

ITEM 7
PROPOSED PARAMETERS AND GUIDELINES

Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6

Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

Williams Case Implementation I, II, and III
05-TC-04, 07-TC-06, and 08-TC-01

San Diego County Office of Education and Sweetwater Union High School District, Claimants

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code sections 88, 1240, 1242, 1242.5, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 17592.70, 17592.71, 17592.72, 17592.73, 32228.6, 33126, 33126.1, 35186, 41020, 41207.5, 41344.4, 41500, 41501, 41572, 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 48642, 49436, 52055.625, 52055.640, 52055.662, 52059, 52295.35, 56836.165, 60119, 60240, 60252, and 62000.4 as Added or Amended by Statutes 2004, Chapter 899 (SB 6); Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); Statutes 2007, Chapter 526 (AB 347).

California Code of Regulations Title 5, Sections 4600-4671; Title 2, Sections 1859.300-1859.330 as Added or Amended by Register 2005, No. 52; Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51.

Alleged Executive Orders, State Allocation Board Forms: Certification of Eligibility, Interim Evaluation Instrument, Needs Assessment Report, Needs Assessment Report Worksheet, Expenditure Report, Application for Reimbursement and Expenditure Report, Web-Base Progress Report Survey, Web-Based Needs Assessment.

Williams I Filed on September 21, 2005,
Williams II Filed on December 14, 2007,
Williams III Filed on July 7, 2008

By San Diego County Office of Education, and Sweetwater Union High School District, Claimants.

Case No.: 05-TC-04; 07-TC-06; 08-TC-01

Williams Case Implementation I, II, III

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

(Adopted: December 7, 2012)

(Served: December 18, 2012)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 7, 2012. Mr. Arthur Palkowitz appeared for the claimants. Ms. Elisa Wynne and Mr. Christian Osmena appeared for the Department of Finance.

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

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of seven to zero.

Summary of the Findings

This consolidated test claim alleges reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state's settlement in *Eliezer Williams, et al. v. State of California (Williams)*. In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and capable teachers.

The case was settled under the Schwarzenegger administration, and the settlement agreement called for legislative action to ensure that students would be provided with sufficient instructional materials, qualified teachers, and clean and safe facilities and instructional spaces. Specifically, the statutes, regulations, and alleged executive orders that were enacted to implement the settlement affect the following eight programs:

- The School Facilities Needs Assessment Grant Program. This program is a grant program that funds a one-time Comprehensive Needs Assessment to assess the needs of schools ranked in deciles 1 to 3 of the Academic Performance Index (API).
- The School Facilities Emergency Repair Program. An account was established to fund urgent repairs or replacements of building systems of facilities at deciles 1 to 3 schools.
- County Office of Education Oversight. The statutes expanded fiscal and operational oversight of schools and school districts by county superintendents with respect to the condition of facilities, teacher vacancies and misassignments, accuracy of the School Accountability Report Cards (SARCs), and availability of intensive instruction to aid students in passing the high school exit examination
- School Facilities Funding (Good Repair). The statutes clarified the definition of "good repair," and added a Facilities Inspection System to ensure the good repair of school facilities.
- School Accountability Report Cards. The statutes expanded the scope of the SARCs.
- *Williams* Complaint Process. A new *Williams* specific Uniform Complaint Process was added (*Williams* complaint process).
- Fiscal and Compliance Audits. The scope of fiscal and compliance audits was expanded.
- Pupil Textbook and Instructional Materials Incentive Program. New benchmarks for provision of sufficient textbooks and instructional materials were provided.

For the reasons stated in the decision, the Commission denies many of the requested activities added or amended by the test claim statutes, regulations, and executive orders on the ground that they are triggered by a school district's voluntary compliance with a grant program; some activities are not new, but simply clarify existing law; and many activities are fully funded by specific appropriations made to local educational agencies (LEAs) in amounts that are sufficient to fund the cost of any new required activity.

The Commission finds, however, that Education Code sections 14501, 41020, 33126(b), 35186, and 42127.6 impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the new mandated activities listed in the conclusion of this decision that relate to School Accountability Report Cards, *Williams* complaint process, and Fiscal and Compliance Audits.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 9/21/2005 | Claimants, San Diego County Office of Education and Sweetwater High School District, filed <i>Williams I</i> (05-TC-04) with the Commission on State Mandates (Commission). ¹ |
| 10/28/2005 | Department of Finance (DOF) requested an extension of time to submit written comments on <i>Williams I</i> . |
| 10/31/2005 | The Commission granted DOF's request for an extension of time to submit comments to February 2, 2006. |
| 11/01/2005 | Office of Public School Construction (OPSC) submitted written comments on <i>Williams I</i> (05-TC-04). |
| 2/02/2006 | DOF requested a second extension of time to submit written comments on <i>Williams I</i> . |
| 2/07/2006 | The Commission granted DOF's request for an extension of time to submit comments to April 3, 2006. |
| 3/27/2006 | DOF requested a third extension of time to submit written comments on <i>Williams I</i> . |
| 4/07/2006 | The Commission granted DOF's request for an extension of time to submit comments to June 19, 2006. |
| 6/19/2006 | DOF requested a fourth extension of time to submit written comments on <i>Williams I</i> . |
| 6/21/2006 | The Commission granted DOF's request for an extension of time to submit comments to August 18, 2006. |
| 8/18/2006 | DOF submitted written comments on <i>Williams I</i> (05-TC-04). |

¹ Based on the September 21, 2005 filing date, the potential period of reimbursement for the *Williams I* test claim would begin July 1, 2004. However, the test claim statutes alleged in *Williams I* were enacted as urgency legislation on September 29, 2004, and therefore the date of enactment marks the potential period of reimbursement.

12/14/2007	Claimants filed <i>Williams II</i> (07-TC-06) with the Commission. ²
1/25/2008	DOF requested an extension of time to submit written comments on <i>Williams II</i> .
1/25/2008	The Commission granted DOF's request for an extension of time to February 25, 2008.
2/22/2008	OPSC requested an extension of time to submit written comments on <i>Williams II</i> .
2/25/2008	Department of Finance submitted written comments on <i>Williams II</i> (07-TC-06).
3/12/2008	The Commission granted OPSC's request for an extension of time to April 12, 2008.
4/14/2008	Office of Public School Construction submitted written comments on <i>Williams II</i> (07-TC-06).
7/02/2008	Claimants filed <i>Williams III</i> (08-TC-01) with the Commission. ³
8/19/2011	Commission notified parties of consolidation of the three <i>Williams</i> claims.
10/18/2012	Draft staff analysis and proposed statement of decision issued for a public comment period ending on November 8, 2012.
11/08/2012	Claimants submitted written comments on the draft staff analysis and proposed statement of decision.
11/16/2012	DOF submitted late comments on the draft staff analysis and proposed statement of decision. ⁴

² Based on the December 14, 2007 filing date, the potential period of reimbursement for the *Williams II* test claim would begin July 1, 2006. However the test claim statutes alleged in *Williams II* were enacted September 29, 2006, effective January 1, 2007, and therefore the period of reimbursement begins on the later effective date of January 1, 2007. Amendments to the regulations alleged in *Williams II* were filed as emergency regulations July 2, 2007, and the reimbursement period for any mandated activities found under the regulations would be July 2, 2007.

³ Based on the July 2, 2008 filing date, the potential period of reimbursement for the *Williams III* test claim would begin July 1, 2007. However the test claim statute at issue in *Williams III* was enacted as urgency legislation October 12, 2007, and therefore the date of enactment marks the potential reimbursement period.

⁴ The late filing of comments has resulted in Commission staff rewriting the final staff analysis and putting them through the Commission's review process two times, since the comments came in on the day final analyses were due to have been completed by staff. This has caused significant disruptions in work flow and has taken staff away from working on matters for the January hearing. Several parties have taken to routinely filing late comments without requesting an extension of time to file comments for good cause, as is provided for under the Commission's

II. Introduction & Background

This consolidated test claim alleges reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the settlement in the case of *Eliezer Williams, et al. v. State of California* (*Williams*). The activities alleged include conducting needs assessments of low-performing schools; conducting emergency repairs; more intensively monitoring schools and school districts for compliance with defined standards for sufficiency of textbooks, providing qualified teachers, and safe and habitable school facilities; more intensive enforcement of state textbook standards; more intensive monitoring of hiring and assignment of credentialed teachers; compliance with various regulations for the receipt of grant funding to repair schools; increased scope of the SARC; a new *Williams* complaint process; new and expanded auditing requirements, and new benchmarks with respect to the sufficiency of textbooks.

A. The *Williams* Settlement

The plaintiffs in *Williams* sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and capable teachers. The *Williams* case was filed on May 17, 2000, alleging that defendants, including the State of California, the California Board of Education, the California Department of Education (CDE), and the California Superintendent of Schools, had failed to meet their duty under the California Constitution to provide equal access to the fundamental necessities of education for all of California public schoolchildren. The case was certified as a class action on October 1, 2001; the class was defined to include all current and future students of California public schools “who suffer from one or more deprivations of basic educational necessities.” During the pendency of the litigation, and in the midst of protracted settlement negotiations, a recall election was held, and the new Schwarzenegger Administration “manifested a determination to deal with problems in public education and to settle this litigation.”⁵

The settlement called for a series of legislative proposals intended to ensure that students would be provided with sufficient instructional materials; that they would be met with qualified teachers; and that the facilities and instructional spaces would be clean and safe. The settlement legislation authorized substantial new spending to repair facilities; replace instructional materials; and improve oversight at the county and the state level, all targeted to impact primarily the lowest performing schools as defined by the API.⁶

regulations. The net result of this practice is to increase delays in the processing of matters pending before the Commission. Under the Commission’s regulations, a three week comment period is provided and “all comments timely filed shall be reviewed by Commission staff and may be incorporated into the final written analysis.” (2 CCR 1183.07(c).) However, written testimony received at least 15 days in advance of the hearing [i.e. late filings], shall be included in the Commission’s meeting binders. (2 CCR 1187.6.) Thus, there is no requirement for staff to review late comments or include an analysis of them in the final staff analysis and proposed decision.

⁵ Exhibit I, Notice of Proposed Settlement, *Williams v. California*, No. 312236, Superior Court of California, County of San Francisco, pp. 1-5 [citing Declaration of Jack W. Londen].

⁶ *Id.*, at p. 7.

B. Statutes Alleged

The legislation implementing the terms of the settlement hereinafter will be referred to by bill number or by code section, as appropriate. Where a code section was amended more than once by the test claim statutes alleged, the bill number or chapter number may be necessary to clarify the amendments made and the applicable periods of reimbursement for certain activities. The following is a brief summary of the test claim statutes, by statute, chapters, bill number, and code sections affected.

Statutes of 2004, chapter 899 (SB 6)

SB 6, the first *Williams* statute at issue in this test claim, sought to re-direct funding from various sources to schools in need of repair, with first priority being those schools that were ranked in deciles 1-3, inclusive, of the API. To that end, SB 6 made the following changes to the law in effect immediately prior to its enactment:

- Added section 17592.70 directing the State Allocation Board (SAB) to administer a new account,⁷ and directing the school districts receiving funds from that account to complete a one-time comprehensive assessment of school facilities needs for schools ranked in deciles 1-3 of the 2003 base API;⁸
- Created another SAB administered account to reimburse school districts, upon application, for emergency or urgent repairs;⁹
- Allocated \$30 million to fund the one-time comprehensive needs assessments and to begin funding the emergency repair account in Section 4 of the bill; and,¹⁰
- Established the Proposition 98 Reversion Account, to hold funds that have not been disbursed or otherwise encumbered.¹¹

Statutes of 2004, chapter 900 (SB 550)

The second statute alleged in this test claim is SB 550. SB 550 made the following changes to existing law:

- Broadened the oversight duties of county superintendents with respect to facilities needs, textbook sufficiency, and the accuracy of information reported in the SARCs;¹²
- Broadened a county superintendent's duties to enforce the use of state textbooks, and provided for remedial action to be taken in the case of noncompliance;¹³

⁷ Education Code section 17592.70(a) (Stats. 2004, ch. 899 § 1 (SB 6)).

⁸ Education Code section 17592.70(d)(1) (Stats. 2004, ch. 899 § 1 (SB 6)).

⁹ Education Code sections 17592.71-17592.73 (Stats. 2004, ch. 899 § 1 (SB 6)).

¹⁰ Statutes 2004, chapter 899, section 4 (SB 6).

¹¹ Statutes 2004, chapter 899, section 2 (SB 6).

¹² Education Code section 1240(c)(2)(E) (Stats. 2004, ch. 900 § 1 (SB 550)).

¹³ Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550)).

- Clarified the meaning of “good repair” as it is used in the State School Building Lease-Purchase Law of 1976 and the School Facilities Act of 1998, among other statutes;¹⁴
- Provided that as a condition of the school facilities program, a district must establish a “facilities inspection system” to ensure schools are maintained in “good repair;”¹⁵
- Added additional information that must be reported in the SARC, including the availability of sufficient textbooks and instructional materials, needed maintenance of school facilities, and teacher misassignments and vacancies;¹⁶
- Directed the California Department of Education (CDE) to add the above objectives to its standardized template for SARC;¹⁷
- Created a new *Williams* complaint process to address primary objectives of availability of textbooks, facilities conditions, and teacher misassignments and vacancies;¹⁸
- Required local officials to investigate and take remedial action promptly to resolve issues identified by the *Williams* complaint process;¹⁹
- Included within the scope of a “financial and compliance audit” the objectives of sufficient textbooks, teacher misassignments and vacancies, and accuracy of the school accountability report cards;²⁰ and required that the superintendent include those objectives in the review of audit exceptions;²¹
- Provided that, notwithstanding any other law, a school district is not required to repay an apportionment based on a significant audit exception if the county superintendent certifies to the Superintendent of Public Instruction and the Controller that an audit exception has been corrected or an acceptable plan of correction put in place;²²
- Amended sections 52055.625 and 52055.640 to add requirements, conditional upon the receipt of funds, to the High Priority Schools Grant Program;
- Added section 52055.662, providing for new grants during the phase-out of schools from the High Priority Schools Grant Program;²³

¹⁴ See Education Code section 17000, et seq.; Education Code section 17070.10 et seq. (Stats. 2004, ch. 900 §§ 3-9 (SB 550)).

¹⁵ Education Code section 17070.75(e) (subd. (e) added by Stats. 2004, ch. 900 § 7 (SB 550)).

¹⁶ Education Code section 33126(b)(5-6; 9) (Stats. 2004, ch. 900 § 10 (SB 550)).

¹⁷ Statutes 2004, chapter 900, section 11 (SB 550).

¹⁸ Education Code section 35186 (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁹ Education Code section 35186 (Stats. 2004, ch. 900 § 12 (SB 550)).

²⁰ Education Code section 14501 (Stats. 2004, ch. 900 § 2 (SB 550)).

²¹ Education Code section 41020 (Stats. 2004, ch. 900 §13 (SB 550)).

²² Statutes 2004, chapter 900, section 14 (SB 550).

²³ Statutes 2004, chapter 900, section 15-17 (SB 550).

- Clarified the definition of “sufficient textbooks or instructional materials” in the context of the Pupil Textbook and Instructional Materials Incentive Program, and required that as a condition of participation in the program, school districts must make a determination and resolution before the end of the eighth week of school as to whether their students in fact have sufficient textbooks or instructional materials;²⁴
- Amended section 60240 to provide for up to \$5 million to be expended from the State Instructional Materials Fund to acquire instructional materials for school districts at the request of county superintendents pursuant to section 1240(i);²⁵
- Required that, as a condition of receiving Instructional Materials funds, a school district must ensure, *to the extent practicable*, that it orders necessary books and materials before the beginning of the school year;²⁶
- Repealed section 62000.4; and,²⁷
- Made a number of appropriations in sections 22 and 23 of the bill, as discussed below where appropriate.²⁸

Statutes of 2004, chapter 902 (AB 3001)

AB 3001 amended the Education Code as follows:

- Amended section 42127.6 to provide that school districts must provide their county superintendent with copies of any reports or studies containing evidence of the district being in fiscal distress. The county superintendent is then required to review those reports or studies, and investigate whether the school district may be unable to meet its financial obligations. If so, the superintendent must report to the Superintendent of Public Instruction, and take remedial action as provided. One of the available remedial actions possible is to assign the Fiscal Crisis and Management Assistance Team to review teacher hiring, retention, and misassignment. If the Fiscal Crisis and Management Assistance Team is assigned, the school district is required to take and adopt their recommendations unless it can show good cause for not doing so;²⁹
- Amended section 44225.6, addressing the annual report to the Legislature and to the Governor by the Commission on Teacher Credentialing;³⁰
- Provided that in exercising his or her existing duties to monitor and review certificated employee assignment practices under section 44258.9, a county superintendent shall “give priority” to schools ranked in deciles 1 to 3 of the 2003 base API;³¹

²⁴ Education Code section 60119 (Stats. 2004, ch. 900 § 18 (SB 550)).

²⁵ Statutes 2004, chapter 900, section 19 (SB 550).

²⁶ Education Code section 60252 (Stats. 2004, ch. 900 § 20 (SB 550)).

²⁷ Statutes 2004, chapter 900, section 21 (SB 550).

²⁸ Statutes 2004, chapter 900, sections 22-23 (SB 550).

²⁹ Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

³⁰ Statutes 2004, chapter 902, section 2 (AB 3001).

- Amended section 44258.9 to require that a county superintendent must investigate school and district efforts to ensure that credentialed teachers serving in an assignment requiring special certification or training have completed such certification or training;
- Required that the annual report submitted to the Commission on Teacher Credentialing must also be submitted to CDE, and must include information on employee assignment practices in schools ranked in deciles 1 to 3 of the 2003 base API, to ensure that in schools of 20% or more English learner pupils, the assigned teachers have completed the necessary training;³²
- Amended sections 44274 and 44275.3 to provide that where the commission [on Teacher Credentialing] determines that another state’s licensing requirements are at least comparable to California’s applicants from that state will not be required to meet California requirements for the basic skills proficiency test;³³
- Amended sections 44325 and 44453 to bring districts’ and universities’ internship programs in line with the requirements of the federal No Child Left Behind Act of 2001;³⁴
- Made technical, non-substantive changes to section 44511;³⁵
- Amended section 52055.640, of the High Priority Schools Grant Program to require annual reporting of school statistics regarding the percentages of credentialed teachers and English learners;³⁶
- Amended section 52059 to require that the Statewide System of School Support, consisting of regional consortia, including county offices of education and school districts, shall provide assistance to schools and school districts in need of improvement by reviewing and analyzing all facets of the school’s operation, including recruitment, hiring, and retention of principals, teachers, and other staff; and the roles and responsibilities of district and school management personnel; and,³⁷
- “[E]ncourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3...priority to review resumes and job applications received by the district from credentialed teachers.”³⁸

Statutes of 2004, chapter 903 (AB 2727)

³¹ Education Code section 44258.9 (Stats. 2004, ch. 902 § 3 (AB 3001)).

³² Education Code section 44258.9 (Stats. 2004, ch. 902 § 3 (AB 3001)).

³³ Statutes 2004, chapter 902, sections 4-5 (AB 3001).

³⁴ Statutes 2004, chapter 902, sections 6-7 (AB 3001).

³⁵ Statutes 2004, chapter 902, section 8 (AB 3001).

³⁶ Statutes 2004, chapter 902, section 9 (AB 3001).

³⁷ Statutes 2004, chapter 902, section 10 (AB 3001).

³⁸ Statutes 2004, chapter 902, section 11 (AB 3001).

AB 2727 amended section 35186, as enacted under chapter 900 of Statutes of 2004, to require that LEAs use the *Williams* complaint process to address “emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff.” SB 550, which was signed before AB 2727, would have amended the same code section and contained broader language, permitting complaints with respect to “the condition of a facility that is not maintained in a clean or safe manner or in good repair.”³⁹ Assembly Bill 2727 thereby limited facilities complaints under the *Williams* complaint process to those complaints regarding *dangerous* conditions, rather than the broader scope of complaints provided for in the earlier language, and since AB 2727 was signed after SB 550, the language on this point prevailed and became law.

