(1) 10.50.010.001-Adult Education.....	574,705,000
(2) 10.50.010.008-Remedial education services for participants in the CalWORKs.....	18,293,000
(3) 10.50.010.009-Local Education Agencies—Education Services for participants in CalWORKs.....	26,447,000
(4) Reimbursements-CalWORKs.....	-8,739,000
Provisions:	
1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.	
2. The funds appropriated in Schedule (2) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Art. 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and Regional Occupational Centers and Programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. However, of the funds appropriated by Schedule (3) of this item, an amount not to exceed \$10,000,000, as negotiated through an interagency agreement between the State Department of Education and the State Department of Social Services, shall be provided for Adult Education Programs, and ROC/Ps for the purposes of providing instructional and training supportive services for CalWORKs eligible members. These services shall include any of the following: (a) career and educational guidance and counseling; (b) training related assessment; (c) transportation to the classroom or worksite during training; (d) job readiness training and services; (e) job development and placement; (f) post employment support and followup to ensure job	

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<p>retention; (g) coordination and referrals to other services provided through the State Department of Social Services, the Employment Development Department, the Local Workforce Investment Boards, community colleges, the Department of Rehabilitation, the Economic Development Agency, and other community resources; (h) curriculum and instruction development to provide short-term integrated programs leading to employment; (i) staff development costs resulting from policy development and training occurring between instructional staff and county welfare agencies in the coordination of the program; and (j) one-time excess program startup costs. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, with no county receiving less than \$25,000, based on the number of CalWORKs eligible family members served in the county, and subject to the instructional and training support services needed annually by each agency as identified in the county CalWORKs Instruction and Job Training Plan required by Section 10200 of the Education Code.</p>	
<p>3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) professional development; (e) citizenship testing; (f) naturalization preparation and assistance; and (g) regional and state coordination and program evaluation.</p>	
<p>4. The funds appropriated in Schedules (2) and (3) of this item shall be subject to the following:</p> <p>(a) The funds shall be used only for educational activities for welfare recipient students and those in transition off of welfare. The educational activities shall be limited to those de-</p>	

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- signed to increase self-sufficiency, job training, and work. These activities shall be carried on in accordance with each local education agency's plan approved and developed pursuant to Chapter 2 (commencing with Section 10200) of Part 7 of the Education Code. These funds shall be used to supplement and not supplant existing funds and services provided for welfare recipient students and those in transition off of welfare.
- (b) Notwithstanding any other provision of law, each local education agency's individual cap for adult education and regional occupational center and programs (ROC/P's), average daily attendance shall not be increased as a result of the appropriations made by this section.
  - (c) Funds may be claimed by local education agencies for services provided to welfare recipient students and those in transition off of welfare pursuant to this section only if all of the following occur:
    - (1) Each local education agency has met the terms of the interagency agreement between the State Department of Education and the Department of Social Services pursuant to Provision 2 of this item.
    - (2) Each local education agency has fully claimed its respective adult education or ROC/P average daily attendance cap for the current year.
    - (3) Each local education agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2 of this item.
  - (d) Each local education agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or pursuant to Item 6110-105-0001 of Section 2.00 of this act, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education Code, and ROC/P requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section

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52335) of, Chapter 9 of, Part 28 of the Education Code, respectively.	
(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.	
(f) The Legislature finds the need for good information on the role of local education agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local education programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.	
(g) The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The department shall work with the Department of Finance and Legislative Analyst in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.	
(h) As a condition of receiving funds provided in Schedules (2) and (3) of this item or any other General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by	

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<p>the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2001, through June 30, 2002.</p> <p>(i) Funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance of effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.</p> <p>5. Of the funds appropriated in this item \$14,340,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 2.50 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, \$22,754,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent.</p> <p>6. Up to \$5,000,000 of the unencumbered balance as of June 30, 2000, of Item 6110-156-0001, Budget Act of 2000 (Ch. 52, Stats 2000), shall be used first by the Superintendent of Public Instruction to increase the revenue limit by up to \$20 per average daily attendance for the 2001-02 year only.</p> <p>7. The unencumbered balance of Item 6110-156-0001, Budget Act of 2000 (Ch. 52, Stats 2000), that remains after allocation under Provision 6 shall be available to the Superintendent of Public Instruction for reallocation on a one-time basis and in equal amounts per unit of average daily attendance to districts that are fully utilizing their adult educational allowances. Districts shall use these funds for one-time expenditures, including, but not limited to, expansion of enrollment on a one-time basis in English as a Second Language, citizenship, adult basic education, adults with disabilities, adult secondary education and vocational education.</p>	
6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund.....	74,105,000

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Provisions:

1. Of the funds appropriated in this item, \$12,570,000 shall be used for adult basic education for citizenship and naturalization services for legal permanent residents who are eligible for naturalization.

Citizenship and naturalization services shall include, for this purpose, to the extent consistent with federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) professional development; (e) naturalization preparation and assistance; and (f) regional and state coordination and program evaluation. The providers of the citizenship and naturalization services, for the purposes of this provision, shall be those as defined by applicable federal law, and consistent with the state plan.

2. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.

3. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.

All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Depart-

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ment of Education's staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.

The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

- (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all subrecipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organizational wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

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The limited scope audits shall include agreed-upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.

The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

4. On or before March 1, 2002, the State Department of Education shall report to the appropriate subcommittees of the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee on the following aspects of the implementation of Title II of the federal Workforce Investment Act: (a) the makeup of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school district, community colleges, community-based organizations, other local entities); (b) the results of a mid-year report on the extent to which participating programs were able to meet planned performance targets; and (c) a breakdown of the types of courses (ESL, ESL citizenship, ABE, ASE) included in the performance targets of participating agencies. It is the intent of the Legislature that the Legislature and State Department of Education utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.
5. The State Department of Education shall expeditiously amend the "Workforce Investment Act, Title II, Adult Education and Family Literacy Act, California State Plan for 1999-2004" to rebench outcome measures for Department of Mental Health and Department of Developmental Ser-

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<p>vices clients so that they will continue to be eligible for adult education services in 2001-02 and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the Department of Mental Health, Department of Developmental Services, and Department of Finance for this purpose.</p>	
<p>6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities .....</p>	17,909,000
<p>Provisions:</p>	
<p>1. Notwithstanding Section 41841.5 of the Education Code, or any other provision of law, the amount appropriated in this item and any amount allocated for this program in this act shall be the only funds available for allocation by the Superintendent of Public Instruction to school districts or county offices of education for the Adults in Correctional Facilities program.</p>	
<p>2. Notwithstanding Section 41841.5 of the Education Code or any other provision of law, the amount appropriated in this item shall be allocated based upon prior-year rather than current-year expenditures.</p>	
<p>3. Notwithstanding any other provision of law, funding distributed to each local education agency (LEA) for reimbursement of services provided in the 2000-01 fiscal year for the Adults in Correctional Facilities program shall be limited to the amount received by that agency for services provided in the 1999-2000 fiscal year, as increased by \$423,000 for growth in services and \$550,000 for cost-of-living adjustments, not to exceed a total of \$17,909,000 for all programs. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the 2000-01 fiscal year, as compared to the level of service provided in the 1999-2000 fiscal year. Any funds remaining as a result of those decreased levels of service shall be allocated to provide support for new programs in accordance with Section 41841.8 of the Education Code.</p>	

# Exhibit D

Assembly Bill No. 425

CHAPTER 379

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 5, 2002. Filed with Secretary of State September 5, 2002.]

I object to the following appropriations contained in Assembly Bill 425.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from \$2,069,477,000 to \$2,068,677,000 by reducing:

- (1) 10—Support for the operation of the Trial Courts from \$1,872,495,000 to \$1,871,695,000.

I am deleting the \$800,000 legislative augmentation to increase funding for family court services activities. Although this program is meritorious, deletion of funding for this program expansion is necessary in light of current fiscal constraints. With this action, \$111.5 million remains to support family court services.

Item 0450-111-0001—For transfer by the Controller to the Trial Court Trust Fund. I reduce this item from \$1,108,568,000 to \$1,079,568,000.

I am deleting the \$800,000 legislative augmentation to increase funding for family court services activities to conform to the action taken in Item 0450-101-0932.

I am reducing this transfer by \$28,200,000 on a one-time basis. This is a technical adjustment consistent with the January 10 proposal to reduce the 2001-02 transfer by this amount. Since the transfer to the Trial Court Trust Fund for fiscal year 2001-02 was inadvertently not reduced, this action is necessary and will still provide sufficient resources in the Trial Court Trust Fund to meet the level of appropriation provided in this act for 2002-03.

Item 0860-490—Reappropriation, Board of Equalization. I revise this item from \$639,000 to \$339,000 as follows:

"Notwithstanding any other provision of law, as of June 30, 2002, the unencumbered balance of the appropriation, not to exceed ~~\$639,000~~ \$339,000, provided in the following citations are reappropriated until June 30, 2003, upon review and approval of the Department of Finance for (1) preliminary plans, working drawings, or construction of any project for the alteration of a state or leased facility to facilitate the transition of new Board of Equalization members; and (2) the upgrade of one of the two CEA 1 allocations to the CEA 2 level in each of the elected Board Member offices to recognize the increased level of duties and responsibilities required.

0001—General Fund

- (1) Item 0860-001-0001, ~~10000000~~-Personal services, Budget Act of 2001 (Ch. 106, Stats. 2001)
- (2) Item 0860-001-0001, ~~30000000~~-Operating Expenses and Equipment, Budget Act of 2001 (Ch. 106, Stats. 2001)"

I am deleting \$300,000 of the \$639,000 reappropriation, which was for the purposes of facility upgrades for incoming Board members and upgrades of Board member positions. My reduction will enable \$300,000 to revert to the General Fund.

Item 0954-101-0001—For local assistance, Scholarshare Investment Board. I revise this item by deleting Provision 2.

I am deleting Provision 2, which states legislative intent to delay payments for 9th and 10th grade awards for the Governor's Scholars Program by one year. Current law requires that awards be provided to all students who meet the criteria for an award under this program. Therefore, this language expresses intent to enact a substantive

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6110-156-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute....	605,038,000
Schedule:	
(1) 10.50.010.001-Adult Education.....	582,038,000
(2) 10.50.010.008-Remedial education services for participants in the CalWORKs.....	31,739,000
(3) Reimbursements-CalWORKs.....	-8,739,000
Provisions:	
1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.	
2. The funds appropriated in Schedule (2) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Art. 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and Regional Occupational Centers and Programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. However, of the funds appropriated in Schedule (2) of this item, an amount not to exceed \$10,000,000, as negotiated through an interagency agreement between the State Department of Education and the State Department of Social Services, shall be provided for Adult Education Programs, and ROC/Ps for the purposes of providing instructional and training supportive services for CalWORKs eligible members. These services shall include any of the following:	
(a) Career and educational guidance and counseling.	
(b) Training-related assessment.	

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(c) Transportation to the classroom or worksite during training.	
(d) Job readiness training and services.	
(e) Job development and placement.	
(f) Postemployment support and followup to ensure job retention.	
(g) Coordination and referrals to other services provided through the State Department of Social Services, the Employment Development Department, the Local Workforce Investment Boards, community colleges, the Department of Rehabilitation, the Economic Development Agency, and other community resources.	
(h) Curriculum and instruction development to provide short-term integrated programs leading to employment.	
(i) Staff development costs resulting from policy development and training occurring between instructional staff and county welfare agencies in the coordination of the program.	
(j) One-time excess program startup costs. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, based on the number of CalWORKs eligible family members served in the county and subject to instructional and training support services needed annually by each agency as identified in the county CalWORKs Instruction and Job Training Plan required by Section 10200 of the Education Code.	
3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) professional development; (e) citizenship testing; (f)	

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- naturalization preparation and assistance; and (g) regional and state coordination and program evaluation.
4. The funds appropriated in Schedule (2) of this item shall be subject to the following:
- (a) The funds shall be used only for educational activities for welfare recipient students and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These funds shall be used to supplement and not supplant existing funds and services provided for welfare recipient students and those in transition off of welfare.
  - (b) Notwithstanding any other provision of law, each local education agency's individual cap for adult education and regional occupational center and programs (ROC/P's), average daily attendance shall not be increased as a result of the appropriations made by this section.
  - (c) Funds may be claimed by local education agencies for services provided to welfare recipient students and those in transition off of welfare pursuant to this section only if all of the following occur:
    - (1) Each local education agency has met the terms of the interagency agreement between the State Department of Education and the Department of Social Services pursuant to Provision 2 of this item.
    - (2) Each local education agency has fully claimed its respective adult education or ROC/P average daily attendance cap for the current year.
    - (3) Each local education agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2 of this item.
  - (d) Each local education agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or pursuant to Item 6110-105-0001 of Section 2.00 of this act, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education

Item	Amount
<p>Code, and ROC/P requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of, Part 28 of the Education Code, respectively.</p> <p>(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.</p> <p>(f) The Legislature finds the need for good information on the role of local education agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local education programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.</p> <p>(g) The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) characteristics of participants; and (3) pupil and program outcomes. The department shall work with the Department of Finance and Legislative Analyst in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.</p> <p>(h) As a condition of receiving funds provided in Schedule (2) of this item or any General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect</p>	

Item	Amount
<p>program and participant data as described in this section and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2002, through June 30, 2003.</p> <p>5. Of the funds appropriated in this item \$15,018,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 2.50 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, \$12,304,000 is for the purpose of providing a cost-of-living adjustment at a rate of 2.00 percent.</p> <p>6. If the funds appropriated in this item are insufficient to cover the costs incurred in the provision of adult education services in accordance with state and federal laws and regulations, it is the intent of the Legislature that up to \$10,000,000 of such a shortfall will be considered a priority for restoration.</p>	
<p>6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund.....</p>	91,826,000
<p>Provisions:</p> <p>1. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.</p>	

Item	Amount
<p>2. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.</p> <p>All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Department of Education's staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.</p> <p>The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.</p> <p>Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.</p> <p>Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.</p> <p>(b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all subrecipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not</p>	

Item

Amount

have an organizational-wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited scope audits shall include agreed-upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.

The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

3. On or before March 1, 2003, the State Department of Education shall report to the appropriate subcommittees of the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee on the following aspects of the implementation of Title II of the federal Workforce Investment Act: (a) the makeup of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school district, community colleges, community-based organizations, other local entities); (b) the results of a mid-year report on the extent to which participating programs were able to meet planned performance targets; and (c) a breakdown of the types of courses (ESL, ESL citizenship, ABE, ASE) included in the performance targets of participating agencies. It is the intent of the Legislature that the Legislature and State Department of Education utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under

Item	Amount
<p>Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.</p> <p>4. The State Department of Education shall expeditiously amend the "Workforce Investment Act, Title II, Adult Education and Family Literacy Act, California State Plan for 1999-2004" to rebench outcome measures for Department of Mental Health and Department of Developmental Services clients so that they will continue to be eligible for adult education services in 2002-03 and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the Department of Mental Health, Department of Developmental Services, and Department of Finance for this purpose.</p> <p>5. Of the funds appropriated in this item, \$18,000,000 is available as a one-time carryover of unexpended funds from the 2001-02 fiscal year.</p> <p>6. Of the funds appropriated in this item for the English Literacy and Civics and Education program, \$5,000,000 shall be expended pursuant to an interagency agreement with the Department of Community Services and Development for the Naturalization Services Program. The interagency agreement shall provide for naturalization services consistent with services and program administration provided through Schedule (2) of Item 4700-101-0001 and authorized under the California State Plan, Workforce Investment Act, Title II, Adult Education and Family Literacy Act. In consultation with the Department of Community Services and Development, the State Department of Education shall develop a plan for implementation not later than December 31, 2002, to ensure the continuity of services to the legal permanent residents eligible for naturalization who rely on community-based citizenship programs funded through the Department of Community Services Development. This plan shall serve as the basis for the delivery of naturalization services through community-based organizations and other eligible providers.</p> <p>Within 30 days of the enactment of this act, the State Department of Education and the Department of Community Services and Development</p>	

Item	Amount
<p>shall seek the United States Department of Education's approval of a naturalization education services plan. If the plan is rejected by the United States Department of Education, the State Department of Education and Department of Community Services and Development shall jointly report to the Department of Finance and the Legislature the reasons and authority cited for the rejection within 15 days of notification, and shall within 60 days make recommendations to the Legislature on alternatives.</p> <p>6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities .....</p>	19,067,000

Provisions:

1. Notwithstanding Section 41841.5 of the Education Code, or any other provision of law, the amount appropriated in this item and any amount allocated for this program in this act shall be the only funds available for allocation by the Superintendent of Public Instruction to school districts or county offices of education for the Adults in Correctional Facilities program.
2. Notwithstanding Section 41841.5 of the Education Code or any other provision of law, the amount appropriated in this item shall be allocated based upon prior-year rather than current-year expenditures.
3. Notwithstanding any other provision of law, funding distributed to each local education agency (LEA) for reimbursement of services provided in the 2001-02 fiscal year for the Adults in Correctional Facilities program shall be limited to the amount received by that agency for services provided in the 2000-01 fiscal year, as increased by \$448,000 for growth in services and \$710,000 for cost-of-living adjustments. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the 2001-02 fiscal year, as compared to the level of service provided in the 2000-01 fiscal year. Any funds remaining as a result of those decreased levels of service shall be

# Exhibit E

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## CDE Adult Education Office

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### ***Student Data Collection Requirements***

California Department of Education  
721 Capitol Mall - P.O. Box 944272  
Sacramento, CA 94244-2720

DATE: July 6, 1999

TO: Adult Education Administrators

FROM: Mary Tobias Weaver  
Assistant Superintendent/Director  
Education Support Systems Division

SUBJECT: Student Data Collection Requirements

The following information outlines the data and accountability requirements of all adult schools beginning July 1, 1999. The data and accountability requirements listed below supersede past recommendations and voluntary efforts utilized as we developed a statewide data and accountability system with Tracking of Programs and Students (TOPSpro) software. Due to the enormous increase in state and federal demands for data collection and accountability, the California Department of Education (CDE) suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below. Software and entry/update record sheets are available to adult schools at no cost to facilitate data collection and reporting efforts.

There are currently four mandates for data collection:

1. **State Budget Act Language** requires data on all students that attend a minimum of 12 hours of instruction, in all program areas, during the entire fiscal year, July 1 through June 30. Full implementation begins July 1, 1999. Specifically, Section 6110-156-001, Provision 5(g) states:

The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The State Department of Education shall provide local providers with a list of required data elements ... The department shall work with the Department of Finance and Legislative Analyst's Office in determining the specific data

elements of the system...

This past year, CDE developed and piloted an adaptation of TOPSpro to meet the reporting requirement imposed by the Department of Finance and the Legislative Analyst's Office. The success of that pilot provides us now with a system requested in the current Budget Act. Therefore, **beginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment.**

TOPSpro forms and software, version 2.3, contain the required data elements and match those identified for CalWORKs. Agencies may obtain the revised TOPSpro software and all data collection forms from CASAS at no charge. Any agency presently using a different system to collect all the required data elements must submit the data in a specified protocol for aggregation with other state data. CDE will not fund the data collection efforts for any other software system than TOPSpro.