Statutes of 2005, chapter 118 (AB 831)

AB 831 amended selected language in several sections of the earlier test claim statutes, in order to clarify the requirements, and in some cases provide some leniency as follows:

- Added section 88, which provides that the “state board,” when used in the Education Code, means the State Board of Education, generally;⁴⁰
- Amended section 1240(c), which provided formerly that a county superintendent’s visits to schoolsites must not disrupt the operation of the school; to provide that the superintendent’s visits should “minimize disruption;”⁴¹
- Amended section 1240(i) addressing the county superintendent’s review and enforcement of state textbooks, adding a cross-reference to the section providing for proper adoption of textbooks and instructional materials;
- Made explicit that the review of schools ranked in deciles 1 to 3 must be completed *by the fourth week* of school; the former language had required the review “shall be conducted within the first four weeks;”⁴²
- Provided that for counties in which more than 200 schools are ranked in deciles 1 to 3, the superintendent may utilize a combination of site visits and written surveys to accomplish the textbook sufficiency review within the timeframe;⁴³
- Made technical non-substantive changes to section 17592.70;⁴⁴
- Repealed section 32228.6;⁴⁵

³⁹ Compare Education Code section 35186(a) (Stats. 2004, ch. 900 § 12 (SB 550)) with Education Code section 35186(a) (Stats. 2004, ch. 903 § 1 (AB 2727)).

⁴⁰ Education Code section 88 (Stats. 2005, ch. 118 § 1 (AB 831)).

⁴¹ Education Code section 1240(c)(2)(D)(i) (Stats. 2005, ch. 118 § 1 (AB 831)).

⁴² Education Code section 1240(i) (Stats. 2005, ch. 118 § 1 (AB 831)).

⁴³ Education Code section 1240(i)(3)(B) (Stats. 2005, ch. 118 § 1 (AB 831)).

⁴⁴ Statutes 2005, chapter 118, section 3 (AB 831).

⁴⁵ Statutes 2005, chapter 118, section 4 (AB 831).

- Required that the notice to be placed in each classroom regarding the use of the *Williams* complaint process must include teacher vacancies or misassignments as a potential subject of complaint, and restated the definition of a “teacher vacancy;”⁴⁶
- Provided that county superintendents must *annually review* the employee assignment practices of schools known or anticipated to have problems with teacher misassignments and vacancies based on past experience, and *annually review* schools ranked in deciles 1 to 3 of the 2003 base API. The former section required that county superintendents *give priority* to those schools within the ongoing annual review and monitoring processes;⁴⁷
- Amended section 48642 to provide for the sunseting and repeal of a number of other sections not relevant to this test claim;⁴⁸
- Made technical changes to sections 41500, 41501, 41572, 49436, 52055.640, 52295.35, and 56836.165, not relevant to this test claim.⁴⁹
- Clarified the definition of sufficient textbooks and instructional materials, by inserting language requiring sufficient materials to be “standards-aligned;”
- Required that where a deficiency is found, the governing board of the school district must notify teachers and the public regarding the percentage of students lacking sufficient materials;⁵⁰
- Made changes to appropriations provided in Statutes 2004, chapter 900, sections 22 and 23, not relevant to this test claim;⁵¹ and,
- Declared that it should be implemented immediately as an urgency statute.⁵²

Statutes 2006, chapter 704 (AB 607)

Assembly Bill 607 amended the Education Code as follows:

- Clarified the technical and substantive requirements of a county superintendent’s site visits and reporting duties under section 1240;
- Added reporting of teacher misassignments and vacancies to the county superintendent’s responsibilities, and described the manner in which the deciles 1 to 3 schools will be identified in the future, for purposes of those site visits;⁵³

⁴⁶ Education Code section 35186(f)(3); (h)(3) (Stats. 2005, ch. 118 § 5 (AB 831)).

⁴⁷ Compare Education Code section 44258.9 (Stats. 2004, ch. 900 (SB 550)) with Education Code section 44258.9 (Stats. 2005, ch. 118 (AB 831)).

⁴⁸ Statutes 2005, chapter 118, section 10 (AB 831).

⁴⁹ Statutes 2005, chapter 118, sections sections 6-8 and 11-14 (AB 831).

⁵⁰ Education Code section 60119 (Stats. 2005, ch. 118 § 15 (AB 831)).

⁵¹ Statutes 2005, chapter 118, sections 17-18 (AB 831).

⁵² Statutes 2005, chapter 118, section 21 (AB 831), effective July 25, 2005.

⁵³ Education Code section 1240 (Stats. 2006, ch. 704 § 1 (AB 607)).

- Provided for the allocation of funding for the county superintendents’ site visits;⁵⁴
- Incorporated in the definition of “good repair” the school facility inspection and evaluation instrument to be developed by OPSC, to replace the interim evaluation instrument provided for under the prior section;⁵⁵
- Provided for repayment of unexpended facilities funds under a payment plan, if a 60 day repayment would cause severe hardship. This section is not relevant to this test claim;⁵⁶
- Changed the School Facilities Emergency Repair Account to a grant scheme instead of a reimbursement-grant scheme;⁵⁷
- Required that within the *Williams* complaint process, a school must respond, if response is requested, in English and in the primary language of the complaint, if 15 percent or more of the pupils enrolled in a school speak that primary language;⁵⁸ and,
- Clarified the technical requirements of the school district governing board’s reporting to the public regarding a textbook shortage.⁵⁹

Statutes 2007, chapter 526 (AB 347)

AB 347 made the following changes to the Education Code:

- Added again to a county superintendent’s oversight and reporting duties, requiring determination of the extent to which students who have not passed the high school exit examination are informed of the availability of intensive instruction services, and the extent to which those who seek intensive instruction to pass the exam are being served;⁶⁰
- Broadened again the scope of the *Williams* complaint process, permitting complaints regarding deficiencies in the intensive instruction and services provided to those who have not passed the high school exit examination by the end of grade 12;⁶¹
- Provided that the notice posted in classrooms must inform parents or guardians of the availability of intensive instruction and services to assist in passing the high school exit examination;⁶²

⁵⁴ Education Code sections 1242; 1242.5 (Stats. 2006, ch. 704 § 2 (AB 607)).

⁵⁵ Education Code section 17002 (Stats. of 2006, ch. 704 § 4 (AB 607)).

⁵⁶ Education Code section 17076.10 (Stats 2006, ch. 704 § 5 (AB 607)).

⁵⁷ Education Code section 17592.72 (Stats. of 2006, ch. 704 § 6 (AB 607)).

⁵⁸ Education Code section 35186 (Stats. of 2006, ch. 704 § 7 (AB 607)).

⁵⁹ Education Code section 60119(a)(2) (Stats. 2006, ch. 704 § 8 (AB 607)).

⁶⁰ Education Code section 1240(c) (Stats. 2007, ch. 526 (AB 347)).

⁶¹ Education Code section 35186(a)(4) (Stats. 2007, ch. 526 (AB 347)).

⁶² Education Code section 35186(f) (Stats. 2007, ch. 526 (AB 347)).

- Amended the eligibility requirements for intensive instruction and services to aid students in passing the high school exit examination under section 37254. This section and changes are not relevant to this test claim; and,⁶³
- Amended section 52378, adding to the Middle and High School Supplemental Counseling Program a cross reference to intensive instruction and services to aid students in passing the high school exit examination.⁶⁴

III. Positions of Parties and Interested Parties

A. Claimants Position

Claimants allege generally that the *Williams* implementing legislation results in new programs and activities which cause school districts and county offices of education to incur reimbursable state-mandated costs.

Claimant San Diego County Office of Education filed in *Williams I* a declaration of Elaine Hodges, Senior Director of Leadership and Accountability, self-identified as “the administrative official responsible for the implementation of the *Williams* Case mandate legislation.” The Hodges declaration describes costs greater than \$1,000 incurred pursuant to a number of programs within the test claim statutes.⁶⁵ In *Williams II* and *III*, San Diego proffered the declaration of Charmaine Lawson, “Coordinator, District and School Improvement, *Williams* Settlement Coordination, San Diego County Office of Education.” The Lawson declarations each allege costs in excess of \$1,000 pursuant to amendments made to the *Williams* implementing legislation.⁶⁶

Claimant Sweetwater Union High School District filed in *Williams I* a declaration by Ernest Anastos, Area Superintendent. The Anastos declaration describes costs greater than \$1,000 incurred pursuant to programs of the test claim statutes.⁶⁷ In *Williams II* and *III*, Sweetwater advanced the declaration of Karen Janney, Assistant Superintendent for Academic Growth and Development with Sweetwater Union High School District. The Janney declarations allege costs exceeding \$1,000 pursuant to amendments to the test claim statutes made in *Williams II* and *III*.⁶⁸

Claimants filed comments on the draft staff analysis and proposed statement of decision, in which claimants argue that participation in the Emergency Repair Program is practically compelled, and that the requirement to maintain facilities in good repair is a reimbursable state mandate.

⁶³ Statutes 2007, chapter 526, section 3 (AB 347).

⁶⁴ Statutes 2007, chapter 526, sections 4;4.5 (AB 347).

⁶⁵ Exhibit A, Test Claim I, Declaration of Elaine Hodges, pp. 1; 11-13.

⁶⁶ Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 2; 9-11. Exhibit C, Test Claim III, Declaration of Charmaine Lawson, pp. 4-6.

⁶⁷ Exhibit A, Test Claim I, Declaration of Ernest Anastos, pp. 21-27.

⁶⁸ Exhibit B, Test Claim II, Declaration of Karen Janney, p. 13. Exhibit C, Test Claim III, Declaration of Karen Janney, pp. 3-5.

B. Department of Finance Position

DOF argues that none of the statutes alleged impose reimbursable state-mandated costs. DOF holds generally that the activities required by the test claim statutes are either not mandatory, not new, or do not result in increased costs mandated by the state within the meaning of Government Code section 17514. DOF relies, alternatively, on *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, for the issue of voluntarily assumed costs; on section 17556(e) for the issue of no costs mandated by the state; and on section 17556(f) for costs imposed by a voter-enacted ballot initiative.

DOF's comments on the draft staff analysis and proposed statement of decision focus on the county superintendents' oversight and monitoring responsibilities; the School Accountability Report Cards; the *Williams* complaint process, and the review of audits and audit exceptions. DOF asserts the statutory changes to these programs do not mandate a new program or higher level of service because the SARC requirements are necessary to implement a voter initiative; the *Williams* complaint process is not new; and, the audit requirements are either not new or are triggered by the discretionary decision of the local agency.

C. Office of Public School Construction Position

The Office of Public School Construction (OPSC), in comments dealing primarily with facilities funding issues (mainly the School Facilities Needs Assessment Grant Program under sections 17592.70 and 17592.73, the School Facilities Emergency Repair Program under sections 17592.72 and 17592.73, and the definition of "good repair" under sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089), asserts that the test claim does not allege reimbursable state-mandated costs, both because the activities required are conditional upon participation in voluntary facilities funding programs, and because the activities involved in the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Program are funded by specific appropriations.

OPSC further asserts that school districts cannot allege costs mandated by the state under Government Code section 17556(d) because the districts have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.⁶⁹

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service.⁷⁰

The purpose of article XIII B, section 6 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

⁶⁹ Exhibit E, Comments filed by Office of Public School Construction, *Williams I*, p. 2.

⁷⁰ California Constitution, Article XIII B, Section 6 (Adopted Nov. 6, 1979).

articles XIII A and XIII B impose.”⁷¹ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁷²

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁷³
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁷⁴
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁷⁵
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁷⁶

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 6.⁷⁷ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁷⁸ 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.”⁷⁹

The above framework will be applied, as appropriate, in sections (A.) through (H.), below, in order to analyze the eight programs pled in this test claim.

⁷¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁷³ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified)* (2004) 33 Cal.4th 859, 874.

⁷⁴ *Id.* (reaffirming test set out in *County of Los Angeles, supra*, (1987) 43 Cal.3d 46, 56.)

⁷⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁷⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁷⁷ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

⁷⁸ *County of San Diego, supra*, 15 Cal.4th 68, 109.

⁷⁹ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

A. The School Facilities Needs Assessment Grant Program Does Not Impose a State-Mandated Program.⁸⁰

The School Facilities Needs Assessment Grant Program is added by Statutes 2004, chapter 899 (SB 6), “for the purpose of awarding grants to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, as specified, to conduct a one-time comprehensive assessment of school facilities needs, as provided.”⁸¹

Section 17592.70 provides:

- “There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive needs assessment of school facilities needs.”
- “The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index...based on the 2003 base Academic Performance Index score.”
- The SAB “shall allocate funds... to school districts with jurisdiction over eligible schoolsites” at a rate of \$10 per pupil in a qualifying school, with a minimum allocation of \$7,500 for a single schoolsite.
- School districts are required, *as a condition of receiving funds*, to use the funds to develop a comprehensive needs assessment of all eligible schools, which must contain:
 - information regarding the age and condition of school facilities;
 - capacity and number of pupils actually enrolled;
 - number of classrooms and portable classrooms;
 - type of calendar or scheduling of the school;
 - whether the school has a cafeteria or auditorium not used for instruction;
 - useful life remaining in all major building systems;
 - estimated cost to maintain functionality of instructional spaces for five years; and,
 - a list of necessary repairs.
- School districts are also required, as a condition of receiving funds, to:
 - use the assessment as a baseline for the facilities inspection system;
 - provide the results of the assessment to the OPSC;
 - use remaining grant funds for repairs identified in the needs assessment; and,

⁸⁰ Education Code sections 17592.70; 17592.73 (Stats. 2004, ch. 899, § 1 (SB 6)); Title 2, California Code of Regulations, sections 1859.300-1859.319 (Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51); Certification of Eligibility; Needs Assessment Report; Needs Assessment Report Worksheet; Expenditure Report; Web-Based Progress Report; Web-Based Needs Assessment.

⁸¹ Legislative Counsel’s Digest, Statutes 2004, chapter 899 (SB 6).

- submit to the OPSC an interim report detailing progress made by the district in completing the assessments.⁸²

The statute provides that the SAB “shall... adopt regulations...for the administration of this article.”⁸³ Those regulations were adopted at Title 2, California Code of Regulations, sections 1859.300-1859.319; which sections lay out the technical requirements of the program, including eligibility requirements, use of the grant funds, and reporting requirements.

- Section 1859.310 of the Title 2 regulations requires that a school site that qualifies for the School Facilities Needs Assessment Grant Program (an API deciles 1-3 school constructed prior to January 1, 2000) *shall be allocated* funds by the SAB in order to conduct a one-time comprehensive school facilities needs assessment and *shall be required* to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of section 1859.311.
- Section 1859.311 provides that a school is eligible for the School Facilities Needs Assessment Grant Program if it is identified on the list of deciles 1 to 3 schools published by the CDE pursuant to section 17592.70, and was newly constructed prior to January 1, 2000.
- Section 1859.312 provides that the SAB “shall allocate ten dollars per Pupil enrolled...for each school site identified by the California Department of Education [as being ranked in deciles 1 to 3]. Once an Apportionment has been made by the SAB and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the schools site(s)...Apportionments shall be reduced by the grant amount allocated of ineligible school sites upon receipt of the Certification of Eligibility.”
- Section 1859.302 defines the “Certification of Eligibility” as “the on-line worksheet provided by the OPSC...for the purpose of a one-time determination of whether a school site meets the provisions of section 1859.311(b) [newly constructed prior to January 1, 2000].”
- Section 1859.313 specifies the use of the Needs Assessment Grant Funds, including unbudgeted administrative or third party costs incurred by completing the assessments.
- Sections 1859.314 and 1859.315 provide the requirements for conducting the assessments.⁸⁴

LEAs complete a Certification of Eligibility to report which schools in their district were constructed after January, 2000, and thereby receive funds for those schools eligible under the criteria of both sections 1859.311(a) and (b). The Needs Assessment Report, and the Needs Assessment Report Worksheet are required, “as a condition of receiving funds,” to complete the one-time comprehensive assessments of school facilities needs. The Expenditure Report is a

⁸² Education Code section 17592.70(a-d) (Stats. of 2004, ch. 899 § 1 (SB 6)).

⁸³ Education Code section 17592.73(a)(1) (Stats. 2004, ch. 899 § 1 (SB 6)).

⁸⁴ Title 2, California Code of Regulations, sections 1859.300-1859.319 (Register 2005, No. 22; Register 2005, No. 45).

conditional requirement of receiving funds under the School Facilities Needs Assessment Grant Program, requiring reporting of the use of grant funds. The Web-based Progress Report and Web-based Needs Assessment are also required, “as a condition of receiving funds” under the School Facilities Needs Assessment Grant Program, as a means to complete the one-time comprehensive assessments of school facilities needs.

The claimants contend that newly added Education Code section 17592.70, the regulations issued pursuant to the section, and the forms issued by SAB impose a state-mandated new program or higher level of service, and that the claimants should be entitled to reimbursement for the activities required.⁸⁵

For the following reasons, the Commission finds that Education Code section 17592.70, the regulations that implement that section, and the alleged executive orders issued by SAB do not impose a reimbursable state-mandated program.

In *City of Merced v. State of California*, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill, pursuant to exercising the power of eminent domain to take the underlying property. The Board of Control (predecessor to the Commission) determined that the requirements of the eminent domain statute imposed a reimbursable mandate, but the court of appeal concluded that the exercise of the eminent domain power was a discretionary act, and that therefore no activities were mandated.⁸⁶ In accord is *Department of Finance v. Commission on State Mandates (Kern)*, in which a state statute required districts maintaining school site councils to comply with the state’s open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public. The court recognized that the notice and hearing requirements could be found to generate activities not previously required, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated. The California Supreme Court reaffirmed *City of Merced*, and held that where activities alleged are conditional upon participation in another or an underlying voluntary or discretionary program, or upon the taking of discretionary action, there can be no finding of a mandate. The court in *Kern* stated the rule that where a local government entity voluntarily undertakes to participate in a program, the legislature may attach reasonable conditions to participation in that program without giving rise to reimbursable state-mandated activities.⁸⁷

Here, the one-time comprehensive Needs Assessments provided for under the statute, as well as all of the SAB forms that must be completed, are downstream requirements, conditional upon receiving funding under the School Facilities Needs Assessment Grant Program. The regulations and statutes provide that the SAB is required to allocate funds to the districts for the number of pupils enrolled in schools ranked in deciles 1 to 3 of the 2003 base API, based on the list published by the CDE. Because the CDE did not have at its disposal the construction dates of all schools, “the SAB apportioned funds to all schools meeting the API criteria.” Then, “[p]rior to release of funds, LEAs had to submit a worksheet to the OPSC to determine whether or not each

⁸⁵ See Exhibit A, Test Claim I, pp. 4-6.

⁸⁶ *City of Merced v. State of California* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777.

⁸⁷ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, 743.

of the decile 1 through 3 schools under their jurisdiction was newly constructed prior to January 1, 2000.” Schools constructed after that date are ineligible under the statute, even if they are ranked in deciles 1 to 3, and “any funds apportioned for an ineligible school will not be released.”⁸⁸ The funding is released to the school districts only upon completion of a Certification of Eligibility, showing that the schools in question are older than January 2000; the form thus determines whether and for which of the deciles 1 to 3 schools the funds will be released.⁸⁹ Then, once the funds are released, the other requirements of conducting the assessment, as provided above, become effective. Therefore, as in *Kern*, the activities required under the test claim statute are conditional upon participation in the underlying funded program: the Certification of Eligibility is a prerequisite to receiving funds, and the one-time comprehensive needs assessments, along with all other later requirements, are conditional upon that receipt of funds.

Moreover, the School Facilities Needs Assessment Grant Program is funded, in section 4 of SB 6, by a targeted appropriation of \$25 million.⁹⁰ Section 1859.313 of Title 2 of the Code of Regulations provides for the use of funds for “unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment,” meaning that even ancillary costs of conducting the one-time assessments are funded by the appropriation in SB 6. Section 1859.312 provides for an allocation of not less than \$7,500 per eligible schoolsite. There is no evidence in the record that costs pursuant to the test claim statutes exceed the funding provided.

The Commission finds that Education Code sections 17592.70 and 17592.73, as added by Statutes 2004, chapter 899, regulations established there under at Title 2, sections 1859.300 through 1859.319, and the forms listed above do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. The School Facilities Emergency Repair Account Does Not Impose a State-Mandated Program.⁹¹

⁸⁸ See Education Code section 17592.70(b); California Code of Regulations, Title 2, sections 1859.311(a); 1859.312 (Register 2005, No. 22; Register 2005, No. 45). See also, Report on the Progress of the School Facility Needs Assessments Required by the *Williams* Settlement: Report to the Governor and Legislature, June 2005, prepared by the State Allocation Board and the Office of Public School Construction, at p. 3. Available at: http://www.documents.dgs.ca.gov/opsc/SAB_Agenda_Items/Archives/2005/Jun22.pdf

⁸⁹ See Certification of Eligibility, SAB forms, at: http://www.documents.dgs.ca.gov/opsc/Regulations/SFNAGP-ERP_Proposed/Jan_SAB/Cert_of_Eligibility.pdf [directs the LEA to list ineligible schools, for which funding will be withheld and no comprehensive needs assessment will be required].