**2. CalWORKs** requires data collection on all CalWORKs eligible students served by adult schools and ROCPs. Specifically, Section 6110-156-001, Provision 5(h) states:

As a condition of receiving funds provided in Schedule (D) of this item or any other General Fund appropriation made to the State Department of education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupations centers and programs shall collect program and participant data as described in this section and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 1999, through June 30, 2000.

This collection effort began on January 1, 1999. Data elements required by CalWORKs are contained on the TOPSpro Entry and Update records and the Workforce Supplemental Entry and Update Record. Please send your data collected for the period January 1 through June 30, 1999, to Wendi Maxwell, CDE, Adult Education Office, 660 J Street, Suite 400, Sacramento, CA 95814, **no later than August 15, 1999.**

**3. Performance Based Accountability (PBA)**, mandated by SB 645, requires data collection for all students enrolled in vocational education programs. These students must have been enrolled in classes scheduled for a minimum of 12 hours per week, attended 20 hours or more in those classes, and signed YES on the *PBA Privacy Notice and Student Consent Form*. [see attached]. Data collection efforts began January 1, 1999 and extended through June 30, 1999. Data are due to CDE **no later than August 15, 1999.** Please send your data to Wolfgang von Sydow, CDE, Adult Education Office, 660 J Street, Suite 400, Sacramento, CA 95814.

At this time, the student's Social Security number is required only for PBA data collection. Students must sign the *PBA Privacy Notice and Student Consent Form* before the agency submits the agency data into the PBA system. This data element will allow CDE to share information with other agencies to measure student success after completion of adult vocational training programs. If the student declines to sign the *PBA Privacy Notice and Student Consent Form*, agencies cannot submit their data into the PBA report. Students must not be denied services if they do not agree to sign the Privacy Notice.

**4. Workforce Investment Act (WIA), Title II, Adult Education and Family Literacy Act, Sections 225 and 231** requires funded agencies to submit data on all students who reach specified benchmarks during the fiscal year. This data must be submitted no later than August 15, 2000 for students served in 1999-2000.

Adult schools can assign student identification numbers for all students not in vocational education programs. However, CDE highly recommends that all programs that identify students attending

classes at more than one school site use Social Security numbers, whenever possible, to track students more easily and acknowledge more benchmarks of student success.

In addition to the reporting requirements, identified in this memorandum, student assessment data is required only for the federally funded Section 225 and 231 programs. Additional information on testing requirements, selection of appropriate assessment instruments, and frequency of testing will be available through online training and in five comprehensive regional training workshops in late August and mid September. Additional information about the upcoming training will be available at later time.

To order TOPSpro software or CASAS entry/update forms for Summer Session 1999, please call 800-255-1036. For more information on any of these data collection efforts call your regional consultant in the Adult Education Office at (916) 322-2175.

MTW:JPY

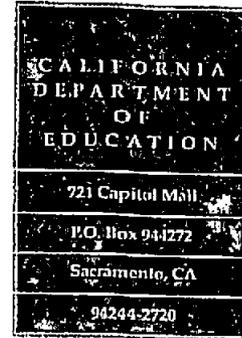
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You are at: <http://www.cde.ca.gov/adulteducation>

# Exhibit F



DELAINE EASTIN  
State Superintendent of Public Instruction



April 24, 2000

To: Adult Education Administrators

From: Joan Dailey Polster, Administrator  
Adult Education Office

Subject: **Student Data Collection Requirements**

The following information outlines the data and accountability requirements of all adult schools for fiscal year 1999-2000. The California Department of Education (CDE) suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below. The TOPSpro report functions will allow you to print reports for all four mandates.

There are currently four mandates for collection:

1. **State Budget Act Language** requires data on all students that attend a minimum of 12 hours of instruction, in all program areas, during the entire fiscal year, July 1 through June 30.

Data must be submitted to CASAS on disk by **August 15, 2000**.

2. **CalWORKs** requires data collection on all CalWORKs eligible students served by adult schools and ROCs. Specifically, Section 6110-156-001, Provision 5(h) states:

As a condition of receiving funds provided in Schedule (D) of this item or any other General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupations centers and programs shall collect program and participant data as described in this section and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period of July 1, 1999, through June 30, 2000.

Data elements required by CalWORKs are contained in the TOPSpro-*Entry and Update* records and the *Workforce Supplementary Entry and Update Record*. Data for fiscal year 1999-2000 must be sent on diskette to:

California Department of Education  
Standards and High School Development Division  
ROCP Unit  
660 J Street, Suite 300  
Sacramento, CA 95814  
Attn: Sue Haseltine

Data must be submitted on disk by **August 15, 2000**.

3. **Performance Based Accountability (PBA)**, mandated by SB 645, requires data collection for all students enrolled in vocational education programs. These students must have been enrolled in classes scheduled for a minimum of 12 hours per week, attended 20 hours or more in those classes, and signed *YES* on the *PBA Privacy Notice and Student Consent Form*. Data for fiscal year 1999-2000 must be sent on diskette to:

California Department of Education  
Standards and High School Development Division  
ROCP Unit  
660 J Street, Suite 300  
Sacramento, CA 95814  
Attn: Sue Haseltine

Data must be submitted on disk by **August 15, 2000**.

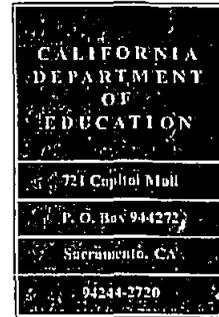
4. **Workforce Investment Act (WIA) Title II, Adult Education and Family Literacy Act, Sections 225 and 231** requires *funded agencies* to submit data on all students who reach specified benchmarks during the fiscal year. This data must be submitted to CASAS no later than **August 15, 2000** for students served in 1999-2000.

CASAS  
8910 Clairmont Mesa Blvd.  
San Diego, CA 92123

# Exhibit G



DELAINE EASTIN  
State Superintendent of Public Instruction



August 1, 2002

To: Adult Schools  
225/231 Funded Agencies  
English Literacy and Civics Education Funded Agencies

From: Kathy Block-Brown, Administrator  
Adult Education Office

Subject: FY 2002-03 Accountability Requirements

The California Department of Education (CDE) is required to collect and report statewide accountability data for adult education programs as directed by federal and state laws. These include the *Workforce Investment Act*, Title II (WIA) *Adult Education and Family Literacy Act*, Sections 225 and 231 P.L. 105-220, the National Reporting System, the *California Budget Act*, and the *California State Plan 1999-2004*. The following is a more detailed description of some of these requirements:

#### *Workforce Investment Act (WIA)*

WIA, Title II, *Adult Education and Family Literacy Act*, Sections 225 and 231 (P.L. 105-220) and the National Reporting System require funded agencies to collect and report data on all students in literacy programs who receive federal literacy funding during the year July 1, 2002 through June 30, 2003. These literacy programs include Adult Basic Education (ABE), English as a Second Language (ESL), ESL-Citizenship, Workplace Literacy (WL), Family Literacy (FL), and Adult Secondary Education (ASE). WIA Title II also requires English Literacy and Civics Education (EL Civics) funded agencies to collect and report data on all students in programs that receive local assistance grants during this year.

#### *State Budget Act*

Although at the time of this writing, the California Budget has not been signed, in the past two years the *California Budget Act*, Section 6110-156-0001, Provision 5(g), required adult schools to collect and report data on all students in all program areas during the year, July 1st through June 30<sup>th</sup>. CDE expects the language to remain the same for the budget year 2002-03. In the past, the language has read:

The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services

provided to program participants; (3) characteristics of participants, and (4) pupil and program outcomes. The department shall work with the Department of Finance and Legislative Analyst in determining the specific data elements of the system and shall meet all information technology-reporting requirements of the Department.

#### *The California State Plan 1999-2004*

The *California State Plan* requires that funded agencies collect and report data on all students in ABE, ESL, ESL-Citizenship, ASE, and EL Civics programs.

In order to meet these requirements, CDE has identified a statewide reporting system, data collection items, and support to help agencies meet these requirements.

#### **Reporting System**

CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.

#### **Required Data Collection Items**

*Adult School Requirements:* A TOPSpro entry record must be completed for all students in all programs regardless of the number of instructional hours. A TOPSpro update record is also required for students who have had at least 12 hours of instruction.

*WIA Title II, 225/231 Requirements:* A TOPSpro entry record must be completed for all students in all programs regardless of the number of instructional hours. A TOPSpro update record is also required for students who have had at least 12 hours of instruction. Pre/post testing using the CASAS assessment instruments is required for 225/231 funded programs.

In addition to reporting educational gains from the pre/post test, agencies are required to report on four follow-up core outcome measures. These include a student's receipt of a high school diploma or GED attainment, entered employment, retained employment, and placement in postsecondary education or training. Reporting on entered employment, retained employment, and placement in postsecondary education or training are only for those students who have indicated these as primary or secondary goals on the TOPSpro entry record. CDE will again do a data match with the GED Office to verify GED attainment. Education Program Consultants will verify receipt of a high school diploma by reviewing official records during site monitoring visits. Data on employment and placement in postsecondary education and training will again be verified through a survey to students.

*EL Civics Education Requirements:* A TOPSpro entry record is required for each student regardless of the number of instructional hours. A TOPSpro update record is required for students with 12 or more instructional hours. CASAS pre/post testing is required for students in the EL Civics program. This year's EL Civics funding requirements include the submission of five program deliverables. These products were discussed in the grant application guidelines and the required EL Civics Implementation Training.

*CalWORKS and PBA Requirements:* TOPSpro forms and software contain the required data elements to match those identified for CalWORKS and Performance Based Accountability (PBA) requirements. Instructions for CalWORKS and PBA data requirements are sent in a separate correspondence to all appropriate adult schools.

### **Data Reporting Dates**

The data reporting periods are:

July 1, 2002 through June 30, 2003 for:

· Adult Schools

WIA Title II Sections 225 and 231

EL Civics Education

California adult schools, WIA Title II 225/231 and EL Civics end-of-year data must be submitted to CASAS no later than August 15, 2003. If you collect data from multiple sites throughout your agency or district, you must compile your data into one agency-wide or district-wide data submission. Instructions for data submission will be provided later in the year. Adult schools, 225/231 funded agencies and EL Civics Education funded agencies should submit their data to:

CASAS  
California Accountability Project  
P.O. 80488  
San Diego, CA 92138  
Attention: California Accountability Program Manager

Failure to submit data by the required date may affect your agency's funding for the following year.

### **Technical and Materials Support**

TOPSpro software, entry and update record forms, workforce entry and update record forms, and certain test booklets and testing forms are available to adult schools and funded agencies at no cost. CASAS will also provide any software and form revisions to any funded agency. To order

August 1, 2002  
Page 4

TOPSpro software, CASAS forms, and certain CASAS test booklets, please fax your order request to (858) 292-2910 using the CASAS special adult school, 225/231, and EL Civics Education order form.

For additional information on CASAS TOPSpro or ordering materials or technical assistance, please contact the CASAS California Accountability Program at (858) 292-2900, (800) 255-1036, or [capm@casas.org](mailto:capm@casas.org). For more information on any of the data collection efforts, please contact your regional consultant in the Adult Education Office at (916) 322-2175.



**RECEIVED**

JUN 23 2004

**COMMISSION ON  
STATE MANDATES**

June 21, 2004

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

Dear Ms. Higashi:

As requested in your letter of September 8, 2003, the Department of Finance has reviewed the test claim submitted by the Berkeley Unified School District, the Elk Grove Unified School District, and the Sacramento City Unified School District (claimants) asking the Commission to determine whether specified costs incurred under the Annual Budget Act for 1999, 2000, 2001, and 2002, and under various letters from the Department of Education (SDE) are reimbursable State mandated costs (Claim No. 02-TC-37 "Adult Education Reporting"). Commencing with page 3, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable State mandates:

1. The completion of required forms for each student in each program at the school site level.
2. Input of the form data collected on each student in each program at the school site level.
3. Transmission of the aggregate school site data to the District.
4. Comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate.
5. Annual reporting of data to (Comprehensive Adult Student Assessment System) CASAS.
6. Obtaining necessary computer hardware and software to properly implement the TOPSpro system.
7. Training district staff regarding the test claim activities.
8. Drafting or modifying policies and procedures to reflect the test claim activities.
9. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

As the result of our review, we have concluded that while many schools with adult education programs are submitting data at the request of the SDE, several issues must be addressed in determining if the activities are reimbursable. Finance raises the following issues:

- A. The Test Claim is based upon assertions of statutory language that is faulty. Specifically, the language that the test claim asserts is the basis of the reimbursable activities is misquoted. The claimants state that:

"The 1999, 2000, 2001, and 2002 California State Budget Acts include identical provisions related to reporting requirements the State Department of Education is required to develop related to the provision of adult education in the state. The Budget Acts at section 6110-156-0001, provision 5(g) provide:

The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The State Department of Education shall provide local providers with a list of required data elements. . . . The department shall work with the Department of Finance and Legislative Analyst's Office in determining specific data elements of the system. . . ."

As can plainly be seen in Claimants Exhibits A-D, the actual language contained in the Budget Acts of 1999, 2000, 2001, and 2002 does not contain the statement "The State Department of Education shall provide local providers with a list of required data elements." The actual language does not place any requirements upon the local education agencies (LEAs). Instead, the language places a specific requirement upon the SDE. Therefore, it is incorrect to use this provisional language as the basis of the test claim as the specific language does not place any new requirements or activities upon LEAs.

- B. The Test Claim is also based upon the assertion that:

"Beginning July 1, 1999, all adult education schools must use the TOPSpro system to reporting specific data to the California Department of Education."

This assertion is based upon letters written by the Administrator of the Adult Education Office of the SDE. Specifically, the claimants reference letters from the SDE dated, July 6, 1999, April 24, 2000, May 31, 2001<sup>1</sup>, and August 1, 2002. The July 6, 1999, and April 24, 2000 letters suggest the use of TOPSpro, while the May 31, 2001 letter is silent as the use of TOPSpro. The August 1, 2002 letter from the SDE does state that adult education providers are required to use the TOPSpro system for submitting student data, as a condition of receiving funds. However, there is no statutory basis on which the SDE can require that districts submit the requested data, nor use the TOPSpro system to do so for State-funded adult education programs.

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<sup>1</sup> The Test Claim provided to us did not contain the exhibit for the 2001 letter. The SDE provided us with a letter from May 31, 2001, that they believe is the letter referenced in the Test Claim.

- C. The claimants are claiming activities related to obtaining computer hardware and software to properly implement the TOPSpro system and for training district staff on the test claim activities. The SDE, through the Comprehensive Adult Student Assessment System (CASAS), provides all LEAs with a free set of TOPSpro software and all of the forms that the system uses. Furthermore, CASAS indicates that they have worked, at the request of the LEAs, with many districts to ensure that their individual school and district attendance systems work with TOPSpro in order to make the system as seamless as possible. Additionally, CASAS provides free training to LEA staff on the use of the TOPSpro system.
- D. Education Code §52540 [Exhibit B] requires that upon the demand of 20 or more students, LEAs offer classes for adults for whom English is a second language. Education Code §52552 [Exhibit C] requires upon the demand of 25 or more students, LEAs offer classes in US citizenship. Chapter 842, Statutes of 1965 (as reflected in the Education Code of 1973 [Exhibit D]) added the requirement that the English as a second language and the US citizenship classes be offered upon demand. Therefore, this requirement was not created after 1975 and is not subject to reimbursement. All other adult education classes are voluntary and are conducted at the discretion of the LEA. Therefore, any incidental reporting or claiming requirements are costs incurred at the LEA option and are not reimbursable under the *Department of Finance v Commission on State Mandates* (2003) 30 Cal.4<sup>th</sup> 727, 735.
- E. The claimants argue that the activities claimed in the Test Claim represent both a "new program" and a "higher level of service" thereby meeting the statutory requirements for reimbursement. However, we would point out that LEAs are already provided money for the administration costs of adult education programs, therefore there is no basis for reimbursement. Education Code §52616.4 [Exhibit A] provides that districts may expend from the LEAs Adult Education Fund for specified direct support costs and indirect costs, or alternately the LEA may transfer from their Adult Education Fund to their General Fund an amount not to exceed 8 percent of the annual revenue deposited in the LEAs Adult Education Fund into their General Fund for "expenditures the district incurs in operating its adult education program." EC §42616.4(4) [Exhibit A]. The Budget Act of 2003 provided \$550.8 million in Proposition 98 General Fund and \$82.2 million in federal funds for adult education programs. Thus the State provides more than adequate funding to be used to offset any costs associated with adult education reporting. Furthermore, such costs are not reimbursable under the *Department of Finance v Commission on State Mandates* (2003) 30 Cal.4<sup>th</sup> 727, 735.
- F. As a condition of receipt of funding, districts have historically been required to report on the number of ADA served along with other information standards established by the SDE. Chapter 842, Statutes of 1965 (as reflected in the Education Code of 1973 [Exhibit E]) provided that as the basis for apportionment of state funds, the SDE shall establish standards on attendance, curriculum, administration, and guidance and counseling services. Therefore, the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding.

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 September 8, 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 Michael Wilkening, 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  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MICHAEL WILKENING  
DEPARTMENT OF FINANCE  
CLAIM NO. 02-TC-37

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.

June 21, 2004

at Sacramento, CA

Michael Wilkening

Michael Wilkening

PROOF OF SERVICE

Test Claim Name: Adult Education Enrollment Reporting  
Test Claim Number: 02-TC-37

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, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On June 21, 2004, 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, 7<sup>th</sup> 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

E-6

Department of Education  
Fiscal and Administrative Services Division  
Attention: Gerry Shelton  
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

Shields Consulting Group, Inc.  
Attention: Steve Shields  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Centration, Inc.  
Attention: Beth Hunter  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

San Diego Unified School District  
Attention: Arthur Palkowitz  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

Spector, Middleton, Young, Minney, LLP  
Attention: David E. Scribner  
7 Park Center Drive  
Sacramento, CA 95825

Reynolds Consulting Group, Inc.  
Attention: Sandy Reynolds, President  
P.O. Box 987  
Sun City, CA 92586

Steve Smith Enterprises, Inc.  
Attention: Steve Smith  
One Capitol Mall, Suite 200  
Sacramento, CA 95814

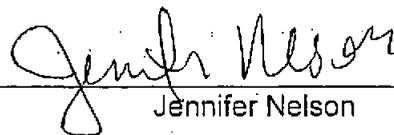
Sixten & Associates  
Attention: Keith Petersen  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Mandate Resource Services  
Attention: Harmeet Barkschat  
5325 Elkhorn Blvd., Suite 307  
Sacramento, CA 95842

Sacramento City Unified School District  
Attention: Joan Polster  
5735 47<sup>th</sup> Avenue  
Sacramento, CA 95824

Berkeley Unified School District  
Attention: Margaret Kirkpatrick  
2134 Martin Luther King, Jr. Way  
Berkeley, CA 94704-1180

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 June 21, 2004, at Sacramento, California.