⁹⁰ Statutes of 2004, chapter 899, section 4

⁹¹ Education Code sections 17592.71-17592.73 (added, Stats. 2004, ch. 899 § 1 (SB 6)); Education Code section 17592.72 (as amended Stats. 2006, ch. 704 § 6 (AB 607)); Title 2, California Code of Regulations, sections 1859.320-1859.329 (filed 5/31/2005; amended 7/2/2007); State Allocation Board forms SAB 61-03 (Application for Reimbursement and Expenditure Report); SAB 61-01 (School Facilities Needs Assessment).

The School Facilities Emergency Repair Account was established by section 17592.72 of the Education Code, as added by chapter 899 of Statutes 2004 (SB 6), “to be administered by the [SAB], for the purpose of reimbursing school districts...for emergency facilities repairs, as provided.”⁹² The account was to be funded each year from unexpended Proposition 98 funds until \$800 million dollars had been disbursed for repairs. The funds in the account were made available “for reimbursement to schools ranked in deciles 1 to 3, inclusive,” of the 2003 base API, in order to satisfy repair costs of projects described as “emergency” needs. The SAB was given authority to adopt implementing regulations, and did so at Title 2, sections 1859.320 through 1859.329.⁹³ The School Facilities Emergency Repair Program provides:

- All moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3...based on the 2003 base API.
- “It is the intent of the Legislature that” school districts exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid emergency repairs.
- Funds made available pursuant to this article shall supplement, not supplant, existing funding made available for maintenance of school facilities.
- The SAB is authorized to deny funding to a school district if it detects a pattern of failing to “exercise due diligence” in making necessary repairs before facilities required emergency repairs.
- School districts are prohibited from using the Emergency Repair Account funds for cosmetic or nonessential repairs: “emergency facilities needs” includes “structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school.”
- School districts are permitted to replace components or structures only if more cost effective than repair.⁹⁴

In order to receive funding from the School Facilities Emergency Repair Account, LEAs must comply with the regulatory requirements promulgated by the SAB at Title 2, California Code of Regulations, section 1859.320 *et seq.* Those regulations provide:

- “An LEA seeking Emergency Repair Program Grant for reimbursement of costs...shall complete and file a form SAB 61-01 with the OPSC.”
- “An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:
 - (a) The school was identified on the list published by the CDE pursuant to [Education Code section] 17592.70(b).

⁹² Legislative Counsel’s Digest, Statutes 2004, chapter 899 (SB 6).

⁹³ Education Code section 17592.73(a) (Stats. 2004, ch. 899 § 1 (SB 6)); California Code of Regulations, Title 2, sections 1859.320-1859.329 (Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51).

⁹⁴ Education Code section 17592.70(b-d) (Stats. 2004, ch. 899 § 1 (SB 6)).

(b) The school was newly constructed prior to January 1, 2000.”⁹⁵

AB 607, enacted in Statutes of 2006, chapter 704, changed the “reimbursement” language of section 17592.72 above to reflect a forward-looking “grant” program. The new section provides:

- “Commencing with the 2006-2007 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for *the purpose of providing emergency repair grants* to schools ranked in deciles 1 to 3.”
- The SAB shall establish a grant application process, grant parameters, substantial progress requirements, and a process for certifying the completion of projects.
- The SAB shall post the grant application on its Internet Web site.

The SAB in turn amended the applicable regulations, sections 1859.320-1859.329, to reflect grant “funding,” rather than grant “reimbursement.”⁹⁶ The new regulation section provides that “[a]n LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems...shall submit to the OPSC a completed Form SAB 61-03.”⁹⁷ This language change, however, *did not change*, substantively, the process of applying for funding, or the eligibility requirements.

For the following reasons, the Commission finds that Education Code sections 17592.71-17592.73, the regulations that implement those sections, and the alleged executive orders issued by SAB do not impose a reimbursable state-mandated program.

1. School Districts are not *legally compelled* to participate in the Emergency Repair Program or to seek funding from the Emergency Repair Account.

The court in *Kern, supra*, stated the rule that where a local government entity voluntarily undertakes to participate in a program, the legislature may attach reasonable conditions to participation in that program without giving rise to reimbursable state-mandated activities.⁹⁸

Here, the regulatory requirements described above, as well as the actual repairs or replacements undertaken by the school districts, operate conditionally upon the receipt of funding, or as a prerequisite to the receipt of funding, but are not, of themselves, mandated activities. All requirements alleged with respect to the School Facilities Emergency Repair Account are incidental to or conditional upon participation in this voluntary program. For example, school districts, in order to receive program funds, must file a form with the SAB documenting repairs made or to be made, and must comply with the regulations promulgated by the SAB. Filing

⁹⁵ California Code of Regulations, Title 2, section 1859.320 et seq. (Register 2005, No. 22; Register 2005, No. 45).

⁹⁶ See, e.g., California Code of Regulations, Title 2, section 1859.320 (Register 2005, No. 22; Register 2005, No. 45) [“An LEA seeking an Emergency Repair Program Grant for *reimbursement* of cost for repairs or replacement...”]; California Code of Regulations, Title 2, section 1859.320 (Register 2007, No. 27; Register 2007, No. 51) [“An LEA seeking an ERP Grant for *funding* of costs for repairs or replacement...”].

⁹⁷ California Code of Regulations, Title 2, section 1859.320 (Register 2007, No. 27; Register 2007, No. 51).

⁹⁸ *Kern, supra*, (2003) 30 Cal.4th 727, 743.

form SAB 61-03 is an activity prerequisite to obtaining funds under a voluntary program. Similarly, using the Emergency Repair Account funds to conduct emergency repairs is a requirement of receiving the funds; but in both cases the underlying program by which the funds are received is voluntary.

Nothing in the plain language of the statute requires LEAs to seek funding from the Emergency Repair Account. The language of the test claim statutes makes clear that emergency repair funds are “made available” to school districts for reimbursement of repair costs; and the implementing regulations refer to an “LEA *seeking* an Emergency Repair Program Grant,” and districts being “*eligible* to submit” an “*application*” for funding.⁹⁹ School districts are and have at all times been free to raise or apply their own funds, rather than seeking construction, repair, or replacement costs from the state.¹⁰⁰ School districts are not legally compelled to participate in the Emergency Repair Program, or seek funds from the Emergency Repair Account.

2. There is no evidence in the record that school districts are *practically compelled* to participate in the Emergency Repair Program or to seek funding from the Emergency Repair Account.

The school district plaintiffs in *Kern, supra*, urged the court to define “state mandate” broadly to include situations where participation in the program is *practically* compelled; where the absence of a reasonable alternative to participation creates a “de facto” mandate.¹⁰¹ Although the court in *Kern* declined to apply the reasoning of *City of Sacramento*, the court stated:

[W]e do 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.

The court in *Kern* found that the facts before it failed to amount to a “de facto” mandate, since a school district that elected to discontinue participation in one of the educational funding programs at issue did not face “certain and severe” penalties such as “double ... taxation” or other “draconian” consequences, but simply must adjust to the loss of program funding.¹⁰²

In this case, the claimants argue that the Emergency Repair Account creates a state-mandated program for the following reasons:

Claimants contend school districts are both legally and practically compelled to perform emergency repairs based on the constitutional and statutory duty to provide facilities that are safe for students, staff and the general public occupying the facilities. Other than the School Facilities Emergency Repair Program, local government entities are provided with “no reasonable alternative” and “no true

⁹⁹ California Code of Regulations, Title 2, sections 1859.320-1859.322 (Register 2005, No. 22; Register 2005, No. 45) [emphasis added].

¹⁰⁰ See Statement of Decision, *School Facilities Funding Requirements* (02-TC-30; 02-TC-43; 09-TC-01) pp. 43-53 [providing analysis of School Facilities Funding programs, and concluding that school districts are not compelled to seek state funding to construct or repair facilities].

¹⁰¹ *Kern, supra*, 30 Cal.4th 727, 748.

¹⁰² *Kern, supra*, 30 Cal.4th 727, 752.

choice but to participate” in the program, and incur the additional costs associated with an increased or higher level of service. Denying the test claim based on a lack of sufficient evidence, that seeking emergency repair program funds “is not the only reasonable means to carry out [school districts’] core mandatory functions” fails to comply with reasonable interpretation of statutory and case law.

Practical compulsion this does not mean void of any choice, rather a more reasonable standard, feasible and more suitable for the particular purpose [*sic*]. “Practical” compulsion must mean something less than legal compulsion, some element of discretion, for example a financially-strapped school district to use state funds instead of local funds [*sic*].¹⁰³

The claimants’ argument, though asserting both legal and practical compulsion, rests primarily on the issue of practical compulsion. As discussed above, there is no legal requirement that school districts seek funding from the state to conduct emergency repairs. While it might be argued that a preexisting constitutional and statutory duty to keep students and staff safe while at school could give rise to a *duty to make emergency repairs*, such duty, even if granted, does not constitute practical compulsion *to seek funds from the Emergency Repair Program*. Moreover, as explained below, that line of reasoning is entirely hypothetical; potential civil liability cannot reasonably be said to constitute “practical compulsion” within the meaning of article XIII B, section 6 of the California Constitution.

The theory of “practical compulsion” traces its origin to *City of Sacramento v. State*, (1990) 50 Cal.3d 51. In *City of Sacramento*, the California Supreme Court held that where a failure to participate in a federal program would result in “certain and severe” penalties, that federal program is mandated. In that case the federal law at issue required certain changes to California’s unemployment taxation system, and the court found that “[i]f California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty – full, double unemployment taxation by both state and federal governments.” The court held that those penalties resulted in a federal mandate because “[t]he alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.”¹⁰⁴ This analysis essentially concluded that the “certain and severe” penalties, including, “full, double unemployment taxation,” resulted in a “de facto” federal mandate, which in turn superseded the state mandates claim.

In *Kern, supra*, the California Supreme Court adapted the analysis of a federal mandate in *City of Sacramento* in order to analyze the question whether claimants were subject to a “de facto” state mandate. The court recognized the possibility that some set of facts would constitute practical compulsion, while rejecting the claimants’ assertions of a de facto mandate in the particular case. The court held that open meeting requirements applied to school site councils established under existing funded programs did not constitute practical compulsion, where there was no compulsion to maintain the school site councils in the first instance. Furthermore, the claimants in *Kern* asserted that they “had ‘no true option or choice’ but to participate in the various

¹⁰³ Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012.

¹⁰⁴ *City of Sacramento v. State* (1990) 50 Cal.3d 51, at p. 74.

programs here at issue, and hence to incur the various costs of compliance, and that the absence of a reasonable alternative to participating is a de facto [reimbursable state] mandate.”¹⁰⁵ The court found, on the contrary, that “school districts are, and have been, free to determine whether to (i) continue to participate and receive program funding... or (ii) decline to participate in the funded program.”¹⁰⁶ Finally, in *Kern*, the court observed that “the costs associated with the ...requirements at issued in this case appear rather modest.” And, the court held, “the parties have not cited, nor have we found, anything in the governing statutes or regulations, or in the record, to suggest that a school district is precluded from using a portion of the program funds obtained from the state to pay associated notice and agenda costs.”¹⁰⁷

In *San Diego Unified School District v. Commission on State Mandates* (2004) 22 Cal.4th 859, the court addressed due process requirements imposed on school districts, triggered by expulsion proceedings, both mandatory and discretionary. While deciding the case on federal mandate grounds, the court discussed whether to extend the analysis of *Kern*, and others, to hold that because school districts exercised discretion in initiating expulsion proceedings, the mandatory due process requirements should not be considered a reimbursable state-mandated activity. The court declined to extend the rule, agreeing with the school district claimant that “although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.”¹⁰⁸ Ultimately, however, the due process requirements were held to be implementing federal law, and therefore not reimbursable, and San Diego Unified, hence, does not rely on the court’s examination of the practical compulsion issues.

The court of appeal addressed the issue of practical compulsion again in *Department of Finance v. Commission on State Mandates (POBRA)*, (Cal. Ct. App. 3d Dist. 2009) 170 Cal.App.4th 1355, in which the Commission had approved reimbursement for costs associated with the Public Safety Officers Procedural Bill of Rights Act, as applied to school districts and special districts that employed peace officers. The court considered the leading cases on the issue of practical compulsion, and determined that school districts were “authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function.” Therefore, the procedural protections mandated under the Public Safety Officers’ Procedural Bill of Rights Act were “prima facie reimbursable” as to cities, counties, and other local government entities, for whom provision of police protection is an essential service. But the statute was held not reimbursable as to the school district claimants. The court rejected the Commission’s view, finding “nothing in this record to show that the school and special districts in issue are practically compelled to hire peace officers.” The court held that practical compulsion to hire peace officers, and thus to incur the costs associated with the Procedural Bill of Rights Act, could not be found “unless there is a showing that, as a practical

¹⁰⁵ *Kern, supra*, at p. 752.

¹⁰⁶ *Id.*, at p. 753.

¹⁰⁷ *Id.*, at p. 752.

¹⁰⁸ *San Diego Unified, supra*, 22 Cal.4th at p. 887.

matter, exercising the authority to hire peace officers is the *only reasonable means to carry out their core mandatory functions.*”¹⁰⁹

Here, claimants have not provided any evidence of practical compulsion, either to make emergency repairs or to participate in the Emergency Repair Program.

There are no “certain and severe” penalties found in the applicable statutes, to be applied if a school district chooses not to participate in the Emergency Repair Program. There is no provision for “double...taxation,” or other “draconian” consequences.¹¹⁰ Neither, in fact, is there any evidence that a renewed lawsuit would be successful. The *Williams* class action was settled before ever being fully tested, and it is uncertain what the outcome would be of a renewed suit against school districts for failing to maintain facilities.

The claimants have borrowed from the language of *Kern*, asserting that “[o]ther than the School Facilities Emergency Repair Program, local government entities are provided with ‘no reasonable alternative’ and ‘no true choice but to participate’”¹¹¹ But the claimants have put forward no evidence, other than naked assertion, that there is no reasonable alternative. In *POBRA*, the court insisted on *evidence in the record* to support a Commission finding of practical compulsion, that “exercising the authority [given under the statute at issue] is the only reasonable means to carry out their core mandatory functions.”¹¹² While it might be persuasively argued that providing safe school facilities is one of the “core mandatory functions” of a school district, there is no evidence that the Emergency Repair Program is the only reasonable means by which to do so. Moreover, the statute itself contemplates, and in fact requires, for program participants, that school districts exercise due diligence in ordinary, ongoing repairs, and in the conduct of deferred maintenance, to avoid the occurrence of emergency repairs; the statute also expressly forbids the use of emergency repair funds to supplant existing sources of maintenance funds.¹¹³

Furthermore, “school districts are, and have been, free to determine whether to (i) continue to participate and receive program funding... or (ii) decline to participate in the funded program,” just as in *Kern, supra*.¹¹⁴ There is no language in the enactment or amendments of the Emergency Repair Program that makes participation mandatory. Neither is there any language in the statute that prevents school districts from applying other funds to the needs of their facilities. And, whatever the school districts’ duties to maintain their facilities before the institution of the Emergency Repair Program, there is no evidence that, after the program became available to fund emergency repairs, it was, or is, the only reasonable means by which to do so.

¹⁰⁹ *Department of Finance v. Commission on State Mandates (POBRA)* (Cal. Ct. App. 3d Dist. 2009) 170 Cal.App.4th 1355, 1366-1368 [emphasis added].

¹¹⁰ See *City of Sacramento, supra*, at p. 74.

¹¹¹ Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012; *Kern, supra*, at p. 752.

¹¹² *POBRA, supra*, 170 Cal.App.4th 1355, at p. 1368.

¹¹³ Education Code section 17592.70(b-d) (Stats. 2004, ch. 899 § 1 (SB 6)).

¹¹⁴ *Id.*, at p. 753.

In conclusion, even if claimants could show some evidence of practical compulsion to participate in the program, the Emergency Repair Program is a funded grant program, and therefore not reimbursable. Consequently the only increased costs that might reasonably be asserted under a practical compulsion theory are the incidental costs of applying for grant funds. Those application costs are clearly provided for in the regulations, as amended in 2007,¹¹⁵ and are not expressly made ineligible expenditures in the earlier regulations, adopted in 2005.¹¹⁶ Moreover, there is no evidence that the application and submittal costs are, in the usual case, anything more than “rather modest:” the regulations on point suggest that up to two percent of project costs may be expended on the costs of applying for grant funds, and there is no evidence that such limitation renders the funding insufficient.

For the foregoing reasons, the Commission finds no evidence of practical compulsion, and no evidence of increased costs mandated by the state.

3. The test claim alleges activities not required by the plain language of the statute.

Several elements of the Emergency Repair Account program, aside from being voluntarily entered into, are also not strictly susceptible of an interpretation that creates an activity. For example, paragraph (2) of subdivision (b) states that “[f]unds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities.” This statement might be considered a limitation or caveat on the funds available, but it does not specifically impose any mandated activities. Likewise, the statute expresses “the intent of the Legislature” that school districts will exercise due diligence in the administration of deferred and regular maintenance in order to prevent the need for emergency repairs.¹¹⁷ There is no specific activity mandated by the Legislature’s expressed intent.

4. Conclusion

For the foregoing reasons the Commission finds that the activities alleged under the Emergency Repair Program, sections 17592.71, 17592.72 and 17592.73 of the Education Code, regulations there under found at sections 1859.320-1859.329 of California Code of Regulations, Title 2, and

¹¹⁵ California Code of Regulations, Title 2, section 1859.323 (Register 2007, No. 27) [“Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j).”]; Code of Regulations, Title 2, section 1859.323.2 (Register 2007, No. 27) [ERP grant may not be used for... “(j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or \$5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1.”]

¹¹⁶ California Code of Regulations, Title 2, section 1859.323 (Register 2005, No. 22) [“Reimbursement of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard.”] section 1859.323.2 [no listing of application preparation and submittal costs as “Ineligible Expenditures.”]

¹¹⁷ Education Code section 17592.72(b) (added by Stats. 2004, ch. 899 (SB 6)).

the Application for Reimbursement and Expenditure Report, form SAB 61-03, do not impose a state-mandated program .

C. County Superintendents’ Oversight and Monitoring Duties Do Not Impose Costs Mandated By the State Upon County Offices of Education, Within the Meaning of Section 17514 of the Government Code. However, Section 42127.6 Does Impose a Reimbursable State-Mandated Program Upon School Districts, Within the Meaning of Article XIII B, Section 6.⁻¹¹⁸

This section analyzes the duties of the county superintendent under Education Code sections 1240(c) and (i); and sections 42127.6; 44258.9; 1242; and 1242.5.

1. Section 1240(c) mandates a new program or higher level of service to the extent that funding is provided for county superintendent site visits.

Education Code section 1240(c), as amended in Statutes 2004, chapter 900 (SB 550), expanded and made more explicit the duties of county superintendents with respect to oversight of schools within their jurisdiction. Prior law required the county superintendent to “[v]isit and examine each school in his or her county at reasonable intervals to observe its operation and learn of its problems.” Prior law also provided that the superintendent “*may* annually present a report of the state of the schools” to the board of education and the board of supervisors.¹¹⁹ Those provisions survived the amendments involved in this test claim in paragraph (1) of section 1240(c).

As amended by Statutes 2004, chapter 900 (SB 550), section 1240(c)(2) now provides that the superintendent, “[t]o the extent that funds are appropriated for purposes of this paragraph”:

- “[S]hall annually present a report” to the governing board of each school district, the county board of education, and the county board of supervisors;
- That report must include the superintendent’s observations while visiting the schools in his or her district ranked in deciles 1 to 3 of the 2003 base API, and must generally describe the state of the deciles 1-3 schools;¹²⁰
- The priority objectives of the schoolsite visits, and the reports, are to determine: (i) the sufficiency of textbooks as defined in section 60119; (ii) the condition of a facility which may pose an emergency or urgent threat to students or staff; and (iii) the accuracy of the information reported on the school accountability report card, including the availability of sufficient textbooks and instructional materials, and the safety, cleanliness, and adequacy of school facilities, including good repair as defined in the code;¹²¹

¹¹⁸ Education Code section 1240 (amended by Stats. 2004, ch. 900 § 1 (SB 550); Stats. 2005, ch. 118 § 1 (AB 831); Stats. 2006, ch. 704 § 1 (AB 607); Stats. 2007, ch. 526 § 1 (AB 347)); section 1242 (added by Stats. 2006, ch. 704 § 2 (AB 607)); section 1242.5 (added by Stats. 2006, ch. 704 § 3 (AB 607)); section 42127.6 (amended by Stats. 2004, ch. 902 § 1 (AB 3001)); section 44258.9 (amended by Stats. 2004, ch. 902 § 3 (AB 3001); Stats. 2005, ch. 118 § 9 (AB 831)).

¹¹⁹ Education Code section 1240(c) (Stats. 2001, ch. 620, § 1 (AB 139)).

¹²⁰ Education Code section 1240(c)(2)(A) (Stats. 2004, ch. 900, § 1 (SB 550)).

¹²¹ Education Code section 1240(c)(2)(E) (Stats. 2004, ch. 900 § 1 (SB 550)) [substantially unchanged by Stats. 2005, ch. 118 and Stats. 2006, ch. 704, but renumbered at subparagraph (I)

- Pursuant to the 2007 amendments, the site visits and reports are also meant to determine:
 - “(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first...[and] (v) The extent to which pupils who have elected to receive intensive instruction and services...are being served;”¹²²
- Pursuant to the 2006 amendments, if a county superintendent or his or her designee finds that the condition of a facility “poses an emergency or urgent threat to the health or safety of pupils or staff...or is not in good repair” the county superintendent is authorized, but not required, to take certain actions. The county superintendent “may, among other things, do any of the following:”
 - Return to the school to verify repairs; and,
 - Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent’s visit or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.¹²³

All of the activities under paragraph (2) above fall within the conditional statement, “*to the extent that funds are appropriated for purposes of this paragraph.*” Article XIII B, section 6 requires reimbursement when the Legislature or a state agency “mandates” a new program or higher level of service upon local government. The limiting language here, “to the extent that funds are appropriated,” calls into question whether the activities of paragraph (2) are in fact mandated. Because section 1240 was amended as urgency legislation, there is virtually no legislative history to aid in examining the purpose of this phrase, but as in all cases of statutory construction, the inquiry must begin with the language of the statute, giving words their plain or literal meaning.¹²⁴ “*To the extent that funds are appropriated for purposes of this paragraph*”

in the 2006 amendments, and again renumbered at subparagraph (J) in the 2007 amendments (Stats. 2006, ch. 704 § 1 (AB 607); Stats. 2007, ch. 526 § 1 (AB 347)).]

¹²² Education Code section 1240(c)(2)(J) (Stats. 2007, ch. 526 § 1 (AB 347)). See also section 1240(c)(2)(E) (Stats. 2007, ch. 526 § 1 (AB 347)) [providing freestanding requirement that county superintendent verify students are made aware of availability of intensive instruction services].

¹²³ Education Code section 1240(c)(2)(K) (Stats. 2006, ch. 704 § 1 (AB 607)).

¹²⁴ See Legislative Counsel’s Digest, Statutes 2004, chapter 900 (SB 550) [“This bill would declare that it is to take effect immediately as an urgency statute.”]. See also, Exhibit I, California Jurisprudence, Vol. 58, Statutes, § 92 [citations omitted].

means that the activities alleged are mandated only when funds are provided, and only to the extent that the activities are capable of completion with the funds provided. Stated in the negative, where funds fall short, there is no mandate. In either case, the Commission finds that the mandate lies if and only to the extent funds are appropriated, and if funds are not appropriate, or are reduced, the mandate is limited by the limiting language. The requirements of section 1240(c), pursuant to the amendments alleged in this test claim, are substantially expanded from the requirements provided for under prior law. Given that these activities relate to the monitoring and oversight of schools and school districts (a service to the public), the test claim statute imposes a mandated new program or higher level of service upon the LEAs, under *County of Los Angeles, supra*, but only to the extent that funds are appropriated.

The Commission finds that the required activities described above under paragraph (2) of subdivision (c) constitute a mandated new program or higher level of service, but only to the extent funding is appropriated. However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-266-0001, provides for annual funding of the section 1240 requirements, and claimant has made no showing that those appropriations are insufficient to fund the costs of the mandated activities.

2. Section 1240(i) imposes a state-mandated new program or higher level of service for county superintendents' enforcement of the use of state textbooks.

The requirement that the county superintendent shall enforce the use of state textbooks is mandatory, irrespective of funding, based on the language of subdivision (i). Prior section 1240(i) required the county superintendent to “enforce the use of state textbooks.”¹²⁵ Amended section 1240(i) provides that:

- A county superintendent shall review for textbook sufficiency, at least annually, schools ranked in deciles 1 to 3, by the end of the fourth week of the school year.
- For counties with more than 200 schools ranked in deciles 1 to 3, a superintendent may utilize a combination of onsite visits and written surveys with follow-up site visits in order to meet the fourth week deadline.
- If a county superintendent determines that a school does not have sufficient textbooks or instructional materials, he or she “shall do all of the following:”
 - prepare a report documenting the instances of noncompliance;
 - provide that report to the district and the Superintendent of Public Instruction;
 - provide the school district with an opportunity to remedy the deficiency, and ensure that it is done within the first two months of the school year; and
 - If the deficiency is not remedied, request the Department of Education to purchase the materials as a loan to the district, to be repaid by agreement with the Superintendent of Public Instruction, or deducted from the next principal apportionment by the Controller.¹²⁶

¹²⁵ Education Code section 1240(i) (Stats. 2001, ch. 620 (AB 139)).

¹²⁶ Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550); Stats. 2005, ch. 118 (AB 831); Stats. 2006, ch. 704 § 1 (AB 607)).

As noted above, unlike the requirements of paragraph (2) of section 1240(c), which are conditional upon funding, the requirements of subdivision (i) are mandatory, irrespective of funding, by the plain language of the section. These requirements are new, and different from the requirements in effect prior to the test claim statutes; and given that the purpose and effect of these requirements is to ensure that students in public schools have sufficient instructional materials early in the school year, the activities provide a service to the public. Furthermore, the requirements of enforcing the use of state textbooks fall uniquely upon county offices of education, a unit of local government.¹²⁷

The Commission finds that the new requirements constitute a state-mandated new program or higher level of service. However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-266-0001, provides for annual funding of the section 1240 requirements, and claimants have made no showing that those appropriations are insufficient to fund the costs of the mandated activities.

3. Section 1240 imposes a state-mandated new program or higher level of service only upon county offices of education, and not school districts.

To the extent that section 1240 creates or expands activities required of LEAs, the section only places such requirements or activities at the feet of the *county superintendent* and certain *state* officials, and does not require any activities of *school districts*.

Claimant Sweetwater Union High School District asserts that section 1240 requires school districts to prepare for and participate in the county superintendents' site visits. Sweetwater claims that it has expended substantial staff time "to prepare the reports and information required by the county office of education for its evaluation of the district's and deciles 1-3 school compliance with *Williams*." Sweetwater also claims that it has spent substantial staff time "to prepare and implement corrective actions, facility repairs, apply for special funding, board action, updating policy and procedures, and other actions in response to the site inspection findings."¹²⁸

None of the activities alleged by Sweetwater are required by the plain language of the statute. The alleged preparation of documentation and reports "required by the county office of education" is exactly that: a requirement of the county office of education. The implementation of corrective action in response to the site inspection findings is also a requirement imposed by the county office of education. In *City of San Jose*, the court held that where a statute authorized, but did not require, a county to charge cities and school districts for the cost of booking persons arrested within those jurisdictions into the county jail, any costs incurred were not imposed by the state, but by another local government entity, and thus were not reimbursable.¹²⁹ Here, the state is not imposing any mandated duties on the school district: the state has given the county office of education certain oversight authority with respect to the school districts, which the school districts allege cause them to incur costs. But where the county may request information or demand remedial action, those activities are mandated by the

¹²⁷ Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550)).

¹²⁸ Exhibit A, Test Claim I, Declaration of Ernest Anastos, p. 26.

¹²⁹ *City of San Jose, supra* (Cal Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, pp. 1816-1817.

county's oversight authority, not by the test claim statute itself. Therefore any costs incurred pursuant to that oversight are imposed by the county, and not by the Legislature.

Alternatively, mandated activities imposed upon the school districts pursuant to the county superintendents' reviews and monitoring may be ascribed to a failure to abide by the conditions and requirements of other pre-existing provisions of the Education Code, and would not be reimbursable, since those requirements are not new. If a school district is required, for example, to take corrective action to remedy an insufficiency of textbooks, or an inaccuracy reported in the school accountability report card, that corrective action is not required by section 1240; it is an existing requirement of the Pupil Textbook and Instructional Materials Incentive Program, or of the School Accountability Report Card, respectively, as those programs are discussed below. The court of appeal in *City of Merced*, discussed above, withheld reimbursement to a local government choosing to incur costs pursuant to its exercise of eminent domain power. And *Kern* upheld and reinforced that ruling, holding that mandated open meeting and agenda costs were not reimbursable where a local educational agency voluntarily entered into programs triggering those required costs. Similarly here, where mandated activities and costs arise due to a failure to abide by the requirements of another code section or program, those requirements, and their resulting costs, are assumed voluntarily under analogy to *Kern* and *City of Merced*, *supra*.¹³⁰

The Commission finds that to the extent that the county superintendent's reviews and monitoring of schools under section 1240 may lead to a district incurring costs, whether from participating in the superintendents' reviews, or from being directed to remedy deficiencies, those costs are imposed by the county office of education, or by the district's failure to comply with other applicable requirements, not by the state. Section 1240 does not impose any *state-mandated* activities or costs upon school districts.

4. Section 42127.6 mandates a new program or higher level of service upon school districts and county offices of education.

Amended section 42127.6 provides as follows:

(a)(1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for

¹³⁰ *City of Merced*, *supra* 153 Cal.App.3d 777, 783; *Kern*, *supra* 30 Cal.4th 727, 743.

the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions and shall do at least one of the following and all actions that are necessary to ensure that the district meets its financial obligations:¹³¹

Section 42127.6(a)(1)(G) added a new option for remedial actions that can be taken by the county superintendent of schools when a school is in fiscal distress. The county superintendent can now assign the Fiscal Crisis and Management Assistance Team (FCMAT) “to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations.” If the FCMAT is assigned, “the district shall follow the recommendations of the team, unless the district shows good cause for failure to do so.”

The requirements imposed on school districts and county offices of education are analyzed below.

School Districts

Claimant, Sweetwater Union High School District, alleges that section 42127.6 requires school districts to provide a copy of any report, study, evaluation or audit which indicates possible fiscal distress, and that if the FCMAT is assigned, a district is required to implement the team’s recommendations or show good cause for failure to do so. Sweetwater also alleges costs incurred or estimated at the district level, related to implementing the FCMAT recommendations “or showing good cause for failure to do so,” in amounts of \$8,828 for fiscal year 2004-2005 and \$9,000 for fiscal year 2005-2006.

DOF submitted written comments on the draft staff analysis, arguing that section 42127.6 does not mandate a new program or higher level of service upon school districts or county offices of education:

County offices of education have a longstanding responsibility, articulated in statutes that have been effective at least since January 1, 1975, to monitor and oversee the school districts within their counties. Education Code section 1240 states, "The county superintendent of schools shall do all of the following: (a) Superintend the schools of his or her county ... " This section must be interpreted to broadly describe the function of a county office of education in relation to the school districts in the county, and it must be interpreted to include a broad range

¹³¹ Education Code section 42127.6(a)(1) (Stats. 2004, ch. 902 (AB 3001)).

of activities related to monitoring and oversight. A narrower interpretation would render the statutory enactment meaningless. This section further states that the county superintendent *shall* visit and examine a school to observe their operations and learn of their problems. For this statute to have meaning, there must be a complementary requirement on the part of school districts to provide the county superintendent with any documents, including the studies, reports, evaluations, and audits included in the test claim legislation, necessary for him to "superintend" the schools in the county.

The test claim statute complements and reinforces this interpretation and simply names specific duties that are part of, not in addition to, the longstanding requirements enumerated in the Education Code. School districts have always had an obligation to provide county superintendents with necessary documents in order for the county superintendent to conduct its oversight responsibilities.¹³²

The Commission finds that section 42127.6(a) mandates a new program or higher level of service on school districts as described below.

Section 42127.6(a) requires school districts to provide copies to the county office of education of any reports, evaluations, or audits commissioned by the district, the county office of education, the Superintendent of Public Instruction, or other state agencies, and that show evidence of fiscal distress, or a report by the County Office Fiscal Crisis and Management Assistance Team, or any regional team created pursuant to section 42127.8. Then, pursuant to the review of the county office of education, if the FCMAT is assigned to review teacher hiring and retention policies, the district is required to implement the recommendations of the team unless it shows good cause for not doing so.

The requirement under section 42127.6 that the district follow the recommendations of the FCMAT unless it can show good cause *does not impose a* mandated new program or higher level of service upon school districts. Under section 42127.6(a)(1)(G) the county superintendent is authorized, but not required, to assign the FCMAT to review a district's hiring and retention policies and make recommendations; just as in *City of San Jose*, where the county was authorized, but not required, to charge cities and school districts for the costs of booking arrestees into the county jail. *City of San Jose* dictates a strict interpretation of article XIII B, section 6, holding that "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions."¹³³ The FCMAT is assigned, if at all, by the county superintendent, not the state, and any increased costs are imposed therefore by the county, not the state. Finally, section 42127.6(a)(1)(G) specifically creates an exception for "good cause," and thus makes clear that it is not strictly *mandatory* to comply with the recommendations of the FCMAT, whatever the source of its authority.¹³⁴ Therefore the Commission finds that section 42127.6(a)(1)(G) does not impose any state-mandated activities or costs upon school districts, as alleged.

¹³² Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

¹³³ *City of San Jose, supra*, (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, pp. 1816-1817.

¹³⁴ Education Code section 42127.6(a)(1)(G) (Stats. 2004, ch. 902, (AB 3001)).

Regarding the remaining requirements of section 42127.6(a), DOF's observation of the existing oversight relationship between the county offices of education and school districts is correct, but the responsibility to "superintend the schools" of the county does not, no matter how broadly interpreted, impose an *affirmative* statutory duty upon school districts to provide copies of reports and studies, as required by the test claim statute. Neither does the obligation on the county superintendent to "visit and examine each school in his or her county at reasonable intervals" equate to a responsibility upon the school districts to disclose, unbidden, any studies or evaluations that betray fiscal difficulties. DOF argues that "[a] narrower interpretation would render the statutory enactment meaningless," but the interpretation that DOF urges implies affirmative duties not found in the plain language of existing law; grounded in nothing more than a general power relationship that exists between counties and school districts. The interpretation that is applied by the Commission, one grounded in the plain language of the test claim statute, does not challenge that relationship; it merely recognizes the affirmative duties on the school districts, newly created by section 42127.6. DOF also argues that "[f]or this statute [section 1240] to have meaning, there must be a complementary requirement on the part of school districts to provide the county superintendent with any documents...necessary for him to 'superintend' the schools," but section 1240 is clearly addressed to the responsibilities and power of the county superintendent, and does not touch on the obligations of school districts.

The prior versions of the code sections to which DOF refers clearly placed the burden on the county superintendent to exercise fiscal oversight. Section 42127.6, prior to SB 550, stated, "[i]f at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years..."¹³⁵ That language places the burden on the county office of education to uncover the fiscal difficulties of the school districts under its supervision. Section 1240, prior to SB 550, only required visits "at reasonable intervals," and again imposed no affirmative responsibility on the school districts to disclose information upon those visits.¹³⁶ DOF imagines a preexisting duty, based on the oversight relationship between school districts and county offices of education, to disclose the type of information now expressly required by the test claim statute. But prior to the enactment of test claim statutes there was no affirmative duty mandated by the state on school districts to provide such information. Moreover, to the extent that school districts might have been obligated to provide documents to the county superintendent when asked, those activities would be mandated by one local government entity as against another, and not mandated by the state.¹³⁷

The requirement that districts "provide the county superintendent of schools with a copy" of reports or studies containing evidence of fiscal distress is a new and more specific requirement than under prior law. And, because the purpose of this requirement is to maintain closer control and oversight of school districts' financial solvency, it provides a higher level of service to the public.

¹³⁵ Statutes 2001, chapter 620, section 3 (AB 139).

¹³⁶ Statutes 2001, chapter 620, section 1 (AB 139).

¹³⁷ See *City of San Jose v. State* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, at p. 1816 [statute permitted, but did not require, county to shift costs of booking arrestees into county jail to cities and other local government entities conducting arrests].

However, there is another portion of DOF's comments regarding section 42127.6 that is persuasive:

A school district makes a decision to commission a study, report, evaluation, or audit at its own discretion. Therefore, any costs to provide a copy of these documents would stem from the district's discretionary activity. Additionally, a school district would already provide a county superintendent with a copy of a study, report, evaluation or audit that was commissioned by that same county superintendent, by the very nature of a report that is "commissioned." Therefore, because they would not result in additional costs, the statutory requirements cannot constitute a reimbursable state mandate.

Two separate, but related issues are raised by this comment. First, under *City of Merced and Kern*, supra, local government is not entitled to reimbursement for required activities that are triggered by discretionary decisions. And second, where an activity that results in increased costs is compelled by another local government entity, that activity is not mandated *by the state*, and therefore is not reimbursable.

In *City of Merced*, supra, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill, pursuant to exercising the power of eminent domain to take the underlying property. The court of appeal concluded that the exercise of the eminent domain power was a discretionary act, and that therefore no activities were mandated.¹³⁸ In accord is *Department of Finance v. Commission on State Mandates (Kern)*, in which a state statute required districts maintaining school site councils to comply with the state's open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated. The court in *Kern* stated the rule that where a local government entity voluntarily undertakes to participate in a program, the Legislature may attach reasonable conditions to that program without giving rise to reimbursable state-mandated activities.¹³⁹

To the extent that studies, reports, evaluations, or audits are "commissioned by the district," solely at its discretion, then to "provide the county superintendent of schools with a copy" of such document would be a conditional requirement of a voluntarily-undertaken activity, and would not be reimbursable under *Kern*, supra. But if a study or report, or an audit, is required by other state or federal law, a district is required to "commission" those activities and is without discretion whether to do so. Therefore, the findings below are qualified, with respect to studies, reports, evaluations or audits that are commissioned at the discretion of the district.

Similarly, reports commissioned by the county superintendent or county office of education, *at their discretion*, would not be reimbursable. Under *City of San Jose*, supra, where the county has the authority, but not the imperative, to commission a study or report, or to direct the school district to commission a study or report, provision of those documents to the county would not be reimbursable, because the county, not the state, is the entity imposing the increased costs.¹⁴⁰

¹³⁸ *City of Merced v. State of California* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777.

¹³⁹ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, 743.

¹⁴⁰ See *City of San Jose*, supra, at Fn 160.

Finally, the amended section also requires school districts to provide copies of “a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8.” Section 42127.8, in turn provides that the County Office Fiscal Crisis and Management Assistance Team, and possible creation of regional teams, are created at the initiative of a 25-member statewide governing board. Any reports by these bodies would therefore be prepared as a result of state action, rather than county action, and would not fall under the *City of San Jose* argument. Thus, the requirement for school districts to provide reports on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team to the county superintendent of schools is mandated by the state.

Therefore the Commission finds that section 42127.6(a)(1) mandates a new program or higher level of service upon school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.

County Offices of Education

Claimant, San Diego COE, alleges that section 42127.6(a)(1) requires the county superintendent to *review and consider studies, reports, evaluations, or audits that contain evidence of school districts being in fiscal distress*, and that this activity results in increased costs. San Diego alleges that county superintendents are required to investigate any such evidence and determine if the school may be unable to meet its financial obligations. San Diego alleges that if that determination is made, a county superintendent is then required to report to the Superintendent of Public Instruction, and take remedial action. San Diego alleges costs incurred under section 42127.6(a)(1) in the form of “[s]taff time to refer the district to the Fiscal Crisis and Management Assistance Team for review and recommendations.”¹⁴¹

As discussed above, section 42127.6 requires the county superintendent to “review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention...are present.” If those findings are made “the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years.” And, “[i]f at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years...he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination.” The county superintendent of schools “shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions.” And the county superintendent “shall do at least one

¹⁴¹ Exhibit A, Test Claim I, Declaration of Elaine Hodges, pp. 8-9; 11-12.

of the following and all actions that are necessary to ensure that the district meets its financial obligations.”¹⁴²

Of those requirements, only “review[ing] and consider[ing] studies, reports, evaluations or audits,” and “investigat[ing] the financial condition of the school district” are newly added by the test claim statute. All other requirements are found in prior law, except that the remedial actions now include the option of assigning the Fiscal Crisis and Management Assistance Team to review teacher hiring and retention practices.¹⁴³

The requirements of section 42127.6(a)(1), with respect to county offices of education, are mandatory by the plain language of the statute: the county superintendent, under amended section 42127.6, “shall review and consider studies, reports, evaluations, or audits of the school district,” and “shall investigate the financial condition of a school district.”