  
\_\_\_\_\_  
Jennifer Nelson

# Exhibit A

classes in English and other  
F-1 visa students from approx

to contrary, each governing  
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Nonimmigrant (F-1) Student  
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immigrant alien, as defined in  
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in an elementary subject, shall  
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fee exceed the actual cost of  
adopted at a regular meeting of  
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shall be responsible for the  
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2, operative April 30, 1977.)

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expense account in  
connection with such class  
be deposited in that account  
oses of that account. (Stats.  
1977.)

adult education fund

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of average daily attendance  
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ined pursuant to Section

shall be deposited in a separa  
own as the "adult education  
fund shall be expended only  
neys received for program  
not be expended for indiv  
195 (A.B.1891), § 7, operative

parents of high-risk pupil  
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der subdivision (a) of Sect  
Instruction shall include the  
renting programs offered by

district for parents of high-risk pupils, as defined in Section  
between the ages of 5 and 18 years, inclusive, which  
shall include, but not necessarily be limited to, instruc  
in the value of the following pupil objectives:

- (a) Completion of the educational process leading to the earning of a diploma of graduation from high school.
- (b) Study and learning in conjunction with other pupils.
- (c) Fulfillment of school homework requirements.
- (d) School attendance and participation as preparation for employment and other activities. (Added by Stats.1986, c. 1192,

**52616.4 Expenditures from Adult Education Fund; transfer of revenues deposited in fund; violations**

(a) Money in the Adult Education Fund of a school district may be expended only for the following charges:

(1) Direct instructional costs relating directly to the adult education program, including, but not limited to, the salaries and benefits of adult education teachers and aides, textbooks, instructional supplies, travel and conference expenses for employees who work in the adult education program, and repair, maintenance, installation, and replacement of instructional equipment used in the adult education program.

(2) Direct support costs for the adult education program. For purposes of this section, "direct support costs" means:

(A) Instructional administration and instructional media costs that are supported by auditable documentation. For purposes of this paragraph, instructional administration costs include the documented costs of individuals who, regardless of specific job description, administer the district's adult education program.

(B) School administration and pupil services costs that are supported by auditable documentation and that represent the activities of individuals whose employment by the school district is exclusively in support of the adult education program, or school administration and pupil services costs that are supported by auditable documentation and that meet all of the following conditions:

(i) Those costs are able to be identified in a separate contract with the adult education program.

(ii) The administration and services are provided exclusively to the students and only for the period identified in the contract made pursuant to clause (i).

(iii) The services are provided during a time that is different from when services to pupils in kindergarten and grades 1 to 12, inclusive, are provided, and the administration is provided after 5:00 p.m.

(iv) The persons who provide the services and administration to the students report to the adult education director during the period of the contract made pursuant to clause (i).

(v) The person providing the administration immediately supervises the adult school personnel.

(C) Plant maintenance and operations costs, including costs for facilities that are used to provide child care services to the children of the students attending the adult education program at a particular site as follows:

(i) For facilities that exclusively house adult education programs, the costs that are supported by auditable documentation. For purposes of this subparagraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses adult education program.

(ii) For facilities that are used by more than one program, including the adult education program, a district may charge the Adult Education Fund for an amount attributable to the adult

education program, but this charge shall not exceed the amount derived from the following calculation:

(I) Calculate, according to the general description in the California School Accounting Manual, the prorated number of classroom units that the adult education program uses for instructional and child care purposes.

(II) Calculate the total number of classroom units in the district.

(III) Divide the amount calculated in (I) by the amount calculated in (II).

(IV) Multiply the quotient calculated in (III) by the district's total plant maintenance and operations costs.

(D) Facilities costs for nondistrict-owned facilities that exclusively house adult education programs, including, but not limited to, costs of facilities that are used to provide child care services to the children of the students attending the adult education program at the same site. For purposes of this paragraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses an adult education program.

(E) Facilities costs for the acquisition of facilities originally acquired by adult education programs, or for the restoration of those facilities, including costs for debt service for the acquisition or restoration of a facility, including the costs of facilities that are used to provide child care services to the children of the students attending the adult education program at the same site.

For the purposes of this paragraph, "auditable documentation" means time reports and other contemporaneous records that establish the time that individual employees spend working for the adult education program, and the documentation that supports nonpersonnel costs substantiating that the adult education program received the service, supply, or equipment. That documentation shall comply with the documentation requirements set forth in the California School Accounting Manual published pursuant to Section 41010.

(3) Indirect costs of the adult education program. For the purposes of this paragraph, "indirect costs" means the lesser of the school district's prior year indirect cost rate as approved by the State Department of Education or the statewide average indirect cost rate for high school and unified school districts for the second prior fiscal year.

(4) As an alternative to charging the costs in both paragraphs (2) and (3) to the adult education program, a school district may transfer not more than 8 percent of the annual revenue deposited in the district's Adult Education Fund to the district's general fund for expenditures the district incurs in operating its adult education program.

(b) If the State Department of Education and the Department of Finance concur that a school district has violated this section, the Superintendent of Public Instruction shall direct that school district to transfer double the amount improperly transferred to the district's general fund from that fund to the district's Adult Education Fund for the subsequent fiscal year, which amount shall be used for the improvement of the district's adult education program. If the school district fails to make that transfer as directed, the superintendent shall reduce the school district's regular apportionment determined pursuant to Section 42238 and increase the district's adult block entitlement determined pursuant to Section 52616 by that amount, which amount shall be used for improvement of the district's adult education program.

(c) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of adult education programs and that minor and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent of Public Instruction and the Department of Finance.

(d) The Superintendent of Public Instruction, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (b), if he or she determines that the noncompliance involved is minor or inadvertent, or both. (Added by Stats 1992, c. 196 (A.B. 1943), § 5, operative July 1, 1993. Amended by Stats 1993, c. 669 (A.B. 556), § 5; Stats 1994, c. 108 (A.B. 56), § 1, eff. June 27, 1994; Stats 1996, c. 158 (A.B. 2964), § 13, eff. Sept. 30, 1996.)

§ 52616.5. Merced union high school district, adult education fund; purchase of classrooms

(a) Notwithstanding the provisions of Section 52616.4, the Merced Union High School District may use money in its Adult Education Fund to purchase up to 20 existing district-owned classrooms for the exclusive use of its adult education program.

(b) The Adult Education Fund money used by the Merced Union High School District to purchase existing district-owned classrooms for the exclusive use of its adult education program shall be placed in a separate account after the purchase is completed.

(c) The money in the separate account established pursuant to subdivision (b) shall be used by the Merced Union High School District solely for the purpose of purchasing classrooms for use by students in grades 9 to 12, inclusive. The school district shall purchase, with the funds in the separate account, an equal number of classrooms for use by students in grades 9 to 12, inclusive, as the number of classrooms purchased for the adult education program pursuant to subdivision (a).

(1) If the funds in the separate account are insufficient to purchase an equal number of classrooms for use by students in grades 9 to 12, inclusive, then the school district may use district general fund money to complete the purchase of the classrooms.

(2) If there are funds remaining in the separate account after the purchase of an equal number of classrooms for use by students in grades 9 to 12, inclusive, those funds shall be transferred back to the Adult Education Fund.

(d) The classrooms purchased pursuant to this section shall meet the structural standards imposed by law for earthquake safety pursuant to Article 3, (commencing with Section 39140) and Article 6, (commencing with Section 39210) of Chapter 2 of Part 23.

(e) Any classrooms purchased pursuant to subdivision (a) shall not be included in the area of adequate school construction existing in the school district pursuant to Section 17742.7.

(f) This section shall not expand the Merced Union High School District's eligibility for funding pursuant to the Public Education Facilities Bond Act of 1996 (Part 66 (commencing with Section 100000)). (Added by Stats 1996, c. 760 (S.B. 1935), § 2.)

§ 52616.6. Correctional facility classes for adults

A school district or county superintendent of schools may expend funds allocated to it for the purposes of classes for adults in correctional facilities only for the direct instructional charges of those classes and for related direct and indirect support costs. (Added by Stats 1993, c. 670 (A.B. 1213), § 9.)

§ 52616.16. Adult education revenue limit per unit of average daily attendance; determination

(a) For the 1993-94 fiscal year, each school district's adult education revenue limit per unit of average daily attendance shall be determined as follows:

(1)(A) Add the total apportionment the school district received for the 1991-92 fiscal year for its adult education program and the portion of its state apportionment that represents the funding for those secondary school pupils concurrently enrolled in adult education.

(B) Add the school district's average daily attendance for the annual apportionment for the 1991-92 fiscal year for education and the portion of the district's funded regular daily attendance for secondary school pupils concurrently in adult education.

(C) Divide subparagraph (A) by subparagraph (B) to determine the school district's adult education revenue limit per average daily attendance.

(2)(A) For a school district offering adult education classes pursuant to Section 41976.2, multiply the average daily attendance for the second principal apportionment made in the 1991-92 fiscal year for independent study pupils 19 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992, statewide average funded adult education revenue limit for the 1992-93 fiscal year. This amount shall be added to the amount calculated pursuant to subparagraph (A) of paragraph (1) of this subdivision.

(B) Determine the funded average daily attendance for the second principal apportionment for the 1991-92 fiscal year for independent study pupils 21 years of age or older and pupils 21 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992. This amount shall be added to the amount calculated pursuant to subparagraph (B) of paragraph (1) of this subdivision.

(3) If the amount determined in paragraph (1) is between one thousand seven hundred seventy-five dollars (\$1,775) and two thousand fifty dollars (\$2,050), that amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993-94 fiscal year.

(4) If the amount determined in paragraph (1) is greater than two thousand fifty dollars (\$2,050), the difference between that amount and two thousand fifty dollars (\$2,050) shall be multiplied by 0.67 and that product shall be added to two thousand fifty dollars (\$2,050). That amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993-94 fiscal year.

(5) If the amount determined in paragraph (1) is less than one thousand seven hundred seventy-five dollars (\$1,775), the difference between that amount and one thousand seven hundred seventy-five dollars (\$1,775) shall be multiplied by 0.67 and that product shall be subtracted from one thousand seven hundred seventy-five dollars (\$1,775). That amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993-94 fiscal year.

(6) Any school district that establishes a new adult education program and receives a state apportionment for adult education on or after July 1, 1993, shall have an adult education revenue limit per unit of average daily attendance equal to the statewide average adult education revenue limit for the 1993-94 fiscal year.

(b) For the 1994-95 fiscal year, each school district's adult education revenue limit per unit of average daily attendance shall be determined as follows:

(1)(A) Add the total apportionment the school district received for the 1991-92 fiscal year for its adult education program and the portion of its state apportionment that represents the funding for those secondary school pupils concurrently enrolled in adult education.

(B) Add the school district's average daily attendance for the annual apportionment for the 1991-92 fiscal year for education and the portion of the district's funded regular

# Exhibit B

(c) A high school pupil shall not be enrolled for apportionment purposes in an adult education program, course, or class that would be considered any of the following:

- (1) Physical education
- (2) Driver's training and education
- (3) Visual and performing arts
- (4) Band
- (5) Preparation of a school yearbook or school newspaper

(6) Training for, or participation in, athletic camps, cheerleading or spirit organizations, student government, or extracurricular student clubs.

The Superintendent of Public Instruction shall issue a program advisory that further defines the purposes set forth in subdivision (d) and the courses set forth in subdivision (e). The superintendent is authorized to issue, at any time, rules and regulations instead of the program advisory. (Added by Stats.1992, c. (1993 (A.B.1321)), § 4, operative July 1, 1993. Amended by Stats.1993, c. 669 (A.B.556), § 4; Stats.1994, c. 922 (A.B.2587), § 136; Stats. 1996, c. 294 (A.B.2630), § 1; Stats.2001, c. 734 (A.B.804), § 39, eff. Oct. 11, 2001.)

§ 52525. Legislative findings and declarations

The Legislature finds and declares all of the following:

- (a) A healthy state economy is dependent on an educated and well-prepared workforce. Career technical education plays a critical role in developing the workforce necessary for the economic viability of the state, keeping pupils engaged in the educational process, and providing meaningful skills that translate to productive careers.
- (b) Data and projections from the Employment Development Department reveal that between the years of 2000 and 2006, approximately 711,290 jobs that do not require a college degree will need to be filled.
- (c) The United States Department of Labor indicates that only about 20 percent of the jobs in the workforce require a baccalaureate degree.
- (d) The State Department of Education reports that over 75 percent of the industrial technology education, which includes, but is not limited to, automotive, construction, and manufacturing programs in California's schools have closed since the mid-1970s.
- (e) The Employment Development Department and other sources reveal that current course offerings and enrollments are insufficient to fill the projected need of the state's future labor market. Existing courses provide only 65 percent of the projected course requirements. (Added by Stats.2002, c. 988 (A.B.1412), § 3.)

ARTICLE 2. USE OF HOSPITALS

Section 52530. Classes in a nursing program; insurance.

52531. Classes for convalescents in a hospital maintained by a county or city in another county.

§ 52530. Classes in a nursing program; insurance

The governing board of any district offering a nursing program, or related program in the healing arts, either in regular graded classes or in classes for adults, may maintain classes in such a program at hospitals located within or without the district for the purpose of providing the hospital training for students in such classes.

The governing board may purchase liability insurance for the students with district funds. (Stats.1976, c. 1010, § 2, operative April 30, 1977.)

§ 52531. Classes for convalescents in a hospital maintained by a county or city in another county

Anything in this chapter to the contrary notwithstanding, whenever any county or city and county maintains a tubercular ward, hospital or sanatorium in another county of this state, governing board of any school district of the county or city county maintaining such institution, if authorized to maintain classes for adults, may establish and maintain such classes in institution for pretuberculous, tuberculous and convalescent minors and adults, and the attendance of pupils in the classes shall be credited to the district maintaining the classes. (Stats. 1976, c. 1010, § 2, operative April 30, 1977.)

ARTICLE 3. ADULT ENGLISH CLASSES

Section 52540. Establishment upon demand.

52541. Time of application.

52542. Establishment without demand.

52543. Scheduling of classes.

52544. Discontinuance of classes.

§ 52540. Establishment upon demand

Upon application of 20 or more persons, above the age of 16 years residing in a high school district who cannot speak, read, or write the English language to a degree of proficiency equal to that required for the completion of the eighth grade of the elementary schools, the governing board of the high school district shall establish classes in English. (Stats.1976, c. 1010, § 2, operative April 30, 1977.)

§ 52541. Time of application

Application for classes shall be made in time to permit the board to arrange to meet the expenses of the classes. (Stats. 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52542. Establishment without demand

The board may establish the classes without demand and with a lesser number of students. (Stats.1976, c. 1010, § 2, operative April 30, 1977.)

§ 52543. Scheduling of classes

The classes shall be held at least twice a week for a two-hour period. (Stats.1976, c. 1010, § 2, operative April 30, 1977.)

§ 52544. Discontinuance of classes

If the enrollment in any class falls to 10 or less for a one-month period, the governing board may discontinue the class for the next year. (Stats.1976, c. 1010, § 2, operative April 30, 1977.)

ARTICLE 4. CLASSES IN CITIZENSHIP

Section 52550. Counties with U.S. district courts.

52551. Notice to applicants.

52552. Establishment of classes.

52553. Time of application for classes.

52554. Penalty for school district failing to establish classes.

52555. Course of study.

52556. Scheduling and discontinuance of classes.

§ 52550. Counties with U.S. district courts

In counties in which the U.S. district courts are located, the superintendent of schools of the county or city and county shall obtain monthly from the clerk of the U.S. district court the names and addresses of all persons filing their declarations of intention

# Exhibit C

...citizens of the United States on their petitions for naturalization. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52551. Notice to applicants

The superintendent of schools of the county or city and county, after obtaining the names and addresses of the applicants, shall send a written or printed notice to the applicants, stating that this article authorizes the governing board of any school district to establish upon application classes in training for citizenship. The form of this notice shall be furnished by the Superintendent of Public Instruction. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52552. Establishment of classes

Upon application of 25 or more persons desiring training for citizenship and residing in a high school district, the governing board shall establish special classes in training for citizenship. Upon demand the board may establish the classes with a lesser number of applicants. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52553. Time of application for classes

Application for classes shall be made in time to permit the governing board to arrange to meet the expenses of the classes. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52554. Penalty for school district failing to establish classes

Upon satisfactory evidence that any school district required to do so has failed to establish and maintain classes in training for citizenship, the Superintendent of Public Instruction and county superintendent of schools may withhold 5 percent of state and county apportionments until the district has complied with the provisions of this article. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52555. Course of study

The course of study in training for citizenship shall consist of the teaching of U.S. history, state and community civics, and the Constitution of the United States, with special reference to those sections in the Constitution which relate directly to the duties, privileges, and rights of the individual, and such allied subjects, including English for foreigners, or activities as will properly prepare the applicants to understand and assume the responsibilities of citizenship. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

§ 52556. Scheduling and discontinuance of classes

The classes shall be held at least twice a week for three months. At the close of this period, if the enrollment in any class has fallen to 10 or less for the month, the governing board of the district may discontinue the class for that year. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

ARTICLE 5 HANDICAPPED ADULTS

Section 52570. Powers of governing board and county superintendent

§ 52571. Public school or nonprofit organization facilities

§ 52572. Contracts with adjacent high school district or unified school district

§ 52570. Powers of governing board and county superintendent

The governing board of any school district maintaining secondary schools or the county superintendent of schools shall have the power, with the approval of the Department of Education, to establish special classes for adults designed to serve the education

al needs of handicapped adults. Such classes shall be directed to providing instruction in civic, vocational, literary, homemaking, technical, and general education and shall conform to standards of attendance, curriculum, and administration established by the Department of Education.

Attendance of handicapped adults in such classes established by the county superintendent of schools shall be included for purposes of apportionments to the county school service fund. (Stats 1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats 1977, c. 36, § 235, eff. April 29, 1977.)

§ 52571. Public school or nonprofit organization facilities

Special classes for handicapped adults may be conducted under the direction of the governing board of the school district in workshop and training facilities provided by nonprofit organizations, or in public school facilities. Such facilities may include those where part-time paid work education and training is conducted and where less than the state minimum wage is paid. (Stats 1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats 1977, c. 53, § 17, eff. April 29, 1977.)

§ 52572. Contracts with adjacent high school district or unified school district

The governing board of any school district or the county superintendent of schools authorized by this article to establish special classes for adults designed to serve the educational needs of handicapped adults may contract for the providing of such classes by any adjacent high school district or unified school district, subject to the approval of the Superintendent of Public Instruction. For purposes of apportionments, the average daily attendance in classes conducted pursuant to the contract shall accrue to and be reported by the district in which such student resides. Any contract entered into pursuant to this section shall be for a term of not to exceed one year but may be renewed or revised and renewed annually. (Stats 1976, c. 1010, § 2, operative April 30, 1977.)

ARTICLE 6 FINANCES

Section 52610. Adult

§ 52610.5. Minors pregnant or parent actively engaged in raising children

§ 52612. Tuition for adult classes; exceptions; sale of textbooks

§ 52613. Nonimmigrant aliens; classes in English and other subjects; costs; exclusion of F-1 visa students

§ 52614. Employee to have custody of incidental expense account

§ 52615. Sale to pupils of materials purchased from incidental expense account

§ 52616. Adult bible certificate; adult education fund

§ 52616.2. Parenting programs for parents of high-risk pupils

§ 52616.4. Expenditures from Adult Education Fund; transfer of revenues deposited in fund; violations

§ 52616.5. Merced fund on high school district; adult education fund; purchase of classrooms

§ 52616.6. Correctional facility classes for adults

§ 52616.16. Adult education revenue limit per unit of average daily attendance; determination

§ 52616.17. Authorized limits of adult education; average daily attendance; determination

§ 52616.18. Application by school districts for initial program

§ 52616.19. Approval and funding to begin adult education

# Exhibit D

Article 5. Classes in Citizenship and English for Minors  
(Article 5 added by Stats. 1965, Ch. 842.)

*Conditions for Mandatory Establishment of English Classes*

5731. The governing board of each high school district in which there are living, within a radius of three miles of any high school located in the district, 20 or more persons over 18 and under 21 years of age who expect to remain in the district for a period of two or more months, who are not in attendance for at least four 60-minute hours per week upon regular full-time public or private day schools or suitable part-time classes, and who cannot speak, read, or write the English language, to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools, shall establish and maintain classes for such persons.

(Added by Stats. 1965, Ch. 842.)

*Scheduling of Classes in Citizenship*

5732. Classes shall provide instruction in citizenship for at least four 60-minute hours per week for at least 36 weeks of the school year.

(Added by Stats. 1965, Ch. 842.)

*Directive to Governing Board*

5733. The board shall provide, for persons who cannot speak, read, or write the English language to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools, instruction in the English language and in the duties and responsibilities of citizenship.

(Added by Stats. 1965, Ch. 842.)

Article 6. Classes in Citizenship for Persons  
Seeking Citizenship

(Article 6 added by Stats. 1965, Ch. 842.)

*Counties With U.S. District Courts*

5736. In counties in which the U.S. district courts are located, the superintendent of schools of the county or city and county shall obtain monthly from the clerk of the U.S. district court the names and addresses of all persons filing their declarations of intention to become citizens of the United States or their petitions for naturalization.

(Added by Stats. 1965, Ch. 842.)

*Notice to Applicants*

5737. The superintendent of schools of the county or city and county, after obtaining the names and addresses of the applicants, shall send a written or printed notice to the applicants, stating that this article authorizes the governing board of any school district to establish upon application classes in training for citizenship. The form of this notice shall be furnished by the Superintendent of Public Instruction.

(Added by Stats. 1965, Ch. 842.)

*Establishment of Classes*

5738. Upon application of 25 or more persons desiring training for citizenship and residing in a high school district, the governing board shall establish special classes in training for citizenship. Upon demand the board may establish the classes with a lesser number of applicants.

(Added by Stats. 1965, Ch. 842.)

*Time of Application for Classes*

5739. Application for classes shall be made in time to permit the governing board to arrange to meet the expenses of the classes.

(Added by Stats. 1965, Ch. 842.)

*Penalty for School District Failing to Establish Classes*

5740. Upon satisfactory evidence that any school district required to do so has failed to establish and maintain classes in training for citizenship, the Superintendent of Public Instruction and county superintendent of schools may withhold 5 percent of state and county apportionments until the district has complied with the provisions of this article.

(Added by Stats. 1965, Ch. 842.)

*Course of Study*

5741. The course of study in training for citizenship shall consist of the teaching of U.S. history, state and community civics, and the Constitution of the United States, with special reference to those sections in the Constitution which relate directly to the duties, privileges, and rights of the individual, and such allied subjects, including English for foreigners, or activities as will properly prepare the applicants to understand and assume the responsibilities of citizenship.

(Added by Stats. 1965, Ch. 842.)

*Scheduling and Discontinuance of Classes*

5742. The classes shall be held at least twice a week for three months. At the close of this period, if the enrollment in any class has fallen to 10 or less for the month, the governing board of the district may discontinue the class for that year.

(Added by Stats. 1965, Ch. 842.)

**Article 7. Education of Handicapped Adults**

(Article 7 added by Stats. 1965, Ch. 842)

*Powers of Governing Board and County Superintendent*

5746. The governing board of any school district maintaining secondary schools or the county superintendent of schools, shall have the power, with the approval of the State Department of Education, to establish special classes for adults designed to serve the educational needs of handicapped adults. Such classes shall be directed to providing instruction in civic, vocational, literary, homemaking, technical, and general education.

# Exhibit E

**Adult School by Resolution of Governing Board**

5704. The governing board of a high school district or unified school district may establish and maintain one or more adult schools by resolution of the governing board.

(Added by Stats. 1965, Ch. 1573.)

**Adult Classes Must Conform to Legal Requirements**

5705. Classes for adults shall conform to any course of study and graduation requirements otherwise imposed by law or under the authority of law.

(Added by Stats. 1965, Ch. 1573.)

**Admission of Adults and Minors**

5706. Such classes shall be open for the admission of adults and of such minors as in the judgment of the governing board may be qualified for admission thereto.

(Added by Stats. 1965, Ch. 842.)

**Scheduling of Classes**

5707. Such classes may be convened at such hours and for such length of time during the day or evening and at such period and for such length of time during the school year as may be determined by the governing authority.

(Added by Stats. 1965, Ch. 842.)

**Department of Education Standards as a Basis for Apportionment**

5708. The State Department of Education shall establish standards including standards of attendance, curriculum, administration, and guidance and counseling service for such classes as a basis for the several apportionments of state funds provided herein for the support of such classes.

(Added by Stats. 1965, Ch. 842.)

**Recognition of Accomplishment**

5709. Governing boards shall have the authority to provide for granting appropriate credits, certificates, diplomas or other recognition of skill or accomplishment in such classes which such districts are otherwise authorized to grant.

(Added by Stats. 1965, Ch. 842.)

**Diplomas or Certificates**

5710. The governing board of a high school district or a unified school district shall have the authority to award diplomas or certificates to adults and eligible minors enrolled in adult schools upon satisfactory completion of a prescribed course of study in an elementary school program.

(Added by Stats. 1965, Ch. 1573.)

**Requirements for Granting Diplomas**

5711. The governing board of any school district maintaining an adult school shall prescribe the requirements for the granting of diplomas.

(Added by Stats. 1968, Ch. 182. See note following Section 171.)



**COMMISSION ON STATE MANDATES**

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SACRAMENTO, CA 95814

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May 29, 2007

Ms. Michele Lawrence  
Superintendent  
Berkeley Unified School District  
2134 Martin Luther King, Jr. Way  
Berkeley, CA 94704-1180

Ms. Joan Polster  
Assistant Superintendent  
Sacramento City Unified School District  
5735 47<sup>th</sup> Avenue  
Sacramento, CA 95824

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

Re: **Draft Staff Analysis and Notice of Hearing**  
*Adult Education Enrollment Reporting, 02-TC-37*  
Statutes 1999, Chapter 50 (SB 160); Statutes 2000, Chapter 52 (AB 1740); Statutes 2001,  
Chapter 106 (SB 739); Statutes 2002, Chapter 379 (AB 425)  
Letters from California Department of Education (Dated July 6, 1999; April 24, 2000;  
and August 1, 2002)  
Berkeley and Sacramento City Unified School Districts, Co-Claimants

Dear Ms. Lawrence and Ms. Polster:

The draft staff analysis of 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 Tuesday, June 19, 2007. 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.) 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 **Thursday, July 26, 2007** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 12, 2007. 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.

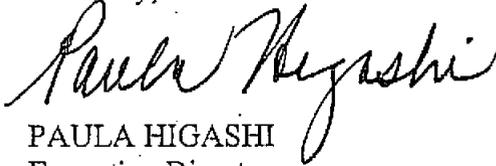
Ms. Lawrence and Ms. Polster  
May 29, 2007  
Page 2

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Commission Counsel Kenny Louie at (916) 323-2611 if you have any questions.

Sincerely,



PAULA HIGASHI  
Executive Director

Enclosure

MAILED: 5/29/07  
DATE: 5/29/07  
FILE: VS  
WORKING BINDER: \_\_\_\_\_  
INITIAL: \_\_\_\_\_  
FAXED: \_\_\_\_\_

ITEM \_\_\_\_\_  
**TEST CLAIM**  
**DRAFT STAFF ANALYSIS**

Statutes 1999, Chapter 50, line items 6110-156-0001 and 6110-156-0890  
Statutes 2000, Chapter 52, line items 6110-156-0001 and 6110-156-0890  
Statutes 2001, Chapter 106, line items 6110-156-0001 and 6110-156-0890  
Statutes 2002, Chapter 379, line items 6110-156-0001 and 6110-156-0890

Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002)

*Adult Education Enrollment Reporting (02-TC-37)*

Berkeley Unified School District and Sacramento City Unified School District, Claimants

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**EXECUTIVE SUMMARY**

**Background**

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis. The only exceptions are adult language classes in English and citizenship. Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level. Similarly, Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.

The Budget Act of 1998 appropriated specified amounts from the General Fund and Federal Trust Fund, for local assistance to be allocated by the California Department of Education (CDE) to school districts, county offices of education, and other agencies for adult education programs. The Budget Act of 1998 required the CDE to develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs. The CDE is also required to provide school districts with a list of the required data elements for the data and accountability system. School districts receiving funds provided in the Budget line item are required to collect and submit specified data to the CDE.

The test claim statutes<sup>1</sup> contain many of the same provisions as the Budget Act of 1998. On July 6, 1999, the CDE issued a letter to "Adult Education Administrators," indicating that the CDE had developed a statewide data and accountability system, "Tracking of Programs and Students" (TOPSpro), as requested in the Budget Act of 1998. The letter also outlines the state and federal sources of data and accountability requirements. In addition, the letter requires adult schools providing programs, funded through state apportionment to fully implement the TOPSpro system. On April 24, 2000 and August 1, 2002, the CDE issued letters similar to the July 6, 1999 letter. Unlike the July 6, 1999 letter, the April 24, 2000 letter only suggests the use

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<sup>1</sup> Line items 6110-156-0001 and 6110-156-0890 of Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, and Statutes 2002, chapter 379 (the Budget Acts of 1999, 2000, 2001, and 2002, respectively).

of the TOPSpro system. The August 1, 2002 letter, however, requires the use of the TOPSpro system for all data collection requirements outlined by the August 1, 2002 letter.

Claimants allege that the test claim statutes and letters issued by the CDE constitute a reimbursable state-mandated program. Claimants argue that although data reporting occurred before the enactment of the test claim statutes and issuance of the CDE letters, the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system. Therefore, the test claim statutes and letters impose a new program or higher level of service and costs mandated by the state upon adult education schools and school districts.

The Department of Finance (Finance) disagrees with claimants' test claim allegations and asserts that the test claim statutes and letters do not constitute a reimbursable state mandate because the test claim statutes and letters: (1) do not mandate any activity upon school districts, (2) do not constitute a "new program" or "higher level of service," and (3) do not impose increased costs mandated by the state.

### Conclusion

Staff finds that Statutes 1999, chapter 50, Statutes 2000, chapter 52, and the letters issued by the California Department of Education dated July 6, 1999 and April 24, 2000 are not subject to article XIII B, section 6 of the California Constitution because, based on the plain language of the statutes and the letters, the activities required in the statutes and letters were required to be performed before the reimbursement period for this test claim (July 1, 2001) pursuant to Government Code section 17557, subdivision (e).

Staff also finds that the plain language of line item 6110-156-0890 of the Budget Acts of 2001 and 2002 do not require any activity of school districts, and therefore do not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

In addition, staff finds under *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, that Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the letter issued by the California Department of Education dated August 1, 2002, do not impose state-mandated activities upon claimants as they relate to the general provision of adult education pursuant to Education Code sections 52501-52503, because adult education under Education Code sections 52501-52503 is provided on a voluntary basis.

Although school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 are required by Statutes 2001, chapter 106, and Statutes 2002, chapter 379 to collect and report adult education data, staff finds that Statutes 2001, chapter 106, and Statutes 2002, chapter 379, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. School districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 were already required to collect and report adult education data prior to the enactment of Statutes 2001, chapter 106, and Statutes 2002, chapter 379.

Staff finds that the CDE letter dated August 1, 2002, which requires school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 to implement the TOPSpro system, does mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution because immediately prior

to the August 1, 2002 CDE letter, the CDE did not require the implementation of the TOPSpro system. However, staff finds, in regard to the provision of adult English and citizenship classes pursuant to Education Code sections 52540 and 52552, that claimants are not entitled to reimbursement of costs related to the implementation of the TOPSpro system as required by the CDE letter dated August 1, 2002. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

Thus, Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the letters issued by the California Department of Education, dated July 6, 1999, April 24, 2000 and August 1, 2002, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

**Recommendation**

Staff recommends the Commission adopt this analysis and deny the test claim.

## STAFF ANALYSIS

### Claimants

Berkeley Unified School District and Sacramento City Unified School District

### Chronology

- 06/26/03 Spector, Middleton, Young and Minney, LLP files test claim with the Commission on State Mandates (Commission) on behalf of Berkeley, Elk Grove, and Sacramento City Unified School Districts
- 07/03/03 Commission issues incompleteness letter for Elk Grove Unified School District, test claim placed on hold
- 09/02/03 Commission receives electronic mail from claimant representative indicating removal of Elk Grove Unified School District as a co-claimant
- 09/08/03 Commission issues completeness letter for Claimants and indicates deletion of Elk Grove Unified School District as a co-claimant
- 09/08/03 Commission receives Spector, Middleton, Young and Minney, LLP's notice of termination of claimant representation for test claim
- 09/10/03 Commission receives MCS Education Services, Inc.'s (MCSed) notice of claimant representation for test claim
- 09/29/03 Commission issues letter acknowledging MCSed as only an interested party
- 10/31/03 The Department of Finance (Finance) files request for an extension of time for comments
- 11/07/03 Commission staff grants extension of time for comments to February 7, 2004
- 02/13/04 Finance files request for an extension of time for comments
- 02/18/04 Commission staff grants extension of time for comments to March 19, 2004
- 06/22/04 Finance submits comments in response to test claim
- 05/01/07 Commission issues letter requesting identification of claimants' representatives
- 05/29/07 Commission staff issues draft staff analysis

### Background

This test claim addresses the data collection and reporting requirements of school districts that provide state and/or federally funded adult education programs. The Legislature passed the Budget Act of 1998 by enacting Statutes 1998, chapter 324 (Assem. Bill No. (AB) 1656).<sup>2</sup> As part of the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 appropriated specified amounts from the General Fund and Federal Trust Fund, respectively, for local assistance to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.

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<sup>2</sup> Claimants did not plead Statutes 1998, chapter 324, in this test claim.

As one of several provisions to the funds appropriated for adult education programs in the Budget Act of 1998, provision 5(h) of line item 6110-156-0001 required the CDE to develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs. The CDE is also required to provide school districts with a list of the required data elements for the data and accountability system. School districts receiving funds provided in the line item are required to collect and submit specified data to the CDE.<sup>3</sup>

Other sources of data collection and reporting requirements for school districts receiving state and/or federal funds for adult education programs include Performance Based Accountability (PBA)<sup>4</sup> and the Workforce Investment Act of 1998 (WIA).<sup>5</sup> Prior to its repeal in 2006, PBA required school districts receiving state and/or federal funding from various sources for adult education programs to report information to the State Job Training Coordinating Council.<sup>6</sup> This information was used to develop an education and job training report card program that assessed the accomplishments of California's work force preparation system.

The United States Congress enacted the WIA with the purpose of creating "a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy services."<sup>7</sup> In order to receive a grant under the WIA, a state is required to submit a five-year plan setting forth, among other things, a description of how the CDE will evaluate annually the effectiveness of the adult education and literacy activities based on specified performance measures.<sup>8</sup> California's five-year plan requires school districts that wish to be eligible to receive WIA grant money to meet certain criteria, which includes submitting specified data to the CDE.<sup>9</sup>

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis.<sup>10</sup> The only exceptions are adult English classes and classes in citizenship. Education Code section 52540 requires a high school district to establish classes in

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<sup>3</sup> Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j).

<sup>4</sup> Statutes 1995, chapter 771 (SB 645), adding Unemployment Insurance Code section 15037.1; repealed by Statutes 2006, chapter 630, section 7 (SB 293).

<sup>5</sup> 112 Statutes 936, 20 U.S.C. section 9201 et seq.

<sup>6</sup> The State Job Training Coordinating Council membership includes the CDE.

<sup>7</sup> 20 U.S.C. 9201.

<sup>8</sup> 20 U.S.C. 9224.

<sup>9</sup> Cal. Dept. Of Education, Workforce Investment Act, Title II, Adult Education and Family Literacy Act, California State Plan 1999-2004, as revised January 10, 2002, p. 33-34 (CDE link to outside source: <<http://www.otan.us/webfarm/stateplan/PDF%27s%202004/Stateplan1999-2004.PDF>> [as of May 2, 2007]).

<sup>10</sup> Education Code section 52301 allows the county superintendent of schools of each county, with the consent of the state board, to establish and maintain a regional occupational center, or regional occupational program (ROC/P) in the county to provide education and training in career technical courses. Education Code sections 52501, 52502, and 52503 allow high school districts or unified school districts to establish and maintain adult education classes and/or schools.

English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.<sup>11</sup> Similarly, Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.<sup>12</sup>

The test claim statutes are line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002 that were enacted by Statutes 1999, chapter 50; Statutes 2000, chapter 52; Statutes 2001, chapter 106; and Statutes 2002, chapter 379. Like the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, appropriate specified amounts from the General Fund and Federal Trust Fund to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.<sup>13</sup> The appropriated amounts are subject to many of the same provisions found in the Budget Act of 1998, including the requirements that the CDE develop a data and accountability system, and that school districts receiving funding for adult education collect and report specified data to the CDE.<sup>14</sup>

On July 6, 1999, the CDE issued a letter to "Adult Education Administrators," indicating that the CDE had developed a statewide data and accountability system "Tracking of Programs and Students" (TOPSpro), as requested in the Budget Act of 1998. Provided by Comprehensive Adult Student Assessment System (CASAS), TOPSpro is a computerized database system that automatically scores CASAS tests; tracks student and program outcomes and progress; generates reports for students, teachers, and program administrators; provides individual, class and agency-wide profiles of skills; collects student demographics; and manages data for state and federal accountability.<sup>15</sup>

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<sup>11</sup> Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

<sup>12</sup> Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

<sup>13</sup> Statutes 1999, chapter 50, line items 6110-156-0001 and 6110-156-0890 appropriate \$542.4 million and \$42.3 million respectively; Statutes 2000, chapter 52, line items 6110-156-0001 and 6110-156-0890 appropriate \$573.6 million and \$48.3 million respectively; Statutes 2001, chapter 106, line items 6110-156-0001 and 6110-156-0890 appropriate \$610.7 million and \$74.1 million respectively; and Statutes 2002, chapter 379, line items 6110-156-0001 and 6110-156-0890 appropriate \$605 million and \$91.8 million respectively.