As discussed above with respect to section 1240, and below with respect to section 44258.9, where the county superintendent’s oversight responsibilities are expanded and made more specific by the *Williams* legislation, those oversight responsibilities constitute new activities that fall uniquely on local government, and that provide a higher level of service to the public.

Under prior law, the county office of education had broad oversight authority with respect to the school districts within the county.¹⁴⁴ And under prior section 42127.6, the county office of education was expected to take remedial action if the superintendent determined that a school might be unable to meet its fiscal obligations. The amendments to section 42127.6 in this test claim make the duties of the county office of education much more specific than before. The requirement to review and consider studies and reports turned over by the school districts might have generally been a part of a county superintendent’s due diligence, but now such reports are required by the state to be forwarded by the school districts, and the county superintendent “shall review and consider” them. Additionally, while a duty to “investigate the financial condition of the school district” might have been implied by the general oversight responsibility, it is made more specific by the test claim statute, and made mandatory upon the occurrence of certain conditions. Therefore the test claim statute mandates a new program or higher level of service upon county offices of education with respect to reviewing and considering reports and investigating the financial condition of the districts.

As stated above, claimants have alleged that the taking of remedial action has resulted in state-mandated increased costs. The prior section 42127.6 provided for remedial action “if at any time during the school year the county superintendent of schools determined that a school district may be unable to meet its financial obligations,” but did not provide specifically that the county superintendent shall investigate reports and studies transmitted by the school districts, in order to make such determinations. The prior section also provided that the county superintendent “shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations.”¹⁴⁵ Amendments to the section alleged in this test claim require the county

¹⁴² Education Code section 42127.6(a)(1) (Stats. 2004, ch. 902 (AB 3001)).

¹⁴³ See Education Code section 42127.6 (Stats. 2001, ch. 620 (AB 139)).

¹⁴⁴ See Education Code sections 1240; 42127.6; 41020; 41344.4 [demonstrating oversight relationship between county office of education and school districts].

¹⁴⁵ See Education Code section 42127.6 (Stats. 2001, ch. 620 § 3 (AB 139)).

superintendent to do “*at least one of the following...and all actions that are necessary,*” and provide that one of the possible remedial actions that may be taken is to assign the Fiscal Crisis and Management Assistance Team (FCMAT) to review the district’s teacher hiring and retention policies.¹⁴⁶ The county superintendent is given options under the section as to how to proceed, and therefore the costs alleged “to refer the district to the FCMAT” is not a mandated increased cost, because it is only one of several options. The county superintendent still has the authority to exercise discretion.

In conclusion, the Commission finds that section 42127.6(a)(1) mandates a new program or higher level of service upon LEAs for the following activities:

- For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.
- For county superintendents:
 - Review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present.
 - If these findings are made, investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131.

However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-107-0001, provides for annual funding of *county offices of education*, with respect to the section 42127.6 requirements, and claimants have made no showing that those appropriations are insufficient to fund the costs of the mandated activities. The funding identified does not fund the activities of *school districts* under section 42127.6. Therefore, the activities found to be mandated above are reimbursable *only for school districts*, and not for county offices of education.

5. Education Code section 44258.9, as amended, imposes a state-mandated new program or higher level of service, but only to the extent of funding provided for expanded oversight and monitoring of school districts’ certificated employee assignment practices by county offices of education.

The 2004 amendments to section 44258.9 increased the responsibilities of county superintendents to monitor and review district hiring and assignment practices to minimize the

¹⁴⁶ Education Code section 42127.6(a)(1)(G) (Stats. 2004, ch. 902 § 1 (AB 3001)).

incidence of teacher misassignments and teacher vacancies.¹⁴⁷ Prior section 44258.9 provided that “*to the extent possible and with funds provided for that purpose:*”

Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment based on past experience or other available information.

(B) All other schools on a four-year cycle.¹⁴⁸

The 2004 amendments to section 44258.9 provided that, “*to the extent possible and with funds provided for that purpose,*” county superintendents, in the conduct of their ongoing annual monitoring of school districts’ certificated employee assignment practices “shall give priority to schools ranked in deciles 1 to 3.”¹⁴⁹

And as of the 2005 amendments, section 44258.9 provides that, “*to the extent possible and with funds provided for that purpose,*” county superintendents shall:

- “[A]nnually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies...based on past experience or other available information.”
- “[A]nnually monitor and review schools ranked in deciles 1 to 3” for teacher vacancies and misassignments.¹⁵⁰
- If, pursuant to an annual review, “a school has no teacher misassignments or teacher vacancies,” that school may return to a four-year cycle of review pursuant to subparagraph (C).¹⁵¹
- A county superintendent “shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate...or training...completes the necessary requirements for these certificates or completes the required training.”
- A county superintendent’s annual report must include information on certificated employee assignment practices in schools ranked in deciles 1 to 3, “to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English

¹⁴⁷ Education Code section 44258.9 (Stats. 2004, ch. 902 (AB 3001)).

¹⁴⁸ Education Code section 44258.9 (Stats. 1996, ch. 204 § 12 (AB 3488)).

¹⁴⁹ Education Code section 44258.9(b) (Stats. 2004, ch. 902 § 3 (AB 3001)).

¹⁵⁰ Education Code section 44258.9(b) (Stats. 2005, ch. 118 § 9 (AB 831)).

¹⁵¹ Education Code section 44258.9(b)(1)(B-C) (Stats. 2005, ch. 118 § 9 (AB 831)). See Education Code section 44258.9(b)(1)(B) (Stats. 2007, ch. 730 (SB 132)) [a school may return to the four year cycle after finding no vacancies or misassignments for two consecutive years].

learners the assigned teacher possesses a certificate...or has completed training...or is otherwise authorized by statute.”¹⁵²

Article XIII B, section 6 requires a subvention of funds when the Legislature or a state agency “mandates” a new program or higher level of service upon local government. As discussed above with respect to section 1240(c), the limiting language, “to the extent possible and with funds provided for that purpose,” calls into question whether the activities of section 44258.9 are in fact mandated. Because both AB 3001 and the prior version of section 44258.9 found in AB 3488 were passed as urgency legislation, there is a dearth of legislative history to illuminate the purpose of this phrase; but the plain language may nonetheless be instructive, as above.¹⁵³ The fundamental rule of statutory construction being to give effect to the intent of the Legislature, as in all cases of statutory construction the inquiry must begin with the language of the statute, giving words their plain or literal meaning.¹⁵⁴ “To the extent possible and with funds provided for that purpose” means that the activities provided for are mandated insofar as funds are provided, and only mandated to the extent that the activities are capable of completion with the funds provided. From another perspective, the phrase means that where funds fall short, there is no mandate. In either case, there are mandated activities only if and to the extent that funds are appropriated.

The Commission finds that section 44258.9 mandates a new program or higher level of service upon county offices of education for the activities bulleted above, but only to the extent that funding is provided. If the funding is reduced or discontinued, the activities would no longer be mandated. Here, as discussed below, section 23 of Statutes of 2004, chapter 900, provides for funding of the section 44258.9 requirements and, thus, there are no costs mandated by the state in any event.

6. Sections 1242 and 1242.5 do not impose any state-mandated activities upon local educational agencies.

Section 1242, added in 2006, outlines the manner in which county offices of education should allocate funding appropriated in the 2006 budget for schoolsite visits required under section 1240. Subdivision (a) requires that the county offices allocate for site visits \$2,500 for each elementary school, \$3,500 for each middle or junior high school, and \$5,000 for each high school. Subdivision (b) provides that county offices of education shall receive additional funding for sites in which enrollment is 20 percent greater than the average of all sites for the prior year. The additional funding will be allocated as follows: two dollars and fifty cents for each pupil exceeding a total elementary school enrollment of 856 pupils; three dollars and fifty cents for each pupil exceeding a total middle or junior high school enrollment of 1,427 pupils; and five dollars for each pupil exceeding a total high school enrollment of 2,296 pupils. Subdivision (c) provides that county offices of education responsible for visiting more than 150

¹⁵² Education Code section 44258.9(b-c) (Stats. 2004, ch. 902 § 3 (AB 3001)).

¹⁵³ See Legislative Counsel’s Digest paragraph (44), Statutes 1996, chapter 204 (AB 3488) [“The bill would declare that it is to take effect immediately as an urgency statute.”]. See also, Legislative Counsel’s Digest, Statutes 2004, chapter 902 (AB 3001) [“This bill would declare that it is to take effect immediately as an urgency statute.”]

¹⁵⁴ Exhibit I, California Jurisprudence, Vol. 58, Statutes, §§ 91-92 [citations omitted].

schoolsites shall receive an additional one dollar per pupil for the total enrollment of all sites visited. And subdivision (d) provides that the minimum amount for allocation to a county office of education shall be \$10,000.¹⁵⁵ There are no new activities required by the plain language of this section, and accordingly no specific activities or costs are alleged.¹⁵⁶

New section 1242.5, also added by Statutes of 2006, chapter 704, (AB 607), requires that any funds allocated for schoolsite visits under section 1240, but not expended by county offices of education, “shall revert to the extraordinary cost pool created by chapter 710 of the Statutes of 2005 and shall be available to cover the extraordinary costs incurred by county offices of education” in conducting their schoolsite visits and reviews under section 1240.¹⁵⁷ There are no new activities required of local governments by this provision, and no specific activities or costs are alleged.¹⁵⁸

The Commission finds no mandated activities under sections 1242 and 1242.5.

- 7. Section 42127.6 imposes costs mandated by the state for school districts to forward and provide copies of reports suggesting fiscal distress to county superintendents. However, the activities required by sections 1240(c), 1240(i), 42127.6, and 44258.9 do not impose “costs mandated by the state” on county offices of education, within the meaning of section 17514 of the Government Code.**

Section 1240(c) requires county superintendents to conduct site visits of deciles 1 to 3 schools early in each school year, to determine the sufficiency of textbooks and instructional materials, the condition of facilities, any teacher misassignments or vacancies, and the availability of intensive instruction services to aid students in passing the high school exit examination. Section 1240(i) requires county superintendents to enforce the use of state textbooks and instructional materials, and to determine whether each student has sufficient textbooks or instructional materials by the end of the fourth week of school, and if not, to take remedial action. Section 42127.6 requires school districts to forward copies of studies or reports suggesting fiscal distress to the county office of education, and requires the county superintendent to investigate any such reports, and determine whether a school district may be unable to meet its financial obligations in that year or the next, and if so, to take remedial action. Section 44258.9 requires county superintendents to annually review and monitor district certificated employee assignment practices at schools and in districts likely to have problems with teacher vacancies or misassignments based on past experience, and schools ranked in deciles 1 to 3 of the applicable base API.

Where an appropriation in the statute, or other bill, or in the annual budget act, provides funds specifically intended to offset the mandated activities, in an amount sufficient to fund the mandated activities, the Commission is proscribed from finding “costs mandated by the state,” within the meaning of section 17514.¹⁵⁹

¹⁵⁵ Education Code section 1242(a-d) (added, Stats. 2006, ch. 704 § 2 (AB 607)).

¹⁵⁶ Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 9-11.

¹⁵⁷ Education Code section 1242.5 (added, Stats. 2006, ch. 704 § 3 (AB 607)).

¹⁵⁸ Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 9-11.

¹⁵⁹ Government Code section 17556(e).

The activities required under amendments to sections 1240(c) and (i), 42127.6, and 44258.9 are provided for in Section 23 of chapter 900 of Statutes of 2004, which provides:

The sum of fifteen million dollars (\$15,000,000) to the State Department of Education for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts pursuant to subparagraph (G) of paragraph (1) of subdivision (a) of Section 42127.6 of the Education Code, subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 44258.9 of the Education Code, and paragraph (4) of subdivision (e) of Section 44258.9 of the Education Code, and to conduct and report on site visits pursuant to paragraph (2) of subdivision (c) of Section 1240 of the Education Code, and oversee schools' compliance with instructional materials sufficiency requirements as provided in paragraphs (2) to (4), inclusive, of subdivision (i) of Section 1240 of the Education Code.¹⁶⁰

Ongoing budget appropriations, beginning in 2006, provide for the county office of education site visits under section 1240, and for the fiscal oversight activities of the county offices of education under section 42127.6. Line item 6110-266-0001, beginning in the 2006 Budget Act and continuing through 2012, provides \$10 million for allocation to county offices of education "for the purposes of site visits pursuant to Sections 1240 and 52056." Line item 6110-107-0001 provides, in the 2005 budget act:

Funds contained in Schedule (1) may be used for activities, including, but not limited to, conducting reviews, examinations, and audits of districts and providing written notifications of the results at least annually by county offices of education on the fiscal solvency of the districts with disapproved budgets, qualified or negative certifications, or, pursuant to Section 42127.6 of the Education Code, districts facing fiscal uncertainty. Written notifications of the results of these reviews, audits, and examinations shall be provided at least annually to the district governing board, the Superintendent of Public Instruction, the Director of Finance, and the Office of the Secretary for Education.¹⁶¹

Line item 6110-107-0001 provides between \$10 million and \$11.4 million each year, beginning in 2005.¹⁶²

It is unclear whether item 6110-107-0001 is intended to cover the costs of activities under section 44258.9, or whether item 6110-266-0001, discussed above, might include the county

¹⁶⁰ Statutes 2004, chapter 900, section 23 (SB 550).

¹⁶¹ Statutes 2005, chapter 38 (SB 77): Item 6110-107-0001

¹⁶² Statutes 2005, chapter 38 (SB 77): Item 6110-107-0001; Statutes 2006, chapter 47 (AB 1801): Items 6110-107-0001, 6110-266-0001; Statutes 2007, chapter 171 (SB 77): Items 6110-107-0001, 6110-266-0001; Statutes 2008, chapter 268 (AB 1781): Items 6110-107-0001, 6110-266-0001; Statutes 2009, Third Extraordinary Session, chapter 1 (SBX3 1): Items 6110-107-0001, 6110-266-0001; Statutes 2010, chapter 712 (SB 870): Items 6110-107-0001, 6110-266-0001; Statutes 2011, chapter 33 (SB 87): Items 6110-107-0001, 6110-266-0001; Statutes 2012, chapter 21 (AB 1464) Items 6110-107-0001, 6110-266-0001 [both items reduced, Statutes 2012, chapter 29 (AB 1497)].

superintendents' monitoring of teacher assignment practices under section 44258.9 in conjunction with the site visits and reviews required under section 1240s (c) and (i). Section 23 of Statutes 2004, chapter 900 clearly invokes section 44258.9 along with these other requirements, but neither of the above-described ongoing budget items clearly expresses the Legislature's intent to continue funding the activities required by section 44258.9. However, as analyzed above, if neither of these ongoing budget items is available to fund the activities described under section 44258.9, those activities are no longer mandated, pursuant to the limiting language, as discussed.

Taking claimant's estimates at face value,¹⁶³ the statewide costs of county office of education activities, (including amendments and additional costs, and the *Williams* complaint process, which is not separately accounted for in Test Claims II and III, and a number of training and preparation costs not expressly required by the statute), would be less than amounts appropriated in the budget acts and amount to *no more than*: \$4,202,737 in fiscal year 2004-2005; \$4,260,000 in fiscal year 2005-2006; plus an additional \$393,500 in fiscal year 2007-2008; and another \$195,700 in fiscal year 2007-2008.¹⁶⁴ And even if *all* activities and costs alleged were approved, both for county offices of education and for school districts,¹⁶⁵ the claimant's estimate of statewide costs would amount to only \$12,805,842 in fiscal year 2004-2005 and \$10.3 million in fiscal year 2005-2006. Without more, claimant has not alleged any increased costs mandated by the state over and above the \$15 million initially appropriated in section 23 of Statutes 2004,

¹⁶³ Statewide Cost Estimates throughout all three consolidated test claims are based upon proportional calculation of claimants' costs as compared to surveyed costs of other districts and counties. For example, the total reported costs of school districts responding to claimants' survey in the 2004-2005 fiscal year amounted to \$907,678. The estimated costs reported by claimant Sweetwater in 2004-2005 were \$60,340. Sweetwater calculated that its costs represented approximately 7% of the survey costs, and that school districts responding to the survey represented about 10% of the county offices of education. For all three test claims, Sweetwater used its own estimated costs (e.g., \$10,750 for FY 2007-2008 alleged in Test Claim II), divided by its share of the survey costs from fiscal year 2004-2005 (\$10,750 divided by 7% = \$153,571, rounded to \$153,500), and then divided again by the survey respondents' representation of all county offices of education (\$153,500 divided by 10% = \$1,535,000). Sweetwater alleges, in all three test claims, that it has received no funds for the activities alleged under sections 1240, 42127.6, and 44258.9. San Diego alleges in Test Claim I \$312,000 received or receivable for 2004-2005 and 2005-2006, and no additional funds made available in Test Claims II and III.

¹⁶⁴ County Office of Education statewide totals, Test Claim I, p. 54; \$697,000 Statewide Estimate of additional costs for 2007-2008 (Test Claim II); and \$195,700 Statewide Estimate of additional costs for 2007-2008 (Test Claim III, which does not distinguish between section 1240 costs and Uniform Complaint Process costs).

¹⁶⁵ Note that claimant Sweetwater has alleged activities, discussed above, that are not required by the plain language of the statute; and still others that are mandated by the county office of education, not by the state.

chapter 900, and the more than \$20 million in ongoing appropriations found in the annual budget act during the eligible period of reimbursement.¹⁶⁶

The Commission finds that sections 1240, 42127.6, and 44258.9 do not impose “costs mandated by the state,” within the meaning of Government Code section 17514, upon county offices of education, because the activities involved are either not mandatory where funding falls short, or specifically funded by the above-described budget appropriations in an amount sufficient to fund the mandated activities within the meaning of Government Code section 17556(e).

However, the Commission finds that there are costs mandated by the state for school districts, under section 42127.6, with respect to the requirement of providing copies of reports and studies to the county offices of education. No funding specifically intended for school districts is identified in the Budget Acts or other bills that bars this finding under section 17556(e).

8. Conclusion

The Commission finds that Education Code section 42127.6 imposes a reimbursable state-mandated program upon school districts, within the meaning of article XIII B, section 6, to provide the county superintendent with a copy of a study, report, evaluation or audit that contains evidence of fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of section 42127.8, unless commissioned at the discretion of the district, or of the county office of education, as described above. The Commission finds that sections 1240 and 44258.9 do not impose a reimbursable state mandated program upon school districts, within the meaning of article XIII B, section 6 of the California Constitution. The Commission further finds that Education Code sections 1240, 42127.6, and 44258.9 do not impose a reimbursable state-mandated program on county offices of education within the meaning of article XIII B, section 6 of the California Constitution.

D. The Changes to School Facilities Funding Programs to Define “Good Repair” Do Not Mandate a New Program or Higher Level of Service Upon Local Educational Agencies.¹⁶⁷

Former section 17002 contained definitions of a number of terms used in the State School Building Lease-Purchase Law of 1976, but did not expressly define “good repair,” as used in the chapter.¹⁶⁸ A number of other sections, as discussed below, referred generally to a requirement of maintaining facilities in good repair, but did not define good repair in any express terms or by

¹⁶⁶ See Test Claim I, p. 54; Test Claim II p. 25; Test Claim III p. 17. It should be noted that budget Line items 6110-107-0001 and 6110-266-0001 were both reduced, by approximately 20%, in Statutes 2012, chapter 29 § 72 (AB 1497), but that claimants have shown no basis for a finding of increased costs.