<sup>14</sup> Statutes 1999, chapter 50, line item 6110-156-0001, provisions 5(g)(h)(i); Statutes 2000, chapter 52, line item 6110-156-0001, provisions 4(g)(h); Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4(g)(h); and Statutes 2002, chapter 379, line item 6110-156-0001, provisions 4(g)(h).

<sup>15</sup> Description provided by the Comprehensive Adult Student Assessment System website at <https://www.casas.org/home/index.cfm?fuseaction=home.showContent&MapID=125>, as of May 2, 2007.

The CDE letter further states, "Due to the enormous increase in state and federal demands for data collection and accountability, the [CDE] suggest using one accountability system that can be used for all data collection requirements."<sup>16</sup> The TOPSpro system has the ability to be used for all adult data collection requirements, which consist of: (1) State Budget Act Language, (2) CalWORKs, (3) PBA, and (4) WIA.<sup>17</sup> When discussing the "State Budget Act Language" in the outline of data and accountability requirements the letter provides:

[B]eginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.]<sup>18</sup>

The letter further indicates the date and location where collected data must be sent. Additionally, the letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge.

On April 24, 2000 and August 1, 2002, the CDE issued letters similar to the July 6, 1999 letter. Unlike the July 6, 1999 letter, the April 24, 2000 letter only suggests the use of the TOPSpro system, stating:

The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.<sup>19</sup>

This language is not coupled with language requiring the full implementation of the TOPSpro system, as was done in the July 6, 1999 letter.

The August 1, 2002 letter requires the use of the TOPSpro system for all data collection requirements outlined by the August 1, 2002 letter, providing:

CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.<sup>20</sup>

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<sup>16</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>17</sup> Claimants did not plead the enacting statutes of CalWORKs, the PBA, or WIA.

<sup>18</sup> CDE letter, *supra*, p. 2, original emphasis.

<sup>19</sup> CDE letter, dated April 24, 2000, p. 1.

<sup>20</sup> CDE letter, dated August 1, 2002, p. 2.

### Claimants' Position

Claimants, Berkeley Unified School District and Sacramento City Unified School District, contend that the test claim statutes and letters issued by the CDE constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants assert the test claim statutes and the letters issued by the CDE mandate the following activities:

- the completion of required forms for each student in each program at the school site level;
- input of the form data collected on each student in each program at the school site level;
- transmission of the aggregate school site data to the District;
- comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
- annual reporting of data to Comprehensive Adult Student Assessment System (CASAS);
- obtaining necessary computer hardware and software to properly implement the TOPSpro system;
- training district staff regarding the test claim activities;
- drafting or modifying policies and procedures to reflect the test claim activities; and
- any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Claimants argue that use of the TOPSpro system to report adult education data to the CDE constitutes a "program" because "[p]ublic education in California is a peculiarly governmental function administered by local agencies as a service to the public."<sup>21</sup> In addition, the test claim statutes and letters only apply "to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state."<sup>22</sup>

Claimants also assert that use of the TOPSpro system constitutes a "new program" or "higher level of service," stating:

While data reporting occurred before the enactment of the test claim [statutes] and issuance of the [letters from the CDE], the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system.<sup>23</sup>

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<sup>21</sup> Test Claim, p. 7. Claimant cites *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172, as support for this contention. However, the court's statement that education is a peculiarly governmental function was made in regard to Kindergarten through 12<sup>th</sup> grade education, and not adult education.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

In addition, claimants contend that the test claim statutes and letters are not subject to any of the "exceptions" listed in Government Code section 17556. Therefore, the test claim statutes and letters impose costs mandated by the state upon adult education schools and school districts.

#### Department of Finance's Position

The Department of Finance (Finance) filed comments dated June 21, 2004 disagreeing with claimants' test claim allegations. Finance asserts that the test claim statutes and letters do not constitute a reimbursable state mandate because the test claim statutes and letters: (1) do not mandate any activity upon school districts, (2) do not constitute a "new program" or "higher level of service," and (3) do not impose increased costs mandated by the state.

Finance contends that the plain language of the test claim statutes and letters do not mandate any activity upon school districts, stating, "The actual language [of the test claim statutes] does not place any requirements upon the [school districts]. Instead the language places a specific requirement upon the [CDE]."<sup>24</sup> Finance argues that the July 6, 1999, and April 24, 2000 letters only "suggest" the use of TOPSpro. In regard to the August 1, 2002 letter, Finance contends that although the letter requires the use of TOPSpro, the requirement is only a condition of receiving funds and the CDE does not have the statutory authority to enforce the submission of data or the use of TOPSpro. Thus, the language of the test claim statutes and letters do not mandate any activity upon school districts.

Finance also argues that any data collection and reporting requirements contained in the test claim statutes and letters are not mandated upon claimants. Finance states that with two exceptions,<sup>25</sup> "adult education classes are voluntary and are conducted at the discretion of the [school district]. Therefore, any incidental reporting or claiming required are costs incurred at the [school district's] option."<sup>26</sup> In regard to the two exceptions, English classes and citizenship classes, Finance states that those requirements were "not created after 1975 and [are] not subject to reimbursement."<sup>27</sup>

In addition, Finance asserts that the test claim statutes and letters do not impose requirements that constitute a "new program" or "higher level of service." Finance contends:

As a condition of receipt of funding, districts have historically been required to report on the number of [average daily attendance] served along with other information standards established by the [CDE]. ... Therefore, the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding.<sup>28</sup>

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<sup>24</sup> Finance comments to the test claim dated June 21, 2004, p. 2.

<sup>25</sup> Education Code section 52540 requires school districts to offer classes for adults for whom English is a second language upon the demand of 20 or more students. Education Code section 52552 requires school districts to offer classes in United States citizenship upon the demand of 25 or more students.

<sup>26</sup> Finance comments to the test claim dated June 21, 2004, p. 3.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

Finance further contends that the test claim statutes and letters should not impose increased costs mandated by the state. Finance argues:

The Budget Act of 2003 provided \$550.8 million in Proposition 98 General Fund and \$82.2 million in federal funds for adult education programs. Thus the State provides more than adequate funding to be used to offset any costs associated with adult education reporting.<sup>29</sup>

Finance indicates that the CDE, through CASAS, provides all school districts with a free set of TOPSpro software and all of the forms that the system uses. CASAS has indicated that they have worked with many districts to ensure that their individual school and district attendance systems work with TOPSpro in order to make the system as seamless as possible. CASAS also provides free training on the use of the TOPSpro system. Finance concludes that "the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding."<sup>30</sup>

### Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>31</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>32</sup> "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."<sup>33</sup> 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.<sup>34</sup> In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.<sup>35</sup>

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "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."

<sup>32</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>33</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>34</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>35</sup> *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*).

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.<sup>36</sup> 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.<sup>37</sup> A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."<sup>38</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>39</sup>

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.<sup>40</sup> 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."<sup>41</sup>

**Issue 1: Are the test claim statutes and letters issued by the CDE subject to article XIII B, section 6 of the California Constitution?**

Government Code section 17500 et seq., implements article XIII B, section 6 of the California Constitution. Government Code section 17557, subdivision (e), establishes the reimbursement period for reimbursable state-mandated programs and provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

Here, claimants submitted the test claim on June 26, 2003, during the 2002-2003 fiscal year. As a result, claimants are eligible for possible reimbursement beginning on July 1, 2001, the start of the 2001-2002 fiscal year. Any costs for activities associated with the alleged state-mandated program incurred before July 1, 2001 are not reimbursable.

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<sup>36</sup> *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 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>37</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>38</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

<sup>39</sup> *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.

<sup>40</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>41</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Claimants have pled line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, and three letters issued by the California Department of Education (CDE) dated July 6, 1999, April 24, 2000, and August 1, 2002, as test claim statutes and alleged executive orders, respectively. The provisions of test claim statutes were effective only for the fiscal year for which the Budget Acts were enacted. Similarly the CDE letters were effective for limited durations.

The July 6, 1999, and April 24, 2000 CDE letters were both issued during the 1999-2000 fiscal year (July 1, 1999 through June 30, 2000). The July 6, 1999 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools beginning July 1, 1999."<sup>42</sup> This outline consisted of: (1) the language of the Budget Act of 1999, (2) CalWORKs, (3) PBA, and (4) WIA. Under the heading for the Budget Act language of 1999, which is only effective for July 1, 1999 through June 30, 2000 (the 1999-2000 fiscal year), the letter provides:

**[B]eginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.]**<sup>43</sup>

Under the CalWORKs and PBA headings, the July 6 letter requires the submission of data collected between January 1, 1999 through June 30, 1999, no later than August 15, 1999. Under the WIA heading, the July 6 CDE letter requires submission of data collected during 1999-2000 no later than August 15, 2000. The April 24, 2000 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools for fiscal year 1999-2000."<sup>44</sup> The letter proceeds to outline the same requirements outlined in the July 6, 1999 CDE letter, however, only suggests the use of the TOPSpro system, providing:

The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.<sup>45</sup>

The April 24, 2000 CDE letter also provides that adult education data collected for the 1999-2000 fiscal year for the State Budget Act, CalWORKs, PBA, and WIA requirements are due no later than August 15, 2000.

Accordingly, the requirements of the July 6, 1999 CDE letter, which cover the same areas as the April 24, 2000 CDE letter, were effective only until the issuance of the April 24, 2000 CDE letter. Also, as indicated in the April 24, 2000 CDE letter, the requirements of the letter were applicable to the 1999-2000 fiscal year and were effective until August 15, 2000.

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<sup>42</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>43</sup> CDE letter, *supra*, p. 2, original emphasis.

<sup>44</sup> CDE letter, dated April 24, 2000, p. 1.

<sup>45</sup> CDE letter, dated April 24, 2000, p. 1.

Given that claimants are not eligible for reimbursement of costs incurred before July 1, 2001, and that the provisions of the test claim statutes are effective only for the fiscal year that the Budget Acts were enacted, the Budget Acts of 1999 and 2000 are not subject to article XIII B, section 6 of the California Constitution. Similarly, the July 6, 1999 and April 24, 2000 CDE letters are not subject to article XIII B, section 6 of the California Constitution, because they were only effective until August 15, 2000.

The August 1, 2002 CDE letter provides as its subject, "FY 2002-03 Accountability Requirements."<sup>46</sup> The letter subsequently provides that adult education data collected for the 2002-2003 fiscal year is due no later than August 15, 2003. Thus, the requirements in the August 1, 2002 CDE letter were applicable to the 2002-2003 fiscal year and effective until August 15, 2003.

Staff therefore, finds that the Budget Acts of 2001 and 2002, and the August 1, 2002 CDE letter are subject to article XIII B, section 6 of the California Constitution. However, because the August 1, 2002 CDE letter is effective only until August 15, 2003, and claimants have not pled any subsequent Budget Acts or alleged executive orders, the possible reimbursement period begins July 1, 2001 and ends August 15, 2003.

**Issue 2: Do the line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002, and the CDE letter dated August 1, 2002, mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?**

In order for a test claim statute and/or executive order to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

Line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002 indicate the amounts appropriated from the State General Fund and Federal Trust Fund to be distributed to school districts that provide adult education programs. For example, line item 6110-156-0001 of the Budget Act of 2001, which appropriates \$610.7 million General Fund, provides:

For local assistance, [CDE] (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute.<sup>47</sup>

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<sup>46</sup> CDE letter, dated July 6, 1999, p. 1.

<sup>47</sup> Statutes 2001, chapter 106, line item 6110-156-0001.

Line item 6110-156-0001 of the Budget Act of 2001 then "schedules" the amount appropriated into four categories (three adult education program areas and reimbursements). The \$610.7 million in General Fund is scheduled amongst the four categories as follows:

- (1) 10.50.010.001 - Adult Education.....574,705,000
- (2) 10.50.010:008 - Remedial education services  
for participants in the CalWORKs.....18,293,000
- (3) 10.50.010.009 - Local Education Agencies—Education  
Services for participants in CalWORKs.....26,447,000
- (4) Reimbursements - CalWORKs.....-8,739,000

These "scheduled" amounts are then subject to several "provisions" that limit the use of the funds or require certain activities if any appropriated funds are received. For example, line item 6110-156-0001 of the Budget Act of 2001 provides:

As a condition of receiving funds provided in Schedules (2) and (3) of this item or any other General Fund appropriation made to the [CDE] specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the [CDE]. The [CDE] shall require that local providers submit to the state aggregate data for the period July 1, 2001, through June 30, 2002.<sup>48</sup>

The Budget Act of 2002 contains the same provision with minor technical changes.<sup>49</sup> Thus, as a condition of receiving appropriated funds, line item 6110-156-0001 of the Budget Acts of 2001 and 2002 require school districts to collect and report data to the CDE.

The language of line item 6110-156-0890 of the Budget Acts of 2001 and 2002 appropriates money from the Federal Trust Fund for adult education. However, the language of line item 6110-156-0890 does not require any activity of school districts (claimants). Therefore, line item 6110-156-0890 of the Budget Acts of 2001 and 2002 do not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. Hereafter, "test claim statutes" will refer only to line item 6110-156-0001 of the Budget Acts of 2001 and 2002.

In addition to the test claim statutes, on August 1, 2002, the CDE issued a letter that claimants have alleged to be an executive order that imposes a reimbursable state-mandated program. An "executive order" is defined as any order, plan, requirement, rule, or regulation issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.<sup>50</sup>

<sup>48</sup> Statutes 2001, chapter 106, line item 6110-156-0001, provision 4(h).

<sup>49</sup> Statutes 2002, chapter 379, line item 6110-156-0001, provision 4(h).

<sup>50</sup> Government Code section 17516.

The August 1, 2002 CDE letter indicates that the CDE is required to collect and report statewide accountability data for adult education programs as directed by federal and state law which include: (1) the Workforce Investment Act (WIA), (2) the State Budget Act, and (3) the California State Plan 1999-2004. In addition the CDE letter specifically requires the implementation of the TOPSpro system for all data collection requirements outlined in the letter, providing:

CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.<sup>51</sup>

The letter further indicates that data reported is for the period of July 1, 2002 through June 30, 2003, and should be submitted to CASAS no later than August 15, 2003.

Thus, the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult education data to CASAS on a specified date, and, therefore, constitutes an executive order within the definition of Government Code section 17516.

Although the test claim statutes require the collection and reporting of adult education data to the CDE and the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult data to CASAS on a specified date, the test claim statutes and the August 1, 2002 CDE letter do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for general adult education classes established pursuant to Education Code section 52501, 52502, and 52503 for the reasons stated below.

#### Adult Education Under Education Code Sections 52501-52503

Generally, adult education programs are provided by school districts and other local education agencies on a voluntary basis pursuant to Education Code sections 52501-52503. The only exceptions are adult language classes in English and citizenship pursuant to Education Code sections 52540 and 52552, which are discussed in the next section of this analysis (beginning on page 18).

In *Kern High School Dist.*, the California Supreme Court considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.<sup>52</sup> Within its discussion, the court addressed whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

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<sup>51</sup> CDE letter, dated August 1, 2002, p. 2.

<sup>52</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."<sup>53</sup> The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."<sup>54</sup>

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.<sup>55</sup> The 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. (Emphasis in original.)<sup>56</sup>

Thus, the court held:

[W]e reject claimant's 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 [sic] participation in the underlying program is voluntary or compelled.* [Emphasis added.]<sup>57</sup>

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 to participate in eight of the nine underlying programs.<sup>58</sup>

The school districts in *Kern High School Dist.*, however, urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a construction to the definition of a federal mandate in the case of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in

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<sup>53</sup> *Id.* at p. 737.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Id.* at p. 743.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Id.* at p. 731.

<sup>58</sup> *Id.* at p. 744-745.

California businesses facing “a new serious penalty – full, double unemployment taxation by both state and federal governments.” After reflecting on the purpose of article XIII B, section 6, which is to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue, the court stated that it “would not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.”<sup>59</sup> However, based on the facts presented in *Kern High School Dist.*, the court declined to find a state mandate, holding:

Finally, we reject claimants’ alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter, they have been compelled to do so and hence to incur notice-and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program – claimants here faced no such practical compulsion. Instead, although claimants argue that they have had “no true option or choice” other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstances that claimants have found the benefits of various funded programs “too good to refuse” - even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the costs of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.<sup>60</sup>

Thus, under the facts in *Kern High School Dist.*, the court found that requirements imposed on a claimant due to the claimant’s participation in an underlying voluntary program do not constitute a reimbursable state mandate. In addition, the court held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion, such as the imposition of “‘certain and severe ... penalties’ such as ‘double ... taxation’ and other ‘draconian’ consequences.”<sup>61</sup> For the reasons below, *Kern High School Dist.* is applicable here.

Education Code sections 52501, 52502, and 52503, *authorize*, but do not require, high school districts or unified school districts to establish and maintain adult education classes and/or schools. School districts that elect to establish adult education classes are eligible to apply for and receive funding for these classes through various sources (such as CalWORKs and the WIA). As a condition of receiving funding through these sources, state and federal law require the collection and reporting of adult education data. These laws include: (1) The State Budget Acts, and (2) the California State Plan 1999-2004 which is required by the WIA.

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<sup>59</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

<sup>60</sup> *Id.* at p. 731, emphasis in original.

<sup>61</sup> *Id.* at p. 751, quoting *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

The State Budget Acts (test claim statutes) appropriate funds subject to various provisions. These provisions require that funds are used for specific purposes (such as CalWORKs and WIA programs), and that certain activities occur (including data collection and reporting) if funds are received. Therefore, school districts that offer and provide adult education classes pursuant to Education Code sections 52501-52503 may avoid being subject to the provisions of the test claim statutes and August 1, 2002 CDE letter by electing to forgo receipt of these funds. Similarly, the California State Plan 1999-2000, which is required by the WIA, provides, "Local providers will be eligible to receive funds if they meet [specified] criteria," which includes submitting data to the CDE.<sup>62</sup> As with the test claim statutes, school districts elect to receive WIA funding, subjecting school districts to conditions attached to the funds. As a result, any data collection and reporting requirements, for which the test claim statutes and the executive order require the implementation of the TOPSpro system, are only conditions to receive funding from these various sources and are not mandated unless the school district *elects* to offer adult education and to receive funding from these sources. Thus, school districts are not legally compelled to comply with the requirements because the underlying activity is not required.

In addition, a school district's failure to establish adult education programs pursuant to Education Code sections 52501-52503, comply with data collection and reporting requirements, and implement the TOPSpro system does not result in any certain and severe penalties independent of the program funds at issue. Instead, similar to the claimants in *Kern High School Dist.*, a school district only faces forgoing the benefits of various voluntary adult education programs funded by the state and federal governments, which the court in *Kern High School Dist.* found did not constitute certain and severe penalties. Thus, school districts have not, as a "practical" matter, been compelled to establish adult education programs, or incur costs associated with adult education data collection and reporting and the implementation of the TOPSpro system.

Accordingly, staff finds with respect to the requirements to implement the TOPSpro system and to collect and submit adult education data for general adult education under Education Code sections 52501-52503, Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 do not impose a state-mandated program on school districts, and thus, are not reimbursable pursuant to article XIII B, section 6 of the California Constitution. Therefore, the remaining discussion involves whether the test claim statutes and the executive order impose a reimbursable state-mandated program as they relate to adult English and citizenship classes.

#### Adult Language Classes in English and Citizenship Classes Pursuant to Education Code Sections 52540 and 52552

Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.<sup>63</sup> Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon

<sup>62</sup> Cal. Dept. Of Education, Workforce Investment Act, Title II, *supra*, p. 33.

<sup>63</sup> Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

application of 25 or more persons.<sup>64</sup> As a result, a school district's provision of adult English and citizenship classes is not voluntary. School districts must comply with the test claim statutes and the August 1, 2002 CDE letter, which require the collection and reporting of adult education data and the implementation of the TOPSpro system; to receive funding for these requested classes. Therefore, staff finds that Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 constitute a state-mandated program for school districts providing English and citizenship classes pursuant to Education Code sections 52540 and 52552.

The courts have held that legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.<sup>65</sup> To make this determination, the test claim statutes and the August 1, 2002 CDE letter's requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.<sup>66</sup>

Prior to the enactment of line item 6110-156-0001 of the Budget Acts of 2001 and 2002, line item 6110-156-0001 of the Budget Acts of 1998, 1999, and 2000 already required the collection and reporting of adult education data to the CDE.<sup>67</sup> Thus, the collection and reporting of adult education data to the CDE is not a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

After the CDE issued the August 1, 2002 letter, all adult schools that received funding through state apportionment and /or WIA were required to fully implement the TOPSpro system. Immediately prior to the August 1, 2002 CDE letter, the CDE only suggested implementing the TOPSpro system, which could be used for all data collection requirements.<sup>68</sup> Thus, the implementation of the TOPSpro system constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

However, even if the implementation of the TOPSpro system is considered a mandated new program or higher level of service imposed upon school districts that are required to provide adult English classes and/or citizenship classes, the August 1, 2002 CDE letter must also impose costs mandated by the state in order to constitute a reimbursable state-mandated program as defined by article XIII B, section 6 of the California Constitution.

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<sup>64</sup> Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

<sup>65</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>66</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>67</sup> Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j); Statutes 1999, chapter 50, line item 6110-156-0001, provisions (h) and (i); Statutes 2000, chapter 52, line item 6110-156-0001, provision (h).

<sup>68</sup> CDE letter, dated April 24, 2000, p. 1.

**Issue 3: Does the CDE letter dated August 1, 2002, impose “costs mandated by the state” on school districts within the meaning of the article XIII B, section 6 of the California Constitution and Government Code section 17514?**

In order for an executive order to impose a reimbursable state-mandated program under the California Constitution, the executive order must impose costs mandated by the state.<sup>69</sup>

Government Code section 17514 defines costs mandated by the state as:

[A]ny 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 XIII B of the California Constitution.

When discussing costs resulting from funded underlying programs that may have been mandated on claimants, the court in *Kern High School Dist.* held:

[A]ssuming (without deciding) that claimants have been legally compelled to participate in *one* of nine [underlying] programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses- including the notice and agenda costs here at issue.<sup>70</sup>

Finance indicates that the Budget Act of 2003 provided “\$550.8 million in Proposition 98 General Fund and \$82.2 million in federal funds for adult education programs.”<sup>71</sup> Like the Budget Act of 2003, and as noted above, the test claim statutes appropriated General Fund and federal funds for adult education programs. The test claim statutes funded adult education programs as follows:

	Budget Act of 2001	Budget Act of 2002
General Fund (GF)	\$610.7	\$605
Federal Trust Fund (FTF)	\$74.1	\$91.8

(Amounts in millions)

These General Fund appropriations are scheduled into separate categories (adult education program areas and reimbursements). These categories are subject to various provisions, some of which limit the use of a portion of the funds for specified purposes. Similarly, the Federal Trust Fund appropriations are subject to various provisions limiting the use of the funds appropriated.

<sup>69</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>70</sup> *Kern High School Dist., supra*, 30 Cal.4th 727, 731, original emphasis.

<sup>71</sup> Finance comments to the test claim dated June 21, 2004, p. 3.

The \$610.7 million General Fund and the \$74.1 million Federal Trust Fund appropriated by the Budget Act of 2001 are scheduled between CalWORKs reimbursements (Reimbursements) and three program areas which include: (1) 10.50.010.001 – Adult Education (Adult Education), (2) 10.50.010.008 – Remedial education services for participants in the CalWORKs (CalWORKs remedial education), (3) 10.50.010.009 – Local Education Agencies—Education Services for participants in CalWORKs (LEA CalWORKs). The amounts appropriated for each program and the amounts limited for specific purposes are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	\$574.7	--	--	\$74.1	\$12.6 <sup>72</sup>	--
CalWORKs remedial education	\$18.3	\$18.3 <sup>73</sup>	--	--	--	--
LEA CalWORKs	\$26.4	\$26.4 <sup>74</sup>	--	--	--	--
Reimbursements	-\$8.7	--	--	--	--	--
	--	Misc.-- \$37.1 <sup>75</sup>	--	--	--	--
Total:	\$610.7	\$81.8	\$528.9	\$74.1	\$12.6	\$61.5

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least \$528.9 million General Fund<sup>76</sup> and \$61.5 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2001-2002 fiscal year.

<sup>72</sup> Statutes 2001, chapter 106, line item 6110-156-0890, provision 1.

<sup>73</sup> Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4 and 4(i). The federal government, pursuant to the Personal Responsibility Act of 1996 (P.L. 104-193), provides grants to the state for Temporary Assistance for Needy Families (TANF). CalWORKs is California's TANF program.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Id.*, provision 5. Reserving from the total \$610.7 General Fund appropriated, \$14.3 million for increases in average daily attendance and \$22.8 million for cost-of-living adjustments.

<sup>76</sup> TANF allows for a portion of TANF funds to be used for administrative costs. (45 CFR § 263.2(a)(5)(i).)

The \$605 million General Fund and the \$91.8 million Federal Trust Fund appropriated by the Budget Act of 2002 are scheduled for each program and the amounts limited for a specific purpose are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	\$582	--	--	\$91.8	\$5 <sup>77</sup>	--
CalWORKs remedial education	\$31.7	\$31.7 <sup>78</sup>	--	--	--	--
Reimbursements	-\$8.7	--	--	--	--	--
	--	Misc.-- \$27.3 <sup>79</sup>	--	--	--	--
Total:	\$605	\$59	\$546	\$91.8	\$5	\$86.8

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least \$546 million General Fund and \$86.8 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2002-2003 fiscal year.

Claimants have stated in the test claim that, "It is estimated that the claimant will/has incurred significantly more than \$1000.00 to implement these new state mandated activities..."<sup>80</sup> However, there is no evidence in the record that indicates why the funds that were not subject to use limitations (\$528.9 million GF and \$61.5 million FTF for the 2001-2002 fiscal year and \$546 million GF and \$86.8 million FTF for the 2002-2003 fiscal year) were not sufficient to cover costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes.

Thus, during the course of the reimbursement period of July 1, 2001 and August 15, 2003, school districts, that may have been required to establish adult English classes and citizenship classes, have had available state funds not subject to specific use limitations to pay for required adult education program expenses. As a result, under *Kern High School Dist.*, school districts are not

<sup>77</sup> Statutes 2002, chapter 379, line item 6110-156-0890, provision 6, which reserves \$5 million for the Naturalization Services Program, but does not expressly prohibit the use of these funds for data collection and implementation of the TOPSpro system as it relates to the Naturalization Services Program.

<sup>78</sup> Statutes 2002, chapter 379, line item 6110-156-0001, provision 4.

<sup>79</sup> *Id.*, provision 5. Reserving from the total \$605 General Fund appropriated, \$15 million for increases in average daily attendance and \$12.3 million for cost-of-living adjustments.

<sup>80</sup> Test Claim, declarations Margaret Kirkpatrick, p.2; and Joan Polster, p.2.

entitled to reimbursement from the state for costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes because there is no evidence in the record of increased costs mandated by the state as defined by Government Code section 17514.

It should be noted that the court in *Kern High School District* states that a "compulsory program participant likely would be able to establish the existence of a reimbursable state mandate"<sup>81</sup> in situations where:

[I]ncreased compliance costs imposed by the state ... become so great or funded program grants ... become so diminished that funded program benefits would not cover the compliance costs, or ... expenditure of granted program funds on administrative costs ... violate a spending limitation set out in applicable regulations or statutes.<sup>82</sup>

However, there is no evidence in the record that the increased costs resulting from the implementation of the TOPSpro system are so great, or program grants have become so diminished that funded program benefits would not cover the costs of implementing the TOPSpro system. In fact, provisions 6 and 7 of line item 6110-156-0001 of the Budget Act of 2001 provide for the use of unencumbered funds from the prior fiscal year. Similarly, provision 5 of line item 6110-156-0890 of the Budget Act of 2002 states that \$18 million of the \$91.8 million appropriated in the item is available as a one-time carryover of unexpended funds from the 2001-2002 fiscal year. In addition, the August 1, 2002 CDE letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge to school districts.<sup>83</sup>

Thus, staff finds that claimants are not entitled to reimbursement of costs related the CDE letter dated August 1, 2002, for the provision of adult English and citizenship classes. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

### Conclusion

Staff finds that Statutes 1999, chapter 50, Statutes 2000, chapter 52, and the letters issued by the California Department of Education dated July 6, 1999 and April 24, 2000 are not subject to article XIII B, section 6 of the California Constitution because, based on the plain language of the statutes and the letters, the activities required in the statutes and letters were required to be performed before the reimbursement period for this test claim (July 1, 2001) pursuant to Government Code section 17557, subdivision (e).

Staff also finds that the plain language of line item 6110-156-0890 of the Budget Acts of 2001 and 2002 do not require any activity of school districts, and therefore do not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

<sup>81</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 747-748.

<sup>82</sup> *Id.* at p. 747.

<sup>83</sup> CDE letter, dated August 1, 2002, p. 3.

In addition, staff finds under *Kern High School Dist.*, that Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the letter issued by the California Department of Education dated August 1, 2002, do not impose state-mandated activities upon claimants as they relate to the general provision of adult education pursuant to Education Code sections 52501-52503, because adult education under Education Code sections 52501-52503 is provided on a voluntary basis.

Although school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 are required by Statutes 2001, chapter 106, and Statutes 2002, chapter 379 to collect and report adult education data, staff finds that Statutes 2001, chapter 106, and Statutes 2002, chapter 379, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. School districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 were already required to collect and report adult education data prior to the enactment of Statutes 2001, chapter 106, and Statutes 2002, chapter 379.

Staff finds that the CDE letter dated August 1, 2002, which requires school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 to implement the TOPSpro system, does mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution because immediately prior to the August 1, 2002 CDE letter, the CDE did not require the implementation of the TOPSpro system. However, staff finds, in regard to the provision of adult English and citizenship classes pursuant to Education Code sections 52540 and 52552, that claimants are not entitled to reimbursement of costs related to the implementation of the TOPSpro system as required by the CDE letter dated August 1, 2002. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

Thus, Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the letters issued by the California Department of Education, dated July 6, 1999, April 24, 2000 and August 1, 2002 do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

#### **Recommendation**

Staff recommends the Commission adopt this analysis and deny the test claim.

Assembly Bill No. 1656

CHAPTER 324

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1998. Filed with Secretary of State August 21, 1998.]

I object to the following appropriations contained in Assembly Bill 1656.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from \$1,676,286,000 to \$1,666,286,000 by reducing:

(a) 10-Support for operation of the Trial Courts from \$1,517,580,000 to \$1,513,580,000,

(d) 45-Court Interpreters from \$46,411,000 to \$40,411,000,

and by revising Provision 4 and deleting Provision 5.

I am deleting the \$4,000,000 legislative augmentation to provide for increased juror compensation and a juror childcare pilot project. If lack of childcare is an impediment to jury service, a pilot can be conducted without additional state resources. In addition, there is no compelling evidence to suggest that a \$5 per day increase in juror compensation will make a difference in the number of persons willing to serve on a jury.

I am deleting the \$6,000,000 legislative augmentation to provide for an increased Minimum Service Level (MSL) of \$220 per day for compensation of court interpreters.

The Budget already increases the MSL to \$180 per day and funds interpreter coordinators. The Administrative Office of the Courts should assess the impact of these changes prior to additional increases.

I am revising Provision 4 to conform to this action.

"4. The funds appropriated in Schedule (d) shall be for payments for services of contractual court interpreters, certified court interpreters employed by the courts, and the following court interpreter coordinators: one each in counties of the 1st through the 15th classes, 0.5 each in counties of the 16th through the 31st classes, and 0.25 each in counties of the 32nd through 58th classes. Courts in counties with a population of 500,000 or less are encouraged, but not required, to coordinate interpreter services on a regional basis. For the purposes of this provision, "court interpreter coordinators" may be full- or part-time court employees, or those contracted by the court to perform these services.

The Judicial Council shall set statewide or regional rates and policies for payment of court interpreters, not to be less than \$220 a day and not to exceed the rate paid to interpreters in the federal court system. The Judicial Council shall adopt appropriate rules and procedures for the administration of these funds. The Judicial Council shall report to the Legislature and Director of the Department of Finance quarterly regarding expenditures from this schedule and projections for annual expenditures for the use of interpreters in the courts and the use and administration of these funds."

I am deleting Provision 5, which would have required the Judicial Council to report anticipated cost increases resulting from contractual salary adjustments for trial court employees to the Legislature and the Department of Finance by October 1, 1998. The Task Force on Trial Court Employees has sufficient authority under Chapter 850, Statutes of 1997, to review any salary issues.

Item 0450-111-0001—For local assistance, State Trial Court Funding. I reduce this item from \$632,860,766 to \$622,860,766.

I am reducing this item to conform to the actions I have taken in Item 0450-101-0932.

Item	Amount
<ul style="list-style-type: none"> <li>district board, as defined in subdivision (d) of Section 60010 of the Education Code.</li> <li>2. If the district board, as defined in Section 60100 of the Education Code, has purchased mathematics instructional materials that the State Board of Education (SBE) certifies are consistent with the state content standards, the funds allocated from this item to those school districts and county offices of education may be used for the purchase of other instructional materials approved by the SBE.</li> </ul>	
6110-152-0001—For local assistance, Department of Education, Program 10.30.050 .....	376,000
Provisions:	
<ul style="list-style-type: none"> <li>1. Funds appropriated by this item for Indian Education Centers are to carry out the provisions of Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code.</li> </ul>	
6110-156-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute....	499,667,000
Schedule:	
(a) 10.50.010.001-Adult Education.....	478,428,000
(b) 10.50.010.008-Remedial education services for participants in the CalWORKs.....	17,478,000
(c) Reimbursements-CalWORKs .....	-8,739,000
(d) 10.50.010.009-Local Education Agencies—Education Services for participants in CalWORKs .....	12,500,000
Provisions:	
<ul style="list-style-type: none"> <li>1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.</li> <li>2. The funds appropriated in Schedule (b) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Art. 3.2 (commencing with Sec. 11320), Ch. 2, Pt. 3, Div. 9, W.&amp; I.C.). Funds shall be apportioned by the Superintendent of</li> </ul>	

Item	Amount
<p>Public Instruction for direct instructional costs only to school districts and Regional Occupational Centers and Programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. However, of the funds appropriated by Schedule (b) of this item, an amount not to exceed \$10,000,000, as negotiated through an interagency agreement between the State Department of Education and the State Department of Social Services, shall be provided for Adult Education Programs, and ROC/Ps for the purposes of providing instructional and training supportive services for CalWORKs eligible members. These services shall include any of the following: (a) career and educational guidance and counseling; (b) training related assessment; (c) transportation to the classroom or worksite during training; (d) job readiness training and services; (e) job development and placement; (f) post-employment support and followup to ensure job retention; (g) coordination and referrals to other services provided through the State Department of Social Services, the Employment Development Department, the Private Industry Council, community colleges, the Department of Rehabilitation, the Economic Development Agency, and other community resources; (h) curriculum and instruction development to provide short-term integrated programs leading to employment; (i) staff development costs resulting from policy development and training occurring between instructional staff and county welfare agencies in the coordination of the program; and (j) one-time excess program start up costs. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, with no county receiving less than \$25,000, based on the number of CalWORKs eligible family members served in the county, and subject to the instructional and training support services needed annually by each agency as identified in the county CalWORKs Instruction and Job Training Plan required by Section 10200 of the Education Code.</p>	

Item	Amount
3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) citizenship testing; (f) naturalization preparation and assistance; and (g) regional and state coordination and program evaluation.	
4. Of the federal reimbursements appropriated in Schedule (b), \$230,000 shall be available for transfer to Item 6110-001-0001 for state operations upon receipt of a plan to develop a data collection system to obtain information on education and job training services provided to CalWORKs recipients through Adult Education and ROC/Ps. The State Department of Education shall work with the State Department of Social Services to ensure the data collection system meets the state's CalWORKs information needs regarding education and job training services provided to CalWORKs recipients. The State Department of Education shall work with the Department of Finance and the Legislative Analyst's Office in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.	
5. The funds appropriated in Schedule (d) of this item shall be allocated on a one-time basis and be subject to the following: (a) The funds shall be used only for educational activities for CalWORKs-eligible recipients. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These activities shall be carried on in accordance with each local education agency's plan approved and developed pursuant to Chapter 2 (commencing	

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- with Section 10200) of Part 7 of the Education Code.
- (b) Notwithstanding any other provision of law, each local education agency's individual cap for adult education and regional occupational center and programs (ROC/P's), average daily attendance shall not be increased as a result of the appropriations made by this section.
- (c) Funds may be claimed by local education agencies for services provided to CalWORKs-eligible recipients pursuant to this section only if all of the following occur:
- (1) Each local education agency has met the terms of the interagency agreement between the State Department of Education and the Department of Social Services pursuant to Provision 2 of this item.
  - (2) Each local education agency has fully claimed its respective adult education or ROC/P average daily attendance cap for the current year.
  - (3) Each local education agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2 of this item.
- (d) Each local education agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or pursuant to Item 6110-105-0001 of Section 2.00 of this act, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education Code, and ROC/P requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of, Part 28 of the Education Code, respectively.
- (e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional

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- ADA funding has been approved by the Superintendent of Public Instruction.
- (f) For purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1997-98 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1997-98 fiscal year.
  - (g) The Legislature finds the need for good information on the role of local education agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local education programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.
  - (h) The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources; (2) the types and amounts of services provided to program participants; (3) characteristics of participants; and (4) pupil and program outcomes. The State Department of Education shall provide local providers with a list of required data elements by October 15, 1998. The department shall work with the Department of Finance and Legislative Analyst's Office in determining the specific data elements of the system and shall meet all information technology reporting requirements of the Department of Information Technology and the Department of Finance.
  - (i) As a condition of receiving funds provided in Schedule (b) of this item or any other General Fund appropriation made to the State Depart-

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- ment of Education specifically for education and training services to CalWORKs recipients, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the State Department of Education. Beginning January 1, 1999, local providers shall begin collecting the data elements required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period January 1, 1999, through June 30, 1999. The State Department of Education shall provide to the local providers by October 15, 1998, a description of the specific reporting requirements for this data.
- (j) Beginning July 1, 1999, local providers shall provide data to the State Department of Education that permits a disaggregation of data to permit the identification for subgroups of participants of (1) types and levels of services, and (2) outcomes. The State Department of Education shall provide to local providers by July 1, 1999, a description of the specific reporting requirements needed to permit the disaggregation of data.
- (k) The State Department of Education shall report on or before March 1, 1999, to the Department of Finance, the Legislative Analyst's Office, and the budget committees of the Senate and Assembly on its progress in establishing the data system. In addition, the State Department of Education shall describe both of the following:
- (1) The department's proposed data collection system needed to implement the disaggregated data system described in subdivision (d).
  - (2) The department's proposal to consolidate all state data needs for adult education and regional occupational centers and programs into one data system that is integrated with the department's California School Information Services data system.