¹⁶⁷ Education Code sections 17002(d) (Stats. 2004, ch. 900 § 3 (SB 550); Stats. 2006, ch. 704 § 4 (AB 607)); 17014 (Stats. 2004, ch. 900 § 4 (SB 550)); 17032.5 (Stats. 2004, ch. 900 § 5 (SB 550)); 17070.15 (Stats. 2004, ch. 900 § 6 (SB 550)); 17070.75 (Stats. 2004, ch. 900 § 7 (SB 550)); 17087 (Stats. 2004, ch. 900 § 8 (SB 550)); 17089 (Stats. 2004, ch. 900 § 9 (SB 550)); Interim Evaluation Instrument, State Allocation Board.

¹⁶⁸ Education Code section 17002 (Statutes 1996, ch. 277 § 2 (SB 1562)).

any identifiable standard. SB 550 added to section 17002 a definition of “good repair,” as it applies to facilities, instructional spaces, and portable classrooms, which reads as follows:

(d)(1) “Good repair” means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

(2) By January 25, 2005, the Office of Public School Construction shall develop the interim evaluation instrument based on existing prototypes and shall consult with county superintendents of schools and school districts during the development of the instrument. The Office of Public School Construction shall report and make recommendations to the Legislature and Governor not later than December 31, 2005, regarding options for state standards as an alternative to the interim evaluation instrument developed pursuant to paragraph (1). By September 1, 2006, the Legislature and Governor shall, by statute, determine the state standard that shall apply for subsequent fiscal years.

Statutes of 2006, chapter 704, substituted the language regarding the “interim evaluation instrument,” with new language providing for a “school facility inspection and evaluation instrument.” The amended section provides that until a school facility inspection and evaluation instrument is approved by the SAB, “good repair” will continue to mean that a facility is clean, safe, and functional as determined by the interim evaluation instrument, “or a local evaluation instrument that meets the same criteria as the interim evaluation instrument.” The amended subdivision provides a lengthy list of minimum criteria to be included in the school facility inspection and evaluation instrument, or local evaluation instruments. Finally, paragraph (2) of subdivision (d) requires the Office of Public School Construction to develop the school facility inspection and evaluation instrument by January 1, 2007, and provides that the overall evaluation of facilities under the instrument will be on a scale of “poor” to “exemplary.”¹⁶⁹

1. Sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089 do not mandate any new activities upon local educational agencies.

The activities alleged under the newly added definition of good repair are not state-mandated reimbursable activities, for two reasons: first, any new programs or higher levels of service that might be alleged under the definition of good repair referred to in sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, or 17089 are conditional requirements imposed upon voluntary funding programs, and therefore constitute voluntarily assumed activities. And second, the Facilities Inspection System required under section 17070.75 is explicitly made conditional upon the receipt of funding under the Leroy F. Greene School Facilities Act, which is both voluntarily received, and, when funded, not a mandated cost.

The State School Lease-Purchase Law of 1976, beginning at section 17000, states that “it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate, or that do not meet present-day

¹⁶⁹ Education Code section 17002(d) (Stats. 2006, ch. 704 § 4 (AB 607)).

structural safety requirements.”¹⁷⁰ Nowhere does it appear that LEAs are *required* to seek funding for reconstruction or remodeling; the statute only refers to the state’s role and “interest” in seeing that inadequate facilities are reconstructed or replaced. The requirement of maintaining “projects” in good repair under the chapter is only applicable to the extent that schools and school districts are participating in the program. Sections 17014 and 17032.5 both invoke the definition of good repair in section 17002; both fall within the State School Lease-Purchase Law, and are therefore conditional upon voluntary participation in the Program.

The School Facilities Act, beginning at section 17070.10, provides for new construction funds, to be distributed by the SAB, upon conditions as set out by the code and regulations adopted by the board. The School Facilities Act requires that “*applicant school district[s]*” undertake to ensure that a project is kept in good repair. Section 17070.75(b) provides: “[i]n order to ensure compliance with subdivision (a) and to *encourage* school districts to maintain all buildings under their control, the [SAB] shall require an *applicant school district* to do all of the following...” Thus subdivision (b) recognizes the limited applicability of the requirements of the chapter: school districts are not required to meet the statutory standard of “good repair,” or to establish restricted accounts for facilities funding, or to do any other thing, except in the case of being an “applicant” participating in the School Facilities Fund.¹⁷¹ The entire chapter is premised upon the availability of funding that the SAB “may apportion” to school districts.¹⁷²

The State Relocatable Classroom Law of 1979, beginning at section 17085, provides for the transfer or reallocation of funds from the School Facilities Fund or the Deferred Maintenance Fund, for allocation by the [SAB] for the purchase or maintenance of portable buildings.¹⁷³ Section 17089 provides that the “[SAB] shall require each lessee [of a portable classroom] to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition.”¹⁷⁴ But despite the mandatory language of that provision, the underlying program is not mandatory; the code describes the conditions under which a district “shall qualify for the lease under this chapter.”¹⁷⁵

Claimants challenge the “conclusion” with respect to the voluntary nature of these facilities funding programs. Claimants quote the following from page 17 of the draft staff analysis to argue that the analysis fails to consider the new statute resulting from the *Williams* settlement as requiring maintenance of facilities in good repair:

“Former section 17002 contained definitions of a number of terms used in the State School Building Lease-Purchase Law of 1976, but did not expressly define ‘good repair,’ as used in the chapter. A number of other sections, as discussed below, referred generally to a requirement of maintaining facilities in good repair, but did not define good repair in any express terms or by any identifiable

¹⁷⁰ Education Code section 17001 (Stats. 1996, ch. 277 (SB 1562)).

¹⁷¹ Education Code section 17070.75(b) (Stats. 2004, ch. 900 § 7 (SB 550)).

¹⁷² Education Code section 17070.40.

¹⁷³ Education Code section 17088.2 (Stats. 2002, ch. 33 (AB 16)).

¹⁷⁴ Education Code section 17089(b) (Stats. 2004, ch. 900 (SB 550)).

¹⁷⁵ Education Code section 17088.3(a) (Stats. 1996, ch. 277 § 2 (SB 1562)).

standard. SB 550 added to section 17002 a definition of ‘good repair,’ as it applies to facilities, instructional spaces, and portable classrooms, and incorporated that definition by reference in a number of other facilities funding programs.” Staff’s conclusion the aforementioned voluntarily assumed activities are based on a local decision fails to consider a lawsuit settlement resulting in a new statute legislation requiring the maintenance of facilities in good repair [*sic*].

However, a new statute, placed within voluntary facilities funding programs, cannot impose a reimbursable state mandated program. A statute must not be interpreted in isolation, but in light of the whole law of which it is a part.¹⁷⁶

All of these funding programs are voluntary: language found in several programs refers, alternatively, to “applicant[s],” or the “eligibility of school districts” to receive funding, or to enter into leases.¹⁷⁷ Therefore the Commission finds that any and all requirements of the above sections pled in this test claim that result from the new definition of good repair are not reimbursable state-mandated activities because they are downstream requirements of an underlying voluntary funded program.

2. Sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089 do not impose new programs or higher levels of service.

The California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term “higher level of service” must be read in conjunction with the phrase “new program.” Both are directed at *state-mandated increases in the services provided* by local agencies and school districts.¹⁷⁸ The enactment of new statutory language, however, does not always mean that the Legislature intended to change the law, or to increase the level of service provided by school districts; new language can be intended to clarify law, rather than change it.

We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. Our consideration of the surrounding circumstances can indicate that the Legislature made ... changes in statutory language in an effort only to clarify a statute's true meaning.¹⁷⁹

The issue here is whether the requirements of the test claim statute increase the responsibilities of local government, or the test claim statute is intended only to clarify a prior requirement.

The requirement to keep and maintain school facilities in good repair is not new. Amendments to the above sections in SB 550 (Stats. 2004, ch. 900) provide a definition of good repair, but the requirement that school districts generally maintain facilities in a safe and habitable condition

¹⁷⁶ Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 113 [citing *People v. Allen*, 42 Cal.4th 91].

¹⁷⁷ Education Code section 17070.75(b) (Stats. 2004, ch. 900 § 7 (SB 550)); Education Code 17005 (Stats. 2004, ch. 900 § 3 (SB 550)).

¹⁷⁸ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁷⁹ Exhibit I, *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 [citations omitted].

was well established in both statutory and common law.¹⁸⁰ The requirement of keeping good repair was found in several sections of the Education Code prior to its express definition in SB 550, and under common law, the courts have long recognized a special relationship between schools and their pupils based on the compulsory nature of K-12 education:

A special relationship is formed between a school district and its students resulting in the imposition of an *affirmative duty on the school district to take all reasonable steps to protect its students*. This affirmative duty arises, in part, based on the compulsory nature of education. (*Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 714-715; ... see also Cal.Const., art. 1, § 28, subd. (c) [students have inalienable right to attend safe, secure, and peaceful campuses]; Ed. Code, § 48200 [children between 6 and 18 years subject to compulsory full-time education].) “The right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. *The school premises, in short, must be safe and welcoming.*” (*In re William G.* (1985) 40 Cal.3d 550, 563)¹⁸¹

It is telling that the Legislature seems to have felt no need to clarify what was meant by “good repair” prior to the *Williams* implementing legislation. The phrase appeared in five or more code sections dictating the proper condition and maintenance of school facilities, but was not expressly defined until the addition of section 17002(d) in SB 550, and the attendant cross-references.¹⁸² The claimants assert that the definition of “good repair” added to the Education Code in 2004 imposes requirements which constitute a new program or higher level of service. However, given that the requirement to maintain facilities in good repair existed previously without an express definition, it appears that “good repair” was already an established requirement, and the Legislature acted in 2004 only to clarify it, not to expand it.¹⁸³

Under the rules of statutory construction, courts generally “give effect to statutes according to the usual, ordinary import of the language employed in framing them.” Courts generally “may not, under the guise of statutory construction, rewrite the law or give the words an effect

¹⁸⁰ See prior sections 17014 (Stats. 1997, ch. 513 § 1 (AB 553)), 17032.5 (Stats. 1997, ch. 893 § 85 (SB 161)), 17070.75 (Stats. 2004, ch. 195 § 1 (SB 409)), 17089 (Stats. 1996, ch. 277 § 2 (SB 1562)) [each stating requirement of keeping projects in good repair].

¹⁸¹ Exhibit I, *M.W. v. Panama Buena Vista Union School Dist.* (Cal. Ct. App. 5th Dist. 2003) 110 Cal.App.4th 508, 517 [emphasis added].

¹⁸² See prior sections 17014 (Stats. 1997, ch. 513 § 1 (AB 553)), 17032.5 (Stats. 1997, ch. 893 § 85 (SB 161)), 17070.75 (Stats. 2004, ch. 195 § 1 (SB 409)), 17089 (Stats. 1996, ch. 277 § 2 (SB 1562)).

¹⁸³ Exhibit I, Legislative Proposals published as a part of the *Williams* Settlement Agreement, at pp. 9-10, provide that good repair shall be judged by reference to health and safety standards applicable to restaurants, rental housing, and other similar facilities. Ultimately the definition adopted was more specific to schools, and did not reference the Health and Safety Code. (Exhibit I, Notice of Proposed Settlement: Legislative Proposals).

different from the plain and direct import of the terms used.”¹⁸⁴ Courts may, however, use the dictionary as a proper source to determine the usual and ordinary meaning of a word or phrase in a statute.¹⁸⁵ In Webster’s Third New International Dictionary, “repair” is defined to mean “1.a. the act or process of repairing; restoration to a state of soundness, efficiency, or health; b. the state of being in good or sound condition.”¹⁸⁶ This definition is consistent with the court’s interpretation in *People v. Tufts* of a county ordinance requiring that toilets be maintained in good repair. The defendant in *Tufts* argued that the county ordinance was unconstitutionally vague, claiming that the words “state of good repair” were uncertain, but the court disagreed, holding that a toilet that does not work is not in a state of good repair.

Common sense is sufficient to tell anyone that a toilet which does not work is not in a state of good repair. Persons of ordinary intelligence should be able to understand this. We have rejected a similar challenge. There we said “The words ‘good repair’ have a well known [a]nd definite meaning ... They sufficiently inform the ordinary owner that his property must be fit for the habitation of those who would ordinarily use his dwelling.”¹⁸⁷

The definition of good repair under amended section 17002 provides more tangible and objective criteria by which the requirement is met, in part by requiring the OPSC to develop a measuring instrument for the local agencies to use to ensure good repair.¹⁸⁸ The amended section gives LEAs the flexibility to develop their own evaluation instrument, so long as its contents meet the minimum requirements of the instrument developed by the OPSC.¹⁸⁹ But none of these requirements leads inexorably to the conclusion that “good repair” is a new standard, or a new responsibility of schools and school districts.

The claimants challenge this conclusion, asserting that it is “based on conjecture that the changes to the statute are without purpose.”¹⁹⁰ It is true that a change in statutory language is generally presumed to be intended to change the law.¹⁹¹ However, it is equally axiomatic that courts “do

¹⁸⁴ Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 92 [citing *Phelps v. Stostad*, (1997) 16 Cal.4th 23; *City of Pasadena v. AT&T Communications of California, Inc.* (Cal. Ct. App. 2d Dist. 2002) 103 Cal.App.4th 981].

¹⁸⁵ Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 138 [citing *People v. Whitlock*, (Cal. Ct. App. 4th Dist. 2003) 113 Cal.App.4th 456, *review denied*, March 17, 2004].

¹⁸⁶ Exhibit I, Webster’s Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1923. (Exhibit D.)

¹⁸⁷ Exhibit I, *People v. Tufts* (1979) 97 Cal.App.3d Supp. 37, 44 [citations omitted].

¹⁸⁸ Education Code section 17002(d)(1) (Stats. of 2004, ch. 900 § 3 (SB 550)).

¹⁸⁹ Education Code section 17002(d)(1) (Stats. of 2006, ch. 704 § 4 (AB 607)).

¹⁹⁰ Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012.

¹⁹¹ Exhibit I, *People v. Mendoza*, (2000) 23 Cal.4th 896, at p. 916 [“the Legislature’s repeal of Act section 21, together with its enactment of a new statute on the same subject—section 1157—with significant differences in language, strongly suggests the Legislature intended to change the law.”]

not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied.”¹⁹² Given the authorities cited above, and the foregoing discussion of the longstanding responsibility to keep facilities in good repair, the change in statutory language may be presumed to simply clarify the law.¹⁹³ The Commission finds that the test claim statutes do not impose a new program or higher level of service.

3. Conclusion

Based on the foregoing, the Commission finds that the definition of good repair, including the reference to development of a Facilities Inspection System, does not impose a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

E. Additions to Education Code Section 33126(b) of the School Accountability Report Cards Program Impose a Reimbursable State-Mandated Program. However, Sections 33126(c) and 33126.1 Do Not Require Reimbursement Because They Do Not Impose a State-Mandated New Program or Higher Level of Service.¹⁹⁴

1. New reporting requirements added in section 33126(b), paragraphs (5), (6), and (9), impose state-mandated new program or higher level of service.

The School Accountability Report Card (SARC) was first introduced as a part of the Proposition 98 reforms to school funding. Subdivision (e) of section 8.5 of Article XVI was added to the California Constitution by the voters, providing as follows:

Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.¹⁹⁵

At the same time, section 33126 was added to the Education Code, which provided that “[i]n order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction” was required to develop a statewide model SARC. The report card at that time was required to include student achievement and progress toward meeting reading, writing, and arithmetic goals; progress toward the reduction of dropout rates; estimated expenditures per pupil; progress toward reduction of class sizes; and several other objectives.

Section 13 of Proposition 98 provided the following: “No provision of this act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor.” Accordingly, each time some portion of

¹⁹² Exhibit I, *Van Horn v. Watson* (2008) 45 Cal.4th 322, at p. 333.

¹⁹³ See Exhibit I, *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 [citations omitted].

¹⁹⁴ Education Code section 33126 (as amended by Stats. 2004, ch. 900 § 10 (SB 550)); Education Code section 33126.1 (as amended by Stats. 2004, ch. 900 § 11 (SB 550)).

¹⁹⁵ California Constitution Art XVI, Section 8.5, subdivision (e) (Initiative Measure November 8, 1988).

the SARC has been added or amended, the Legislature has been required to obtain a two-thirds vote and has noted its finding “that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.”¹⁹⁶

Usually amendments to section 33126 merely add or alter one of the objectives of the reports: in the 1993 amendments, for example, the Legislature added a requirement that the report card must include “the degree to which students are prepared to enter the work force.”¹⁹⁷ In 1994, the Legislature added a requirement that the report cards include the total number of days and minutes of instructional time each school year.¹⁹⁸ The 1997 amendments added that “[i]t is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card.” The 1997 amendments to section 33126 also reframed the purpose of the SARC in terms of informing parents as follows: “The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.”¹⁹⁹ Further amendments to section 33126 in 2000 and 2002 added still more reporting requirements.²⁰⁰

Finally, SB 550, at issue in this test claim, added to section 33126 a definition of teacher vacancies and misassignments, and a requirement of reporting the same; as well as a requirement of reporting on the availability of sufficient textbooks and instructional materials; and any needed maintenance of facilities to ensure good repair. SB 550 also required that if the Commission found reimbursable state-mandated activities, LEAs would only receive reimbursement for costs incurred if the information provided in the SARC was accurate, as determined by the annual audit.²⁰¹

Claimants allege generally that amendments to the SARC mandate new programs or higher levels of service resulting in increased costs mandated by the state.

Amendments to section 33126 add new requirements to the SARC. These new requirements are mandated, based on the plain language of section 33126, which provides that the SARC “shall provide data by which a parent can make meaningful comparisons between public schools” and “*shall include*, but is not limited to, the assessment of the following conditions:”

(5) [M]isassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

¹⁹⁶ See Statutes 1993, chapter 1031 § 4 (AB 198). See, e.g., Statutes 1994, chapter 824 § 2 (SB 1665); Statutes 1997, chapter 912 § 2 (AB 572); Statutes 2000, chapter 996 § 6 (SB 1632); Statutes 2002, chapter 1168 § 76 (AB 1818); Statutes 2004, chapter 900 § 26 (SB 550).

¹⁹⁷ Education Code section 33126(b) (Stats. 1993, ch. 1031 § 1 (AB 198)).

¹⁹⁸ Education Code section 33126(b) (Stats. 1994, ch. 824 § 1 (SB 1665)).

¹⁹⁹ Education Code section 33126(a-c) (Stats. 1997, ch. 912 § 1 (AB 572)).

²⁰⁰ Education Code section 33126(b) (Stats. 2000, ch. 996 § 1 (AB 572)); (Stats. 2002, ch. 1166 § 2 (SB 1868)); (Stats. 2002, ch. 1168 § 5 (AB 1818)).

²⁰¹ Education Code section 33126(b-c) (Stats. 2004, ch. 900 §10 (SB 550)).

(A) For purposes of this paragraph, “vacant teacher position” means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year, or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of the semester for an entire semester.

(B) For purposes of this paragraph, “misassignment” means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(6) (A) Quality and currency of textbooks and other instructional materials...

(B) The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

(9) Safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.²⁰²

The SARC is an activity that is both unique to government (falling exclusively on public schools) and provides a service to the public (promoting accountability in schools and school districts, and making parents or legal guardians aware of the quality of local schools, so they may make informed choices). The SARC is not a new program, but includes new reporting requirements, which increase the level of service provided to the public. Therefore the Commission finds that amended section 33126(b), paragraphs (5), (6)(B), and (9), mandate a new program or higher level of service within the meaning of article XIII B, section 6.²⁰³

2. Sections 33126(c) and 33126.1 do not impose a mandated new program or higher level of service.

Section 33126 was amended by Statutes of 2004, chapter 900 (SB 550), to read as follows:

(c) If the Commission on State Mandates finds a school district is eligible for a reimbursement of costs incurred complying with this section, the school district shall be reimbursed only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed [by the county office of education]. If the information is determined to be inaccurate, the

²⁰² Statutes 2004, chapter 900 section 10 (SB 550).

²⁰³ Education Code section 33126(b) (Stats. 2004, ch. 900 § 10 (SB 550)).

school district is not ineligible for reimbursement if the information is corrected by May 15.²⁰⁴

This subdivision recognizes that the Commission may determine that the amended section imposes reimbursable state-mandated costs, but provides for the withholding of funds in the event that the school district fails to report accurately in its SARCs.

This is not a reimbursable state-mandated new activity or higher level of service, for two reasons: first, accuracy of the SARC is an underlying expectation of the program arising from its inception. With one of the principal purposes of the SARC being to ensure that parents have sufficient information upon which to base a decision as to where to enroll their children, accuracy of information is a necessary prerequisite to the usefulness of that information. Moreover, the same underlying information is audited pursuant to Education Code section 41020, and other relevant sections, by the county office of education, and there are sanctions for inaccuracy provided in those sections as well. In short, accuracy and the fact of being subject to audit are not new requirements.