Item	Amount
6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001—Adult Education, payable from the Federal Trust Fund.....	39,869,000.
Provisions:	

1. Of the funds appropriated by this item, \$12,570,000 shall be used for adult basic education for citizenship and naturalization services for legal permanent residents who are eligible for naturalization.

Citizenship and naturalization services shall include, for this purpose, to the extent consistent with federal law, all of the following: (a) outreach services; (b) assessment of skills; (c) instruction and curriculum development; (d) staff development; (e) citizenship testing; (f) naturalization preparation and assistance; and (g) regional and state coordination and program evaluation. The providers of the citizenship and naturalization services, for the purposes of this provision, shall be those community-based organizations, community colleges, and adult education programs approved for this purpose by the State Department of Education and the federal Immigration and Naturalization Service.

2. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.
3. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organiza-

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tional audit, as specified, to the State Department of Education, Office of External Audits.

All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Department of Education's staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.

The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

- (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all sub-recipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organizational wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of

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Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited scope audits shall include agreed upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.

The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

6110-158-0001.—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002—Adults in Correctional Facilities .... 15,557,000

Provisions:

1. Notwithstanding any other provision of law, the amount appropriated in this item and any amount allocated for this program in this act shall not exceed, in the aggregate, the maximum amount allocated for the purposes of Section 41841.5 of the Education Code.
2. Notwithstanding Section 41841.5 of the Education Code or any other provision of law, the amount appropriated by this item shall be allocated based upon prior-year rather than current-year expenditures.
3. Notwithstanding any other provision of law, funding distributed to each local education agency (LEA) for reimbursement of services provided in the 1998-99 fiscal year for the Adults in Correctional Facilities program shall be limited to the amount received by that agency for services provided in the 1997-98 fiscal year, as increased by \$389,000 for growth in services and \$347,000 for cost-of-living adjustments, not to exceed a total of

West's Ann. Cal. Un. Ins. Code § 15037.1

Effective: January 01, 2007

West's Annotated California Codes Currentness

Unemployment Insurance Code (Refs & Annos)

Division 8. Family Economic Security: Job Preparation and Training Services [Repealed] (Refs & Annos)

→ § § 15035 to 15038.5. Repealed by Stats.2006, c. 630 (S.B.293), § 7

#### HISTORICAL AND STATUTORY NOTES

##### 2007 Electronic Update

##### 2006 Legislation

Section 15035, added by Stats.1983, c. 12, § 3, amended by Stats.1994, c. 819 (S.B.1417), § 1, derived from former § 15035, added by Stats.1982, c. 1329, § 8, related to establishment and purpose of State Job Training Coordinating Council.

Former § 15035, added by Stats.1982, c. 1329, p. 4915, § 8, relating to similar subject matter, was repealed by Stats.1983, c. 12, § 2.

Section 15036, added by Stats.1983, c. 12, § 3, amended by Stats.1983, c. 537, § 24.6; Stats.1989, c. 739, § 1, derived from former § 15036, added by Stats.1982, c. 1329, § 8, related to membership of State Job Training Coordinating Council.

Former § 15036, added by Stats.1982, c. 1329, p. 4915, § 8 relating to similar subject matter, was repealed by Stats.1983, c. 12, § 2.

Section 15037, added by Stats.1983, c. 12, § 3, amended by Stats.1983, c. 1234, § 34; Stats.1985, c. 1025, § 9.5; Stats.1990, c. 1667 (S.B.1033), § 21; Stats.1993, c. 731 (A.B.1847), § 15; Stats.1998, c. 990 (S.B.1744), § 3; Stats.2001, c. 745 (S.B.1191), § 221; Stats.2005, c. 208 (S.B.665), § 6, derived from former § 15037, added by Stats.1982, c. 1329, § 8, related to powers and duties of California Workforce Investment Board.

Former § 15037, added by Stats.1982, c. 1329, p. 4916, § 8, relating to similar subject matter, was repealed by Stats.1983, c. 12, § 2.

Section 15037.1, added by Stats.1995, c. 771 (S.B.645), § 1, amended by Stats.1996, c. 124 (A.B.3470), § 111; Stats.1997, c. 915 (S.B.394), § 2; Stats.1998, c. 817 (A.B.2352), § 5; Stats.1998, c. 874 (S.B.1559), § 1; Stats.2000, c. 491 (S.B.43), § 22, related to subcommittee of State Job Training Coordinating Council to develop education and job training report card program to assess the accomplishments of California's workforce preparation system.

Section 15037.3, added by Stats.1983, c. 537, § 24.7, related to legislative intent as to use of resources to support conservation corps.

Section 15037.5, added by Stats.1983, c. 12, § 3, related to approval by Governor of council plans and decisions.

Section 15038, added by Stats.1983, c. 12, § 3, related to oversight role of council and prohibited council from direct operation of programs or provision of services.

West's Ann.Cal.Un.Ins.Code § 15037.1

Former § 15038, added by Stats.1982, c. 1329, § 8, relating to compensation of state job training council members, was repealed by Stats.1983, c. 12, § 2. See Unemployment Insurance Code § 15039.7.

Section 15038.5, added by Stats.1983, c. 1234, § 36, amended by Stats.1990, c. 1667 (S.B.1033), § 21.3, related to meetings of state council and prohibition on absentee or proxy voting.

For reimbursement provision relating to Stats.2006, c. 630 (S.B.293), see Historical and Statutory Notes under Unemployment Insurance Code § 14000.

West's Ann. Cal. Un. Ins. Code § 15037.1, CA UNEMP INS § 15037.1

Current through Ch. 5 of 2007 Reg.Sess. urgency legislation

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END OF DOCUMENT

BILL NUMBER: SB 645 CHAPTERED 10/12/95

## CHAPTER 771

FILED WITH SECRETARY OF STATE OCTOBER 12, 1995

APPROVED BY GOVERNOR OCTOBER 11, 1995

PASSED THE SENATE SEPTEMBER 5, 1995

PASSED THE ASSEMBLY SEPTEMBER 1, 1995

AMENDED IN ASSEMBLY JULY 28, 1995

AMENDED IN ASSEMBLY JULY 15, 1995

AMENDED IN ASSEMBLY JUNE 26, 1995

AMENDED IN SENATE MAY 31, 1995

AMENDED IN SENATE MAY 23, 1995

AMENDED IN SENATE MAY 10, 1995

AMENDED IN SENATE APRIL 17, 1995

INTRODUCED BY Senator Johnston

FEBRUARY 22, 1995

An act to add Section 15037.1 to the Unemployment Insurance Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 645, Johnston. Job training report cards.

Under existing law, the State Job Training Coordinating Council is responsible for oversight of employment and training programs at the state level.

This bill would require the State Job Training Coordinating Council to establish a subcommittee with a specified membership to develop an education and job training report card program to assess the accomplishments of California's work force preparation system. The bill would require the subcommittee or an operating entity under contract to the subcommittee to compile information on the performance of state and federally funded education and training programs, as specified, and to issue annual report cards for all providers of these programs measuring the effectiveness of the individual providers and of the various programs that constitute the state's work force development system. The subcommittee or operating entity would also issue a statewide report card measuring the effectiveness of the entire system of work force preparation. Funding would be made available on a shared basis by the programs the report card program is measuring, to the extent authorized by federal and state law, and the subcommittee or operating entity would have the authority to assess each of the programs with an appropriate share of the report card program costs.

The bill would require that collection and use of social security numbers under the bill be consistent with federal law, and would provide that social security numbers obtained are not public records subject to disclosure under the California Public Records Act. Information obtained could not be sold or distributed without prior consent, as specified. The subcommittee or operating entity would also be prohibited from making public any information that could identify an individual or his or her employer.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 15037.1 is added to the Unemployment Insurance Code, to read:

15037.1. (a) The State Council shall be responsible for developing an education and job training report card program to assess the accomplishments of California's work force preparation

system.

(1) A subcommittee of the State Council shall be established for this purpose.

(2) The subcommittee shall be comprised of three private sector members of the State Council, the director of the department, the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, or their designees, and representatives of programs that are to be measured under the report card program.

(3) The subcommittee shall be responsible for designing and implementing, or contracting with an operating entity for the implementation of, a system that can compile, maintain, and disseminate information on the performance of providers, programs, and the overall work force preparation system.

(b) By January 1, 2001, the subcommittee or an operating entity under contract to the subcommittee shall operate a comprehensive performance-based accountability system which matches the social security numbers of former participants in state education and training programs with information in files of state and federal agencies that maintain employment and educational records and identifies the occupations of those former participants whose social security numbers are found in employment records.

(c) This system shall measure the performance of state and federally funded education and training programs. Programs to be measured may include programs in receipt of funds from the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Job Opportunities and Basic Skills program, the Food Stamp Employment and Training program, the Wagner Peyser Act, the Employment Training Panel, adult education programs as defined by paragraph (9) of subdivision (b) of Section 10521, vocational education programs, and certificated community college programs.

(d) Job training and education providers receiving funding identified in subdivision (c) shall report to the subcommittee or an operating entity under contract to the subcommittee, as the case may be, on participant social security numbers and economic and demographic characteristics, including, but not limited to, age, gender, race or ethnicity, and education achievement. The State Council shall establish the acceptable format and timeframes for data submission.

(e) The system shall be designed to measure factors such as:

(1) Amount and source of funding.

(2) Program entrance and successful completion rates.

(3) Employment and wage information for one, and three years after completion of training.

(4) The relationship of training to employment.

(5) Academic achievement for one and three years after completion of training.

(6) Achievement of industry skill standard certifications, where they exist.

(7) Return on public investment.

(f) Based upon the information compiled pursuant to this section, the subcommittee or an operating entity under contract to the subcommittee, as the case may be, shall, by December 31, 1997, and each December 31 thereafter, do all of the following:

(1) Prepare and disseminate report cards for all training and education providers in receipt of funds included in the tracking system.

(2) Prepare and disseminate local and statewide report cards that measure the outcomes of the individual programs that operate as part of the work force development system.

(3) Prepare and disseminate a state report card that measures the performance of the entire system of work force preparation and the effectiveness of the system in meeting employers' needs for educated and trained workers and the clients' needs for improving their economic well-being.

(g) The State Council shall develop objective performance standards emphasizing the principles of continuous improvement for

the programs covered under this section and shall develop a system of sanctions and incentives to encourage performance which meet these standards.

(h) The State Council shall explore the feasibility of including the following persons in this system:

- (1) Attendees at private postsecondary institutions.
- (2) Recipients of federal student loans.
- (3) Recipients of Pell grants.
- (4) Students in grades 11 and 12.
- (5) Students enrolled in any community college, California State University, or University of California program.

(i) The sole purpose of this section is to assess the performance of state and federal employment and training providers and programs in preparing Californians for the work force. Collection and use of social security numbers pursuant to this section shall be consistent with the requirements of Section 7 of the federal Privacy Act of 1974 (P.L. 93-579) and Section 405(c)(2)(C) of Title 42 of the United States Code. Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any other provision of law, the social security number of any person obtained pursuant to this section is not a public record, and shall not be disclosed except for the purpose of this section. Information obtained pursuant to this section shall not be sold or distributed to any entity without prior consent from the individual, or his or her parent or guardian, with respect to whom the information is gathered.

However, this shall not preclude the exchange of information with other governmental departments and agencies, both federal and state, that are concerned with the administration of work force development programs. Neither the subcommittee nor an operating entity under contract to the subcommittee, as the case may be, may make public any information that could identify an individual or his or her employer.

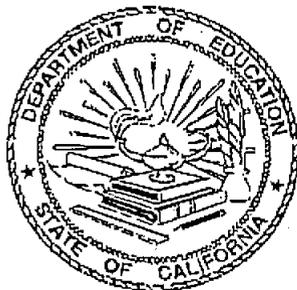
(j) An education and training program that requires information gathered by the education and job training report card program shall use the report card program and shall not initiate automated matching of records in duplication of methods already in place as a result of the report card program.

(k) Funding for the development and maintenance of the education and job training report card program shall be made available on a shared basis by the programs the report card program is measuring, to the extent authorized by federal and state law. The subcommittee, or the operating entity under contract to the subcommittee, shall have the authority to assess each of the programs with an appropriate share of the costs of the report card program. Administrative funds currently used for program followup activities for the identified programs shall be redirected for this purpose, if authorized by federal law.

(l) The state council shall apply for any federal waivers that may be necessary to implement this section.

**Workforce Investment Act, Title II  
Adult Education *and* Family Literacy  
Act**

**California State Plan  
1999-2004**



California Department of Education, Adult Education Office  
660 J Street, Suite 400  
Sacramento, CA 95814  
Revised January 10, 2002

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# Chapter 6

## Procedures and Process of Funding Eligible Providers

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*Section 224(b)(7) requires a description of how the eligible agency will fund local activities in accordance with the considerations described in Section 231(e).*

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### 6.0 Procedures and Process of Funding Eligible Providers (Section 224(b)(7))

#### 6.1 Applications for Section 231/225 Grants

Local providers will be eligible to receive funds if they meet the following criteria:

1. The applicant will provide evidence of financial internal controls, fiscal solvency, and a sound fiscal accounting system that provides auditable cost allocations and financial records.
2. The applicant will meet the certification requirements regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace environment. (34 CFR Part 82, 34 CFR Part 85, and Government-wide Requirements for Drug-free Workplace grants)
3. The applicant will provide both a State-prescribed pre-test and a post-test of reading or life skills achievement to Adult Basic Education (ABE), English as a Second Language (ESL), which includes ESL-Citizenship, Family Literacy (FL), and Workplace Literacy (WL) students. The procedures for collecting data will be specified by CDE. The applicant will report to the Adult Education Office pre- and post-test scores of students. Since the process of obtaining high quality data is an incremental one that takes into account logistical constraints and the motivation of students and teachers alike, the applicant will agree to follow State guidelines that may be revised from year to year with respect to accountability and data collection procedures. ASE student achievement will be tracked by attainment of a diploma or equivalency, job placement or retention, and entry into postsecondary education.
4. The applicant will describe the projected goals of the program with respect to participant educational achievement, and how the applicant will measure and report progress in meeting its goals.
5. The applicant will list current programs, activities, and services that receive assistance from federal, State, and local sources in the area proposed to be served by the applicant.
6. The applicant will describe cooperative arrangements, including arrangements with business and industry and volunteer literacy organizations that have been made to deliver services to adults.
7. The applicant will describe how the applicant's proposed program provides guidance and supportive services while not duplicating programs, services or activities made available to adults under other federal, State and local programs.
8. The applicant will describe its past effectiveness in providing services, especially with respect to learning gains demonstrated by educationally disadvantaged adults.
9. The applicant will describe the degree to which the applicant will coordinate and utilize other literacy and social services available in the community or institution.

10. The applicant will explain its commitment to serve individuals in the community or institution that are most in need of literacy services.
11. The applicant will spend not more than 5 percent of the grant or contract on administration, unless a different rate has been approved by CDE.
12. The applicant will provide direct and equitable access to all Federal funds provided under the Act by ensuring that information, applications, and technical assistance are available to all eligible applicants.
13. Any applicant not previously funded with WIA, Title II funds, will provide assurance it will meet state-imposed program participation criteria that include, but not limited to, attendance at CDE-sponsored training related to the Comprehensive Adult Student Assessment System (CASAS), budget development, and program development.

## 6.2 Eligible Providers (Section 203(5))

Eligible providers for a grant or interagency contract that propose a program in Adult Basic Education (ABE), Adult Secondary Education (ASE), English as a Second Language (ESL), which includes ESL-Citizenship, and/or Family Literacy Service (FLS), include the following:

1. A local education agency
2. A community-based organization with demonstrated effectiveness
3. A volunteer literacy organization with demonstrated effectiveness
4. An institution of higher education
5. A public or private nonprofit agency
6. A library
7. A public housing authority
8. A nonprofit institution that is not described in (1) through (7) and has the ability to provide literacy services to adults and families
9. A consortium of the agencies, organizations, institutions, libraries, or authorities described in (1) through (8)
10. The California Department of Developmental Services, the Department of Corrections, the California Youth Authority, and the California Conservation Corps
11. A prison, jail, halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders

Whenever appropriations under this program exceed the amount available in the fiscal year, CDE will give preferences to those applicants who have demonstrated or can demonstrate a capability to recruit and serve those individuals most in need and hardest to serve.

### 6.3 Notice of Availability

CDE will announce the availability of funds through the Outreach and Technical Assistance Network's (OTAN) Web based communications system, through direct mailing of notification of availability of applications to all known eligible providers that participated in the previous fiscal years, and to those known adult education providers that have programs but did not participate.

### 6.4 Process of Funding Eligible Providers for 231/225 Grants

Pursuant to Section 232 of the *Adult Education and Family Literacy Act*, local adult education providers and state agencies desiring a grant or contract under this subtitle must submit an application or proposal containing a description of how funds awarded under this subtitle will be spent, and a description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities. Eligible providers are listed in Section 6.2.

CDE will distribute an announcement of pending available funds along with an application for funding. An adult education provider who wishes to obtain funding must develop a formal response to each part contained in the application or proposal. Reviewers of the applications and proposals will note the thoroughness of the proposed plan by specific criteria and will recommend that applicants deemed to have fully and adequately responded to the application review criteria be considered for funding.

From funds made available under Section 211(b)(1), California will award grants and contracts on a competitive basis to eligible providers within the State to develop, implement, and improve adult education and literacy activities. Each eligible provider receiving a grant or contract under this subtitle shall establish one or more programs that provide instruction or services in one or more of the following categories: (1) adult education and literacy services, including workplace literacy services; (2) family literacy services; or (3) English literacy programs.

CDE will use the following process to distribute funds to approved applicants:

1. CDE will set aside 82.5 percent of the State allocation for local assistance purposes. The State allocation will be distributed to support *State Plan* objectives in the following ways:

#### State Allocation

Local Assistance Grants 82.5%				Leadership Activities 12.5%	State Administration 5%	TOTAL 100%
Priorities 1, 2, 3 Literacy NALS Levels I and II 59.45%	Priority 4 Family Literacy 7.4%	Priority 5 Adult Secondary 7.4%	Section 225 Corrections Education and other Institutionalized Individuals 8.25%	<ul style="list-style-type: none"> <li>• Technology</li> <li>• Distance Learning</li> <li>• Assessment and Accountability</li> <li>• Staff Development</li> </ul>	<ul style="list-style-type: none"> <li>• CDE Staff</li> <li>• Administration costs</li> </ul>	

2. Local assistance grants and contracts will be based on the following greatest need/hardest-to-serve priorities:
  - a. Populations with greatest need and hardest to serve are those performing below the eighth grade level. In this population, there are three levels of priority. Level 1 priority consists of those individuals who score below the fifth grade level as measured by a CASAS score of under 210. Level 2 and Level 3 priorities consist of those individuals below the eighth-grade level as measured by a CASAS score of 235 being served in classes at agency sites or in the workplace. No less than 80 percent of the local applicants' funds will be allocated for grants or contracts for this population (59.45% of the total State basic grant).
  - b. Populations with eighth grade performance, but not having a high school diploma or equivalent. No more than 10 percent of the local applicants' funds will be allocated for grants or contracts for this population (7.4% of the total State basic grant).
  - c. Populations in need of family literacy skills and training who collaborate with corresponding programs of literacy service for children. No more than 10 percent of the local applicants' funds will be allocated for grants or contracts for this population (7.4% of the total State basic grant).
  - d. Incarcerated populations (in county jails or prisons) or those eligible adults in state hospitals performing below the high school graduation level (Section 225). No more than 10 percent of the total local assistance funds for the state will be allocated for grants or contracts for these populations (8.25% of the total State basic grant).
3. Funds will be awarded on the basis of the core performance measures attained. Grantees will not receive funds which exceed the total amount of their grant or contract.
4. Grant applications or contract proposals that are accepted for funding will be approved for funding July 1, 1999. Leading up to the approval date, key date benchmarks are:

Year One 1999-2000

- a. March 22, 1999 – Notification of availability of funding
- b. May 28, 1999 – Deadline for submitting applications to CDE
- c. June 10, 1999 – Completion of application review, scoring and ranking
- d. June 20, 1999 – Deadline for appeals

Year Two 2000-2001

- a. March 24, 2000 – Notification of availability of funding
- b. May 26, 2000 – Deadline for submitting applications to CDE
- c. June 9, 2000 – Completion of application review, scoring and ranking
- d. June 23, 2000 – Deadline for appeals

Year Three 2001-2002

- a. March 16, 2001 – Notification of availability of funding
- b. May 4, 2001 – Deadline for submitting applications to CDE
- c. May 25, 2001 – Completion of application review, scoring and ranking
- d. June 15, 2001 – Deadline for appeals

Year Four 2002-2003

- a. March 8, 2002 – Notification of availability of funding
- b. April 26, 2002 – Deadline for submitting applications to CDE
- c. May 16, 2002 – Completion of application review, scoring and ranking
- d. May 31, 2002 – Deadline for appeals

## Year Five 2003-2004

- a. March 7, 2003 – Notification of availability of funding
- b. April 25, 2003 – Deadline for submitting applications to CDE
- c. May 16, 2003 – Completion of application review, scoring and ranking
- d. May 30, 2003 – Deadline for appeals

## 6.5 Evaluation of Applications for 231/225 Grants (Section 231(e))

Grant applications and proposals must meet the requirements of Section 231(e) and Chapter 6, page 6.1, Section 6.1 of this *State Plan*. In addition, grant reviewers will determine that the applicant agency is able to complete the following:

1. Local providers will establish measurable and meaningful goals established for participants. The measurable performance levels for participant outcomes, including levels of literacy achieved connect to challenging state performance levels for literacy proficiency.

CDE has utilized the services of CASAS, an assessment, evaluation, and data collection system with a national reputation in providing measurable performance standards for program participants. Measurable outcomes will be tied to realistic outcome expectations for specific target populations.

2. Local providers will demonstrate past effectiveness in improving the literacy skills of adults and families, based on the performance measures established under Section 212 by the agency. Eligible providers must meet or exceed these performance measures, especially with respect to those adults on the lowest levels of literacy. Student goals and skill attainment must be tracked and reported to CDE on a regular basis.
3. Local providers will demonstrate a commitment to serving the most-in-need, including students who are low income or have minimal literacy skills. The program offerings must reflect the needs of the local community or institution in terms of literacy and basic skills needs. This commitment can be demonstrated by an analysis of community or institution demographics as compared to the types of programs offered.
4. Local providers will provide instruction that is of sufficient intensity and duration to achieve substantial learning gains. Providers must describe the pressing need of target groups, such as the homeless, which require effective and intense short-term ABE competencies, literacy based pre-employment skills and computer literacy competencies, when assessing priorities.
5. Local providers will select literacy and adult education practices that are based upon a solid foundation of research and effective educational practices. CDE will assist eligible applicants to review model programs, such as *Programs of Excellence*, along with those developed through state leadership demonstration projects, and, when available, recommendations from the National Institute for Literacy (NIFL).
6. Local providers will make effective use of technology, including computers, in the delivery of adult education and literacy services. CDE will request eligible applicants to describe how technology, including the use of computers, is used to enhance instructional strategies in approved programs. Among the most competitive agencies will be those that incorporate basic computer literacy instruction within each of the major program components, along with computer assisted and distance learning programs.
7. Local providers will use real-life learning contexts to ensure that students will possess the required skills to compete in a global economy and exercise the rights and responsibilities of citizenship.

The California Adult Education Office has historically emphasized such practical instructional strategies. Eligible applicants will therefore be required to demonstrate how the proposed program curricula is consistent with this priority. Applicants will state program outcomes in terms of the student's ability to demonstrate mastery of transferable skills that are linked to student goals.

8. The training and experience of local providers' program instructors, counselors, and administrators will meet high standards. CDE will require eligible applicants to demonstrate that staff possesses the necessary expertise to serve the target student population. There are many adult target populations characterized by deficiencies that must be effectively addressed if these populations are to be able to compete in a global economy and exercise the rights and responsibilities of citizenship. Staff must possess knowledge and cultural sensitivity toward such populations in order to develop effective instructional strategies.
9. Local providers will effectively coordinate community resources and establish strong linkages to elementary and secondary schools, postsecondary institutions, one-stop centers, job training programs, and social service agencies. Eligible applicant agencies shall demonstrate the capacity to link low-income students with needed programs and services. Collaborations such as those outlined in Chapter 9 will expand the ability of providers to ensure services.
10. Local providers will provide flexible scheduling and support services, including child care and transportation, to enable students to attend and complete programs. Workplace literacy providers will offer flexibility in selecting site locations and schedules to accommodate working adults.

CDE will give priority to eligible applicants who offer flexible schedules, child care, transportation, and other supportive services. Support services such as child care and transportation may be provided directly by the agency or may be provided through collaborations with other agencies, including one stop shops, social service agencies and job training agencies.

11. Local providers will maintain a high-quality management information system (MIS) that has the capacity to report client outcomes and to monitor program performance against state performance measures.

The TOPSpro data collection system has been developed to collect and transmit the required data in an acceptable format.

12. Local providers will be able to demonstrate a need for English literacy programs in the local community or institution. The need in the local community or institution for additional English literacy programs, as identified by local needs assessments or demographic studies, must support the expenditure for federal funds.

## 6.6 Payment and Audit of Local Assistance Funds

### A. Payment of Local Assistance Funds

1. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant.
2. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained.
3. Reimbursement of claims shall be distributed on a quarterly basis.
4. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.

**B. Audit of Local Assistance Funds**

CDE will implement annual Budget Act language regarding audits. Current 2000-01 Budget Act language mandates the following:

1. Notwithstanding any other provision of law, all nonlocal educational agencies receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit to the CDE's, Office of External Audits.
  - a. All audits shall be performed by one of the following:
    - (1) a certified public accountant possessing a valid license to practice within California;
    - (2) a member of CDE's staff of auditors; or
    - (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence in Standards for Audits of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States.
  - b. The audit shall be in accordance with State Department of Education Audit guidelines and Office of Management and Budget Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.
  - c. Non-LEA entities shall submit the annual audit no later than six months from the end of the agency fiscal year.
  - d. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.
  - e. Non-LEA entities receiving funds pursuant to this item shall be held liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.
2. Notwithstanding any other provision of law, CDE shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all sub-recipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organizational wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education Audit guidelines and Office of Management and Budget, Circular No. A-133. CDE may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).
3. The limited scope audits shall include agreed upon procedures conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements:
  - a. allowed or unallowed activities;
  - b. allowable costs and cost principles;
  - c. eligible matching;
  - d. level of effort;
  - e. earmarking; and
  - f. reporting.

## 6.7 Special Rule (Local Administrative Expenditures)(Section 223(c))

CDE limits local providers to a 5 percent limit for administrative costs. However, the *Adult Education and Family Literacy Act* allows CDE to negotiate with local providers so that they can exceed the 5 percent limit for administrative costs — specified in Section 233(a)(2) which are restricted to planning, administration, personnel development, and interagency coordination. CDE will negotiate with any local provider on a case-by-case basis to increase the administrative cost above the 5 percent limit for agencies who serve fewer than 100 adults or that can demonstrate a compelling need for higher administrative costs. For these providers, additional funding may be allocated to cover planning, administration, personnel development and interagency coordination.

## 6.8 Procedures and Process of Funding Eligible Providers for EL Civics Education

### Application Requirements

To qualify for funding, eligible local providers as listed in 6.2 of the California State Plan will respond to the following application criteria:

1. Applicants for English Literacy and Civics Education Program Implementation will utilize funds to design and implement a dedicated EL Civics Education program. Applicants for EL Civics Education Program Enrichment Activities will utilize funds to supplement and enhance existing programs. Applicants for Citizenship Preparation Education will utilize funds to design and implement a program of basic education for citizenship and naturalization preparation for legal permanent residents who are eligible for naturalization. Applications will address all of the following: (a) outreach services; (b) assessment of skills; (c) curriculum development and instruction; (d) professional development; (e) naturalization preparation and assistance; (f) regional and state coordination; and (g) program evaluation.
2. Applicants for all components are encouraged to describe proposed strategies to incorporate distance learning opportunities into program design, as appropriate.
3. The applicant will describe the projected goals of the program with respect to participant educational achievement and enhanced civic participation, and how the applicant will measure and report progress in meeting its goals.
4. The applicant will describe cooperative arrangements, including arrangements with business and industry, volunteer literacy organizations and other mutually supportive education programs such as Even Start, Title I, Migrant Education and CBET Programs that have been made to deliver services to adults.
5. The applicant will describe how the proposed component implementation provides program enhancement, deepening, and enrichment while avoiding duplication of services that are already available in the local community.
6. The applicant will describe its past effectiveness in providing services, especially with respect to civics and language and literacy development, and its success in meeting or exceeding statewide performance measures.
7. The applicant will describe the degree to which it will coordinate and utilize other educational and social services available in the community.
8. The applicant will explain its commitment to serve language learners who are the most in need of EL Civics Education activities.
9. The applicant will spend not more than five percent of awarded funds on administration, unless a different rate has been approved by CDE.
10. The applicant will spend federal funds only on allowable costs identified in the *Education Department General Administrative Regulations (EDGAR)*.

**Funding Procedures**

CDE will distribute an announcement of pending available funds in the form of a Request for Applications (RFA). An adult education provider that wishes to obtain EL Civics Education funding must develop a formal response for each component area for which funding is requested. Reviewers of the RFAs will rank proposals against the specific scoring criteria derived from the 12 considerations given in Section 231(e) and listed in Section 6.5 of the California State Plan. Highest ranked proposals will be funded:

California will award EL Civics Education funds on a competitive basis to eligible providers within the state to develop one or more of the following EL Civics Education activity components: (1) English Literacy and Civics Education Program Implementation, (2) English Literacy and Civics Education Program Enrichment Activities, and/or (3) Citizenship Preparation Education.

All funds will be awarded based on agency performance. CDE will reimburse agencies funded for English Literacy and Civics Education Program Implementation and English Literacy and Civics Education Program Enrichment Activities on the basis of attainment of program goals and objectives that are identified and negotiated as part of the application and approval process.

CDE will reimburse agencies funded for Citizenship Preparation Education, through benchmark payments that are based on learner outcomes as demonstrated by individual student learning gains and instructional level movements on standardized assessment instruments. Programs funded for this component will also have the opportunity to earn additional benchmark payments through achievement of other program goals, such as citizenship attainment.

CDE will set aside no less than 82.5 percent of the State EL Civics Education allocation for local assistance projects. The allocation will be distributed to support the objectives of the EL Civics Education funds in the following ways:

**EL Civics Education State Allocation**

Local Assistance Grants (no less than 82.5%)			Leadership Activities (no more than 12.5%)	State Administration (no more than 5%)	Total 100%
Component 1	Component 2	Component 3	Resource Development Mini-Grants	Short-term, special assignment, technical assistance field consultants CDE staff positions	
English Literacy and Civics Education Program Implementation	English Literacy and Civics Education Program Enrichment Activities	Citizenship Preparation Education	EL Civics Education Evaluation, funded up to \$250,000		
Projects to be funded up to \$150,000 or up to 666 benchmarks	Projects to be funded up to \$65,000 or up to 288 benchmarks	Projects to be funded up to \$225,000 or up to 1,000 benchmarks	Projects to be funded up to \$50,000 or up to 222 benchmarks		

Requests for EL Civics Education funding that are ranked high enough to merit funding for the calendar year 2001 will be approved for funding December 1, 2000. Leading up to the approval date, approximate key date benchmarks are:

**Year One 2000-2001**

- 1. Request for Applications released 8/18/00
- 2. Technical Assistance workshops 8/23 – 8/29/00

3. Deadline for written questions, 4:00 p.m.	9/27/00
4. RFA Submission deadline 4:00 p.m. at 660 J, Suite 400	9/29/00
5. Review, rate, and ranking of applications	10/04-10/06/00
6. Posting of intent to award grants to successful applicants	10/27/00
7. Appeals deadline	11/10/00
8. Grant implementation	2/1/01
<b>Year Two 2001-2003</b>	
1. Request for Applications released	09/04/01
2. Technical Assistance workshops	9/10-9/21/01
3. Deadline for written questions, 4:00 p.m.	10/05/01
4. RFA Submission deadline 4:00 p.m. at 660 J, Suite 400	10/08/01
5. Review, rate, and ranking of applications	10/15-10/31/01
6. Posting of intent to award grants to successful applicants	11/16/01
7. Appeals deadline	12/07/01
8. Grant implementation	02/01/02

### Evaluation of Applications

EL Civics Education applications must meet the application requirements listed at the beginning of this section. In addition, all applications must meet the requirements of Section 231(e). Grant reviewers will score and rank applications on the applicant agency's ability to meet the considerations in 231(e) as listed in Section 6.5 of the California State Plan.

Item	Amount
Provisions:	
1. Funds appropriated in this item are to carry out the provisions of Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code.	
6110-156-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute....	573,612,000
Schedule:	
(a) 10.50.010.001-Adult Education.....	537,611,000
(b) 10.50.010.008-Remedial education services for participants in the CalWORKs.....	18,293,000
(c) 10.50.010.009-Local Education Agencies—Education Services for participants in CalWORKs.....	26,447,000
(d) Reimbursements-CalWORKs.....	-8,739,000
Provisions:	
1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.	
2. The funds appropriated in Schedule (b) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Art. 3.2 (commencing with Sec. 11320) Ch. 2, Pt. 3, Div. 9, W.I.C.). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and Regional Occupational Centers and Programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. However, of the funds appropriated by Schedule (c) of this item, an amount not to exceed \$10,000,000, as negotiated through an interagency agreement between the State Department of Education and the State Department of Social Services, shall be provided for Adult Education Programs, and ROC/Ps for the pur-	

45 C.F.R. § 263.2

C

Effective: June 29, 2006

Code of Federal Regulations Currentness  
Title 45. Public Welfare

## Subtitle B. Regulations Relating to Public Welfare

Chapter II. Office of Family Assistance  
(Assistance Programs), Administration for  
Children and Families, Department of Health  
and Human Services (Refs & Annos)Part 263. Expenditures of State and  
Federal Tanf Funds (Refs & Annos)Subpart A. What Rules Applies to a  
State's Maintenance of Effort?→ § 263.2 What kinds of State  
expenditures count toward meeting a  
State's basic MOE expenditure  
requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act including:

(i) Nonmedical treatment services for alcohol and drug abuse and some medical treatment services (provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at § 260.20 of this chapter; and

(ii) Pro-family activities that are consistent with the goals at § 260.20(c) or (d) of this chapter, but do not constitute "assistance" as defined in § 260.31(a) of this chapter; and

(5)(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section; not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV-A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of "administrative costs."

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support, or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for the development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) With the exception of paragraph (a)(4)(ii) of this section, the benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An "eligible family" as defined by the State, must:

(1) Be comprised of citizens or aliens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

## 45 C.F.R. § 263.2

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under § 264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under § 260.31 of this chapter. Further, families that meet the criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g. local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;

(2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and

(3) The State counts a cash donation only when it is actually spent.

(f)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

(g) State funds used to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement may count to meet the MOE requirement in § 263.1, provided the expenditure also meets all the other MOE requirements in this subpart.

[64 FR 40291, July 26, 1999; 71 FR 37481, June 29, 2006]

SOURCE: 64 FR 17878, 17893, April 12, 1999; 71 FR 37481, June 29, 2006, unless otherwise noted.

AUTHORITY: 42 U.S.C. 604, 607, 609, and 862a; Pub.L. 109-171.

45 C. F. R. §: 263.2; 45 CFR §: 263.2

Current through May 10, 2007; 72 FR 26566

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END OF DOCUMENT

Commission on State Mandates

Original List Date: 6/26/2003 Mailing Information: Draft Staff Analysis  
Last Updated: 5/1/2007  
List Print Date: 05/29/2007 Mailing List  
Claim Number: 02-TC-37  
Issue: Adult Education Enrollment Reporting

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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