Second, the Commission finds that this amendment does not impose reimbursable state-mandated costs because to the extent that funds may be withheld due to inaccuracies that are not promptly corrected, those failings are voluntary, and the sanctions attached to them knowingly assumed and undertaken. Under a *Kern* analysis, a failure to accurately report required information which results in a monetary sanction is a voluntarily assumed monetary sanction.

Section 33126.1 requires the CDE to develop a standardized template to simplify the process of completing the SARC. This section does not impose any activities upon the school districts or county offices of education.

3. Paragraphs (5), (6), and (9) of section 33126(b) impose costs mandated by the state, within the meaning of Government Code section 17514.

Government Code section 17514 defines “costs mandated by the state” to include “any increased costs which a local agency or school district is required to incur [as a result of a state statute, regulation, or executive order].”²⁰⁵ Government Code section 17556 provides a number of statutory exclusions from the definition under 17514 of “costs mandated by the state.” If any of these exclusions applies, the Commission is proscribed from finding reimbursable costs. The exclusions from the definition of “costs,” provided in section 17556 are supported by the court’s relatively narrow interpretation of article XIII B section 6, which requires reimbursement only for costs *mandated by the state*.²⁰⁶

Where a statute relies upon, or otherwise overlaps in legal requirements with, a voter-enacted ballot measure, subdivision (f) of section 17556 is indicated. Government Code section 17556 provides, in pertinent part:

²⁰⁴ Education Code section 33126(c) (Stats. 2004, ch. 900 § 10 (SB 550)).

²⁰⁵ Government Code section 17514.

²⁰⁶ *County of Fresno v. State of California*, (1991) 53 Cal.3d 482, 487.

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

[...]

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.²⁰⁷

Therefore, when subdivision (f) of section 17556 is applicable, a statute may impose state-mandated activities under article XIII B, section 6, but those activities may be nevertheless non-reimbursable, due to the absence of *state-mandated* increased costs. The courts have upheld the applicability of the 17556 exclusions as being consistent with article XIII B, section 6 in a number of factual situations.²⁰⁸

DOF argues, in comments submitted in response to the draft staff analysis, that section 33126 should be denied because the SARC was enacted as a ballot initiative and “the test claim statutes impose duties that are necessary to implement and are expressly included in a ballot measure approved by voters in a statewide election.” DOF cites the text of section 33126(a), as added by Proposition 98:

(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

- (1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.
- (2) Progress toward reducing drop-out rates.
- (3) Estimated expenditures per student, and type-s of services funded.
- (4) Progress toward reducing class sizes and teaching loads.
- (5) Any assignment of teachers outside their subject areas of competence.**
- (6) Quality and currency of textbooks and other instructional materials.**
- (7) The availability of qualified personnel to provide counseling and other student support services.
- (8) Availability of qualified substitute teachers.
- (9) Safety, cleanliness, and adequacy of school facilities.**
- (10) Adequacy of teacher evaluations and opportunities for professional improvement.
- (11) Classroom discipline and climate for learning.

²⁰⁷ Government Code section 17556 (Stats. 2010, ch. 719, § 31 (SB 856)).

²⁰⁸ See, e.g., *City of Sacramento, supra*, 50 Cal.3d 51; *California School Boards Ass’n v. State (CSBA)* (Cal. Ct. App. 2009) 171 Cal.App.4th 1183, 1214.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership. [emphasis supplied]²⁰⁹

It is clear that paragraphs (5), (6), and (9) touch on the same subject matter in the original text of section 33126, as does the amended section 33126, which is the subject of this test claim. However, while the original text is much less specific as to what is required to be reported, amended paragraphs (5), (6), and (9), as discussed above, provide substantially more detail and precision than before. For example, teacher “misassignment” is much more than assignment “outside their core areas of competence,” and requires verification of certifications and assignments that otherwise violate the law. And teacher “vacancies” were not addressed in the earlier code section at all. Moreover, section 33126, as enacted in Proposition 98, addressed only the quality and currency of textbooks and instructional materials; it did not address “sufficiency,” as defined in section 60119 to mean that every pupil has textbooks and instructional materials assigned to them at a point in time early in the school year. And finally, the original text of section 33126 addressed safety, cleanliness, and adequacy of school facilities, but did not require the reporting of needed maintenance, as does the section, as amended by the test claim statutes. As the following discussion will show, the test claim statute adds meaningfully to section 33126, and despite DOF’s reliance on its origins as a voter-enacted ballot initiative, the new provisions of section 33126 are not “expressly included” or “necessary to implement” that initiative.

Government Code section 17556(f) and the SARC program of Education Code 33126 share a complicated history. In 1998 the Commission heard the first of several test claims dealing with the SARCs. The amendments to Education Code section 33126 in Statutes 1993, chapter 1031 § 4 (AB 198), Statutes 1994, chapter 824 § 2 (SB 1665), and Statutes 1997, chapter 912 § 2 (AB 572) increased the scope and number of requirements of the SARCs, each time adding new and different measures of school quality and performance.²¹⁰ Although the underlying program outlined in section 33126 arose from a voter-enacted ballot measure, the Commission held that by increasing the requirements beyond those the voters had approved in Proposition 98, the Legislature had imposed reimbursable state-mandated costs.²¹¹ At that time section 17556(f) proscribed the Commission from finding “costs mandated by the state” only where an activity or requirement was “expressly included” in a voter-enacted ballot measure.²¹² Thus the Commission’s interpretation of subdivision (f) as applied to the 1998 test claim was inevitably narrow, and the Commission had little choice under that narrow statutory exclusion but to find reimbursable costs resulting from the expansion of the SARCs by the Legislature.

In Statutes 2005, chapter 72, section 7 (AB 138), the Legislature amended Government Code section 17556(f) to provide that the Commission “shall not find” reimbursable state-mandated

²⁰⁹ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012. See also Government Code section 17556(f).

²¹⁰ See Statutes 1993, chapter 1031 § 4 (AB 198), Statutes 1994, chapter 824 § 2 (SB 1665), and Statutes 1997, chapter 912 § 2 (AB 572)

²¹¹ Statement of Decision, *School Accountability Report Cards (97-TC-21)*, available at <http://www.csm.ca.gov/sodscan/97tc21sod.pdf>.

²¹² See Government Code section 17556 (Stats. 1989, ch. 589 § 1 (SB 1014)).

costs if the requirements of a statute or executive order are “*necessary to implement, reasonably within the scope of, or expressly included in*, a ballot measure approved by the voters in a statewide or local election.”²¹³ In the same bill the Legislature also directed the Commission to set aside or reconsider a number of mandates decisions that relied on the former provisions of Government Code 17556, including *School Accountability Report Cards* (97-TC-21).²¹⁴ Upon reconsideration, the Commission found that under the amended subdivision (f), the additions and amendments to Education Code section 33126 were “reasonably within the scope of” the SARCs as enacted in Proposition 98, and therefore the test claim statutes could not give rise to reimbursable state-mandated costs under Government Code sections 17556 and 17514.²¹⁵

In *CSBA, supra*, the reconsideration of the SARCs test claim on the basis of the amended language of 17556(f) was challenged, and rejected. The court of appeal held first that it was a violation of separation of powers doctrine under the California constitution for the Legislature to order the Commission to set aside or reconsider a final decision, and therefore the court of appeal directed the Commission to reinstate its former decision on the SARCs. More prescient to this test claim, however, the court’s decision upheld in part and rejected in part the constitutionality of subdivision (f). The court held that the amended language of subdivision (f) “declaring that no reimbursement is necessary for ‘duties that are...*reasonably within the scope of*...a ballot measure’ [was] impermissibly broad” because it allowed exclusion of reimbursable activities in a manner inconsistent with article XIII B, section 6.

However, the court of appeal also held that “to the extent that Government Code section 17556(f)...declares that no reimbursement is necessary for costs resulting from ‘duties that are *necessary to implement*...a ballot measure,’ the amendment does not violate article XIII B, section 6.” The court therefore found the “necessary to implement” language consistent with article XIII B, section 6, and held that where additional requirements imposed by the state are necessary to implement a ballot measure, and the additional costs are de minimus in the context of the program adopted by the voters, no reimbursement is necessary.²¹⁶

The court borrowed heavily for its analysis from the California Supreme Court’s decision in *San Diego Unified, supra*, which addressed whether state-imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The *San Diego Unified* court held that all procedures set forth in the test claim statute, including those that exceeded federal law, were arguably “adopted to implement” a federal due process mandate and, thus, the costs were not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17556. The *CSBA* opinion analogized to the *San Diego Unified* analysis, finding that the statutory exclusions in section 17556, subdivisions (c)

²¹³ Government Code section 17556(f) (Stats. 2005, ch. 72 § 7 (AB 138)).

²¹⁴ Statutes 2005, chapter 72 § 17 (AB 138).

²¹⁵ *CSBA, supra*, 171 Cal.App.4th 1183, 1197. See also Reconsideration of Prior Statement of Decision, *School Accountability Report Cards* (04-RL-9721-11), available at <http://www.csm.ca.gov/sodscan/130.pdf>; Reconsideration of Prior Statement of Decision, *School Accountability Report Cards* (04-RL-9721-11, 05-RL-9721-03), available at <http://www.csm.ca.gov/sodscan/131.pdf>.

²¹⁶ *CSBA, supra*, 171 Cal.App.4th 1183, 1211.

(federal law mandates), and (f) (voter-enacted ballot initiatives), operated substantially similarly with respect to the definition of “costs mandated by the state” under section 17514. In fact, the court held that the “necessary to implement” language of subdivision (f) was actually a narrower exclusion than “adopted to implement,” as used by the California Supreme Court with respect to subdivision (c) in *San Diego Unified*. Therefore, the court of appeal upheld the amended section 17556, but only to the extent of that which is “necessary to implement” a ballot measure, and not “reasonably within the scope of.”²¹⁷

Following the partial rebuke by the court of appeal in *CSBA*, the Legislature amended section 17556 again; this time omitting the offending language, and preserving the exclusion as approved by the court of appeal. Government Code section 17556 now provides that the Commission “shall not find costs mandated by the state...if...[t]he statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.”²¹⁸ Thus the scope of the exclusion under the current Government Code, consistent with the holding of *CSBA*, is confined to statutes or executive orders which can be said to be expressly included in a ballot measure, or necessary to implement that ballot measure. A statute which goes beyond what is necessary to implement may still give rise to a reimbursable state mandate.

Amendments to section 33126 enacted in Statutes 2004, chapter 900 (SB 550), as described above, add the requirements of: reporting teacher vacancies and misassignments, with an attendant definition of those terms; the availability of sufficient textbooks and instructional materials; and any maintenance needed to ensure good repair. These requirements reach beyond the program as provided in the original voter-enacted statute, and therefore are not “expressly included.” The issue, then, is whether the new requirements can be said to be “necessary to implement” the voter-enacted ballot initiative.

DOF argues, in its comments on the draft staff analysis, that the amendments made to SARC by the test claim statutes are in furtherance of the provisions of the voter-enacted ballot initiative, and therefore “necessary to implement” the ballot initiative:

The test claim statute implements the provisions of the voter-approved initiative related to the School Accountability Report Card. There are several indications that the proponents of Proposition 98 intended for the Legislature to take further action to make operational the categories listed in the initiative language:

- The initiative specifies that the model report card shall include specific elements but expressly states that the list is not comprehensive.
- The initiative requires that the Superintendent consult with the task force to develop the model report card, which serves as the basis for the report cards produced by individual schools. If the initiative were self-implementing, this type of consultation would be unnecessary.
- Most directly, the initiative specifically allows the Legislature to amend the statute to further the initiative's purposes.

²¹⁷ *CSBA, supra*, at p. 1217 [citing *San Diego Unified, supra*, at p. 890].

²¹⁸ Government Code section 17556 (Stats. 2010, ch. 719, § 31 (SB 856)).

The Legislative Counsel included the following in its digest of the test claim statute:

"This bill would require the school accountability report card to include information regarding the availability of sufficient textbooks and other instructional materials for each pupil, any needed maintenance of school facilities to ensure good repair, the misassignments of teachers, including misassignments of English learner teachers, and the number of vacant teacher positions for the most recent 3-year period. The bill would define "misassignment" and "vacant position" for this purpose."

The School Accountability Report Card elements that were added by the test claim statutes directly relate to the subjects contained in the original Proposition 98 language. They describe specific indicators related to instructional materials, teacher assignments, and school facilities, which were all addressed in Proposition 98. Therefore, the amendments should be interpreted to make operational the broad categories enumerated in the initiative language, not to add new requirements.

If these elements were not selected by the Legislature to make operational the categories identified in the initiative, the Superintendents of Public Instruction and individual school districts would make decisions about specific indicators to use. They would not be free of the responsibility to report information that fits into these categories. The state is not shifting additional responsibility to local governments; instead, it is selecting one alternative in implementing the initiative that school districts are expected to use.

Finally, because the initiative expressly states that the Legislature may only amend the statutes in furtherance of the initiative's purposes, the Commission must presume that the Legislature did so and that the statutes are necessary to implement the initiative and expressly permitted by the initiative.²¹⁹

The fundamental rule of statutory construction is to give effect to the intent of the Legislature. As in all cases of statutory construction, the inquiry must begin with the language of the statute, giving words their plain or literal meaning.²²⁰ In this case, the phrase "necessary to implement" is at issue. Webster's Third New International Dictionary defines the word "necessary" to include those things which are "of, relating to, or having the character of something that is logically required or logically inevitable or that cannot be denied without involving contradiction." Accordingly, the court of appeal in *CSBA, supra*, embraced a strict view of "necessary to implement," concluding, with reference to *San Diego Unified*, that "[s]ubdivision (f) is even more restrictive, stating that there is no reimbursement obligation if the statute is 'necessary to implement' a ballot measure."²²¹ Given the court's strict interpretation of

²¹⁹ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012

²²⁰ California Jurisprudence, Vol 58, Statutes, §§ 91-92 [citations omitted].

²²¹ *California School Boards Ass'n v. State* (Cal. Ct. App. 2009) 171 Cal.App.4th 1183, 1214.

“necessary to implement,” only those requirements which are considered “logically required or logically inevitable” should be held non-reimbursable, post *CSBA*.²²²

It might be argued, as DOF does, that the text of Proposition 98 contemplates amendment or augmentation of the programs involved therein, stating: “No provision of this act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor.”²²³ Accordingly, the original text of section 33126, as enacted within Proposition 98, provided that “[t]he model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions.”²²⁴ The argument goes, therefore, that “the electorate recognized that the precise details of the model report card are subject to change, and that the districts are required to make modifications as necessary.”²²⁵ But such amendments cannot reasonably be characterized as “necessary to implement.” Additions to the requirements of a reporting statute, though perhaps furthering the purpose of the statute, and however such changes might have been contemplated, cannot be said to be “necessary” to implement the requirements of the initiative, absent some showing that the statute was not being administered or enforced effectively, or that the statute *required* further amendment or adjustment by its nature. As raised by DOF, this argument is unpersuasive.²²⁶

Under the current text of Government Code 17556(f), as interpreted and endorsed by the court of appeal in *CSBA*, the Commission finds that the addition of new reporting requirements regarding teacher vacancies and misassignments, sufficiency of instructional materials, and facilities conditions, does constitute a higher level of service within the meaning of article XIII B section 6, and does impose costs mandated by the state because the amendments are not “necessary to implement” the original statute enacted in Proposition 98. The Commission finds that claimants have alleged costs in excess of \$1000, and the statutory exclusion of section 17556(f) does not bar this finding.²²⁷

4. Conclusion

The Commission finds that amendments to section 33126(b) enacted in Statutes of 2004, chapter 900, impose a reimbursable state-mandated program upon school districts, beginning on September 29, 2004, for the following activities:

- Reporting teacher misassignments and vacancies within the School Accountability Report Card.

²²² See Exhibit I, Webster’s Third New International Dictionary, *supra*.

²²³ Proposition 98, Section 13.

²²⁴ Education Code section 33126 (Enacted by Proposition 98, Nov. 8, 1988).

²²⁵ Exhibit D, Department of Finance Comments, filed 8/23/2006, p. 5.

²²⁶ Finally, note that DOF relies on an earlier decision of the Commission, which relied on the broader reading of section 17556(f), before the statute was narrowed by the court in *CSBA*, *supra*. DOF has not sought to update its comments since that 2009 decision.

²²⁷ Exhibit A, Test Claim I, p. 53.

- Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
- Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.

However, the Commission finds that section 33126(c) and section 33126.1, added by Statutes of 2004, chapter 900, do not mandate a new program or a higher level of service.

F. The *Williams* Complaint Process Imposes a Reimbursable State-Mandated Program.²²⁸

1. Sections 35186, as enacted in Statutes 2004, chapters 900 and 903, and amended by Statutes 2007, chapter 526, imposes a state-mandated new program or higher level of service.

The Uniform Complaint Process which existed prior to *Williams* is addressed primarily to discrimination complaints, and complaints regarding violations of federal or state law in certain specific educational programs, including Special Education, Adult Education, Child Nutrition, and others.²²⁹ New section 35186, enacted in 2004 as part of the *Williams* implementing legislation, created a new and different *Williams* Uniform Complaint Process, which this analysis will refer to as the “*Williams* complaint process,” to avoid confusion with the former Uniform Complaint Process.

The *Williams* complaint process provides for new permissible subjects of complaint, including: sufficiency of textbooks and instructional materials; teacher vacancies or misassignments; and facilities conditions; and helps school districts, on an ongoing basis, police and address the major types of deficiency identified in the *Williams* class action and settlement.

Education Code section 35186 imposes the following requirements on school districts:

- Receive *Williams* complaints “to help identify and resolve any deficiencies related to” sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions “that pose a threat to the health and safety of pupils or staff,” and teacher vacancies or misassignments.
- Respond to the complaint if a response is requested.
- Forward a complaint beyond the authority of the school principal to the appropriate school district official.
- For the principal or district superintendent’s designee to:

²²⁸ Education Code section 35186 (as added by Stats. 2004, ch. 900 § 12 (SB 550); amended by Stats. 2004, ch. 903 § 1 (AB 2727); Stats. 2005, ch. 118 § 5 (AB 831); Stats. 2006, ch. 704 § 7 (AB 607); Stats. 2007, ch. 526 § 2 (AB 347)). Note also that the claimants have pled Code of Regulations, Title 5, sections 4600-4671, relating to the Uniform Complaint Process. These sections do not address the *Williams* complaint process, as enacted by section 35186 and later amendments, and therefore these regulations are treated in section (I), below, along with code sections not properly addressed in this test claim.

²²⁹ California Code of Regulations, Title 5, section 4610 (Register 92, No. 3)).

- “make all reasonable efforts to investigate any problem within his or her authority...[and] remedy a valid complaint within a reasonable time period but not to exceed 30 working days.”
- Report to a complainant, if the complaint was not filed anonymously, regarding the resolution of the complaint, within 45 working days.
- Provide for an unsatisfied complainant to be heard by the governing board of the district at the next regularly scheduled meeting, or, for facilities complaints regarding an emergency or urgent threat, to appeal directly to the Superintendent of Public Instruction.
- Report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the district, and to keep complaints and written responses available as public records.
- Post a notice in all classrooms in each district explaining the applicable scope of the *Williams* complaint process, and stating how a complaint form can be obtained in the event of a shortage.²³⁰

As enacted in Statutes 2004, chapter 900 (SB 550), the local educational agency is required to post a notice in each classroom in each school in the district, beginning September 24, 2004, which provides:

- (1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.
- (2) School facilities must be clean, safe, and maintained in good repair.
- (3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.²³¹

The issues of keeping public records and responding in a language other than English are discussed separately below, but the Commission finds that all other requirements of section 35186(a-d) and (f) described above constitute a mandated new program or higher level of service, beginning, for purposes of reimbursement eligibility, on September 29, 2004.

Amendments made to section 35186(f) by Statutes 2005, chapter 118, section 5 (AB 831) provided that the notice posted in classrooms must include teacher vacancies and misassignments as a permissible subject of complaint. This amendment further increases the scope of the *Williams* complaint process, and therefore imposes a new program or higher level of service, beginning, for purposes of reimbursement eligibility, July 25, 2005.

²³⁰ Education Code section 35186(a-d;f) (as added by Stats. 2004, ch. 900, § 12 (SB 550); amended by Stats. 2004, ch. 903 § 1 (AB 2727); Stats. 2005, ch. 118 § 5 (AB 831); Stats. 2007, ch. 526, § 2 (AB 347)).

²³¹ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

Amendments made to section 35186(a) by Statutes 2007, chapter 526 (AB 347) provided for complaints regarding intensive instruction services for students who have not passed both parts of the high school exit examination by the end of grade 12.

And, as amended by Statutes 2007, chapter 526 (AB 347), the classroom notice must include the following information beginning October 12, 2007:

Pupils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of section 37254. The information in this paragraph, which is to be included in the notice required pursuant to this subdivision, shall only be included in notices posted in classrooms in school with grades 10 to 12, inclusive.²³²

These amendments further increase the scope of the *Williams* complaint process, and therefore impose a new program or higher level of service, beginning, for purposes of reimbursement eligibility, October 12, 2007.²³³

DOF argues, in its comments submitted on the draft staff analysis, that “[t]he Uniform Complaint Process alleged in the test claim is not ‘new and different.’” DOF’s comments state:

Section (a) of Education Code section 35186, alleged in the test claim states, "A school shall *use the uniform complaint process it has adopted* as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12."

As the emphasized selection indicates, the test claim statute states that the complaint process used to address *Williams* complaints is the process the school district has already adopted. This statute does not add a new process but provides additional purposes for an existing process.²³⁴

The Commission disagrees with DOF’s interpretation. The *Williams* complaint process *is* new. Although section 35186 directs school districts to use the Uniform Complaint Process, as provided for in Title 5, section 4600 et seq., it qualifies that direction with the phrase “with modifications, as necessary.” As noted above, the existing Uniform Complaint Process, as provided for in Title 5, section 4600 et seq., is addressed primarily to discrimination complaints

²³² Education Code section 35186(f) (Stats. 2007, ch. 526, § 2 (AB 347)).

²³³ Education Code section 35186(a)(4) (Stats. 2007, ch. 526, § 2 (AB 347)).

²³⁴ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

in specified educational programs, and was limited to specific educational programs or discrimination against protected groups, as defined in the Education Code, sections 200 and 220, and Government Code section 11135.²³⁵

Because section 35186 provides for complaints on a number of new grounds, which are not necessarily discrimination-related, and provides for its own specific process requirements, CDE chose to adopt separate regulations (Title 5, section 4680-4687) to implement the *Williams* complaint process. It is apparent, by the adoption of separate regulations, that CDE interprets the *Williams* complaint process as being new, and separate from the existing Uniform Complaint Process. The regulations implementing section 35186, and the three categories of *Williams* issues provided for under those regulations, are specifically exempted from a number of sections of the former Uniform Complaint Process.²³⁶ These regulations, which have not been pled and are therefore not before the Commission, provide specifically for complaints regarding emergency or urgent facilities conditions, instructional materials, and teacher vacancies or misassignments.²³⁷

DOF suggests that absent the *Williams* complaint process the districts “would still be required to respond to violations of applicable laws.” But the existing Uniform Complaint Process addresses only discrimination complaints in specified programs, and is limited to specific educational programs or discrimination against protected groups.²³⁸ The *Williams* complaint process is distinct from the former Uniform Complaint Process, in that it addresses emergency or urgent facilities conditions, teacher vacancies or misassignments, and insufficient provision of textbooks and instructional materials; subjects which may or may not rise to the level of discrimination, and which may occur at any school in any district, and are not confined to specific programs.²³⁹ Moreover, a more specific provision of law will control over a more general one; even if, as DOF asserts, the Uniform Complaint Process could have addressed these issues, the *Williams* complaint process, being a new enactment, should be presumed to supersede the earlier, more general program.²⁴⁰ And finally, the persons responsible for taking complaints, and the response required of the local educational agencies under the *Williams* complaint process are both different from and more specific than the Uniform Complaint Process under section 4600 et seq.²⁴¹

²³⁵ See Code of Regulations, Title 5, section 4610.

²³⁶ See, e.g., Code of Regulations, Title 5, section 4630 [“Except for complaints under sections 4680-4687 regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments,”].

²³⁷ Code of Regulations, Title 5, sections 4680-4687.

²³⁸ See Code of Regulations, Title 5, section 4610.

²³⁹ *Contra*, Code of Regulations, Title 5, section 4610.

²⁴⁰ California Jurisprudence 3d, Statutes, section 117.

²⁴¹ Compare, Code of Regulations, Title 5, section 4631 [Except for complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, which must be processed in accordance with sections 4680-4687, within 60 days from the date of the receipt of the complaint, the local educational agency person responsible for the investigation of the

DOF also suggests that the costs of the *Williams* complaint process “must be compared with the costs of implementing an alternative process for the district to respond to complaints.”²⁴² DOF submits no evidence, nor cites any legal authority, to support this contention.

Therefore, the Commission finds that section 35186 mandates a new program or higher level of service with respect to the requirements of subdivisions (a) through (d), and (f), as provided above.

DOF further argues, in its comments on the draft staff analysis, that there should be no increased costs for posting the notice regarding the *Williams* complaint procedures as follows:

It is not reasonable to assume that there would be costs associated with posting a notice regarding the complaint procedures, pursuant to Education Code section 35186. The Legislature included in the test claim statute the exact text of an acceptable notice. A school district that chooses to modify the text should bear the costs of any modifications. There is no reason to believe that the costs of physically posting the notices would create any actual costs for the school district, even on a one-time basis.

Though not dispositive on the issue,²⁴³ the Legislative Counsel’s Digest preceding SB 550 expressly states that posting the notice in classrooms regarding the *Williams* complaint process “impose[s] a state-mandated local program.”²⁴⁴ DOF submits no evidence or authority to support its contention; based on nothing more than common sense it would be unreasonable to assume that a physical act, no matter how slight, conducted in every classroom in every school in every district, would not result in costs. DOF’s assertion must rely on Government Code section 17564, which provides that a test claim or reimbursement claim must allege at least \$1000 in increased costs. But if so, DOF misapprehends the purpose and meaning of section 17564; the section does not require that every activity alleged, or even every program or code section alleged, result in costs of at least \$1000. Here, even though the costs may be small, there is no evidence in the record to support DOF’s assertion that there are no increased costs at all.

On the basis of the foregoing analysis, the Commission finds that these notice requirements impose a state-mandated new program or higher level of service on school districts.

complaints or his or her designee shall conduct and complete an investigation of the complaint in accordance with the local procedures adopted pursuant to section 4621 and prepare a written Local Educational Agency Decision. “[, with Code of Regulations, Title 5, section 4680 [“Complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancy or misassignment shall be filed with the principal of the school”]; and Code of Regulations, Title 5, section 4685 [“The principal, or, where applicable, district superintendent or his or her designee shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received.”]

²⁴² Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012

²⁴³ *County of Los Angeles v. Commission on State Mandates* (Cal. Ct. App. 2d Dist. 1995) 32 Cal.App.4th 805, at p. 819.

²⁴⁴ Legislative Counsel’s Digest, Statutes 2004, chapter 900.

2. Responding to complaints in a language other than English under section 35186(a)(1), as amended by Statutes 2006, chapter 526, and the keeping of complaints and responses as public records under section 35186(d), do not impose state-mandated new programs or higher levels of service because Education Code section 48985, and Government Code sections 6252 and 6253, respectively, were requirements of prior law.

Section 35186(a)(1), as amended by Statutes of 2006, chapter 704 (AB 607), requires that when reporting back to a complainant regarding the resolution of the complained-of subject matter, “[i]f section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed.”²⁴⁵ Section 48985 provides, in pertinent part:

- (a) If 15 percent or more of the pupils enrolled in a public school that provides instruction in kindergarten or any of grades 1 to 12, inclusive, speak a single primary language other than English...all notices, reports, statements, or records sent to the parent or guardian of any such pupil by the school or school district shall, in addition to being written in English, be written in the primary language, and may be responded to in either English or the primary language.²⁴⁶

Section 48985 was a requirement of prior existing law, and applied broadly to “all notices, reports, statements, or records sent to the parent or guardian of any such pupil.” This requirement was broad enough to apply to the response and report required under section 35186(a), irrespective of the 2006 amendments specifically incorporating section 48985. The Commission finds that the incorporation by reference of section 48985 within the *Williams* complaint process under section 35186(a) is a clarification of existing law, and not a new program or higher level of service.

Similarly, section 35186(d) provides that “[t]he complaints and written responses shall be available as public records.” The claimant alleges this subdivision to require a new program or higher level of service, but the keeping of school districts’ “public records” was a requirement of existing law, pursuant to sections 6252 and 6253 of the Government Code. Section 6252 provides that “public records” shall include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Section 6252 also provides, that a “writing” includes “handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.”²⁴⁷ And section 6253 provides that “[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided.”²⁴⁸ The clear import of these two sections, as

²⁴⁵ Education Code section 35186(a)(1) (Stats. 2006, ch. 704 (AB 607)).

²⁴⁶ Education Code section 48985 (Stats. 1981, ch. 219 § 2).

²⁴⁷ Government Code section 6252 (Stats. 1970, ch. 575).

²⁴⁸ Government Code section 6253 (Stats. 1975, ch. 544).

well as the broader purpose of the Public Records Act, as enacted in Statutes of 1968, chapter 1473, is addressed to the keeping and making available of all records of state and local agencies. The Legislature stated in Statutes 1968, chapter 1473, that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every citizen of this state.”²⁴⁹ Given the long history and broad applicability of the Public Records Act, the Commission finds that subdivision (d) does not impose a new program or higher level of service.

3. California Code of Regulations, Title 5, sections 4600-4670 do not impose a new program or higher level of service upon local educational agencies.

The Uniform Complaint Process in existence before the *Williams* settlement, and before the addition of section 35186 to the Education Code, is outlined at California Code of Regulations, Title 5, sections 4600-4670. Those regulations, the underlying statutes, and the requirements thereof, address allegations of discrimination and violations of specific educational programs, and are analyzed in a separate test claim: *Uniform Complaint Procedures* (03-TC-02). The regulations governing the new *Williams* complaint process are found at sections 4680-4687, and are not pled in this test claim.²⁵⁰ The *Williams* complaint process is specifically excepted from the provisions of sections 4600-4670, which govern the former process, and which are not properly pled in this test claim.²⁵¹

4. Sections 35186(a-d) and (f) impose costs mandated by the state upon local educational agencies.

The new programs and higher levels of service described above are alleged by claimants to result in increased costs mandated by the state. Those costs are alleged to amount to greater than \$1000, and no funding specifically intended for these mandated activities is identified. Neither does any other provision of section 17556 operate to statutorily exclude these activities from a finding of “costs mandated by the state.” The Commission finds that there is evidence of costs mandated by the state, within the meaning of Government Code section 17514.

5. Conclusion

The Commission finds that section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831);

²⁴⁹ Statutes 1968, ch. 1473 § 39.

²⁵⁰ California Code of Regulations, Title 5, sections 4680-4687 (Register 2005, No. 52).

²⁵¹ See, e.g., California Code of Regulations, Title 5, section 4631 (operative 9-25-91 (Register 92, No. 3)) [“Except for complaints regarding (the *Williams* subject matter), which must be processed in accordance with sections 4680-4687, within 60 days from the date of the receipt of the complaint, the local educational agency person responsible for the investigation of the complaints or his or her designee shall conduct and complete an investigation of the complaint in accordance with the local procedures adopted pursuant to section 4621 and prepare a written Local Educational Agency Decision.”]; California Code of Regulations, Title 5, section 4650 (operative 9-25-91 (Register 92, No. 3)) [“Except for complaints under sections 4680, 4681, 4682, and 4683 (i.e., the *Williams* subject matter complaints), the Department shall directly intervene without waiting for local educational agency investigation if one or more of the following situations exist:”].

Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:

- Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.²⁵²
- Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.²⁵³
- Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁴
- Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁵
- Remediating a valid complaint within a reasonable time period but not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁶
- Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁷
- Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁸
- Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.²⁵⁹

²⁵² Education Code section 35186(a)(1) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

²⁵³ Education Code section 35186(a)(1) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁴ Education Code section 35186(a)(3) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁵ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁶ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁷ Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁸ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550).

²⁵⁹ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550).

- Adding to the posted notice in each classroom that “[t]here should be no teacher vacancies or misassignments.” The eligible reimbursement period for this activity begins July 25, 2005.²⁶⁰
- Receiving complaints regarding “any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.” The eligible reimbursement period for this activity begins October 12, 2007.²⁶¹
- Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that “[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.” The eligible reimbursement period for this activity begins October 12, 2007.²⁶²

All other statutes and regulations pled with respect to the *Williams* Uniform Complaint Process do not impose a reimbursable state-mandated program.

G. Expansion of the Scope of Compliance Audits and the Scope of Review of Audit Exceptions Imposes a Partially Reimbursable State-Mandated Program Upon School Districts and County Offices of Education.²⁶³

Claimants allege generally that the reviewing of additional audit exceptions and the addition to the requirements of the fiscal and compliance audit, pursuant to amended sections 14501, 41020, and 41344.4, impose reimbursable state-mandated activities upon county offices of education and school districts.

DOF asserts, in its comments in response to the draft staff analysis, that “the *Williams* elements,” apparently referring to sufficiency of textbooks and instructional materials, teacher vacancies and misassignments, and facilities conditions, are “basic requirements that all school districts must meet in expending state funding,” and “basic constitutional requirements.” As such, DOF argues that the annual audits provided for in Proposition 98, and the “existing financial and compliance audits program” should reasonably have included these elements, and therefore the activities are not a new program or higher level of service. DOF also argues that the review of audit exceptions conducted by county offices of education would have addressed audit exceptions related to “the *Williams* elements.”²⁶⁴

DOF does not submit any evidence or authority to support these contentions. The analysis below will demonstrate that the fiscal and compliance audits under section 14501 are expanded to

²⁶⁰ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

²⁶¹ Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

²⁶² Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

²⁶³ Education Code sections 14501 (Stats. 2004, ch. 900, § 2 (SB 550)); 41020 (Stats. 2004, ch. 900 § 13 (SB 550)); 41344.4 (Stats. 2004, ch. 900 § 14 (SB 550)).

²⁶⁴ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

include the *Williams* elements, and that the review of audit exceptions was consequently expanded as well, to include the same elements. The conduct of an audit including elements that were not previously required by state law to be subject to audit constitutes a new program or higher level of service.

The Commission finds that the expansion of compliance audits under section 14501, and the expansion of audit exceptions and review under section 41020, impose a partial reimbursable state mandated program or higher level of service. But the possible withholding of funds pursuant to a significant audit exception unless the county superintendent certifies that the exception has been corrected or an acceptable plan of correction has been put in place, under section 41344.4, does not impose a reimbursable state mandated program, as discussed below.

1. Amendments to the Compliance Audit under section 14501 impose a state-mandated new program or higher level of service upon school districts.

Under prior existing law, section 14501 defined a “compliance audit” to mean “an audit that ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.”²⁶⁵ As amended by Statutes 2004, chapter 900, section 2, Section 14501 now defines a compliance audit to “includ[e] the verification of each of the following:”

- (1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.
- (2) Teacher misassignments pursuant to Section 44258.9.
- (3) The accuracy of information reported on the School Accountability Report Card required by Section 33126.

The expanded scope of the “compliance audit,” like the expanded scope of the SARC, and the new *Williams* complaint process, mandates a higher level of service upon school districts. Paragraph (7) of the Legislative Counsel’s Digest of chapter 900 of Statutes 2004 suggests an awareness by the Legislature that these amendments constitute a new state-mandated local program, and while the Legislative Counsel’s expression is not dispositive on the issue, the amendments require school districts to perform new activities that provide a service to the public.²⁶⁶

DOF argues that the so-called “*Williams* elements” above are basic and essential to the provision of education and that therefore the audits required under Proposition 98 should encompass these items.²⁶⁷ This argument relies on Government Code section 17556(f), which proscribes a

²⁶⁵ Education Code section 14501(b) (Stats. 2002, ch. 1128 (AB 2834)).

²⁶⁶ Paragraph (7) of Legislative Counsel’s Digest preceding Statutes 2004, chapter 900 describes in brief the requirements of the local audit and review of audit exceptions commencing with the 2004-2005 audit, concluding that the requirements “impos[e] a state-mandated local program.”

²⁶⁷ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

finding of costs mandated by the state where a mandated activity is “expressly included in,” or “necessary to implement” a voter-enacted ballot initiative.²⁶⁸

There is no evidence or authority that would link the “annual audit accounting for such funds” that DOF cites from Proposition 98²⁶⁹ to the “*Williams* elements” cited above. The language from Proposition 98 upon which DOF relies refers to fiscal accounting, while the test claim statute has been amended with respect to a “compliance audit” only.²⁷⁰ It cannot reasonably be argued that the requirements of the test claim statute are “expressly included in” the fiscal audit provided for in Proposition 98.

Moreover, what is “necessary to implement” a voter-enacted ballot initiative is explored above, with respect to SARCs, and it is found that the word “necessary” is operative. As discussed with respect to SARCs, a program that contemplates amendment or augmentation does not result in any and all amendment being found “necessary to implement” that program. Whatever audit requirements might be permissible under Proposition 98, the test claim statute is not “necessary to implement” the voter-enacted ballot initiative.²⁷¹

DOF also argues, in its comments, that “the existing financial and compliance audits program has always been able to address the categories of expenditures identified in the test claim statute.” DOF argues, therefore, that “the statute should not be interpreted to create a higher level of service, but to identify the Legislature’s use of audit resources.”²⁷² Prior section 14501 provided that a compliance audit “means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.”²⁷³ The test claim statute adds specific reference to the reporting requirements for sufficient textbooks and instructional materials, teacher misassignments, and the accuracy of the SARCs, as requirements for inclusion in a compliance audit. As discussed above, the prior audit requirements address fiscal accountability, and the disbursement of funds in compliance with law and regulation; the test claim statute adds elements that are beyond the scope, and by increasing the scope of the audit, the test claim statute imposes a new program or higher level of service.

The Commission finds that section 14501 imposes a state-mandated new program or higher level of service upon school districts.

2. Amendments and additions to the review of audit exceptions under section 41020 impose new programs or higher levels of service upon county offices of education and school districts.

²⁶⁸ Government Code section 17556(f).

²⁶⁹ Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

²⁷⁰ Education Code section 14501(b) (Stats. 2004, ch. 900 (SB 550)).

²⁷¹ See *CSBA, supra* [discussion of “necessary to implement”].

²⁷² Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November 16, 2012.

²⁷³ Education Code section 14501 (Stats 2002, ch. 1128 (AB 2834)).

Under prior section 41020 both the county offices of education and the school districts were required to conduct an audit of all funds and expenditures within their respective control, by May 1 of each fiscal year.²⁷⁴ The audit was to be conducted at the expense of the school district by a certified public accountant licensed by the California Board of Accountancy, and using a format established by the Controller.²⁷⁵ The prior section required that, commencing with the 2002-2003 audits, county superintendents must review audit exceptions “related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determin[e] whether the exceptions have been either corrected or an acceptable plan of correction has been developed.”²⁷⁶ Amendments to section 41020, enacted in Statutes 2004, chapter 900 provide that beginning with the 2004-2005 fiscal year, county superintendents must also include in the review of audit exceptions “those audit exceptions related to use of instructional materials program funds, teacher misassignment, [and] information reported on the school accountability report card,” and the superintendent “shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.”²⁷⁷

DOF argues, in its comments, that review of audit exceptions was a preexisting requirement on county offices of education, and in fact argues that “county superintendents would have had to address audit exceptions that related to the *Williams* elements, even though they were not expressly contained in statute.” DOF also argues that “as discussed previously, any costs to the county offices are a part of the broad range of duties required to superintend the schools in the county.” DOF argues that in carrying out the broad oversight duties, “the county superintendent must ensure that the school district is operating schools that meet basic constitutional requirements, including those specifically included in the *Williams* statutes.”

But in the same way that the test claim statute expands the scope of the audits to be performed, the scope of audit exceptions must expand. There is no evidence that prior to the express inclusion in the compliance audits of the so-called *Williams* elements, the county superintendents would have reviewed audit exceptions regarding those elements. To the extent that the review of audit exceptions is expanded in scope, and the claimants have alleged increased costs, DOF submits no evidence or authority to rebut the claimants’ allegations. DOF’s bare assertions that the broad oversight authority of county offices of education should extend to the review of audit exceptions are without supporting evidence or authority, and where an audit was not previously required to contain those elements under section 14501, no review of audit exceptions would have occurred under section 41020.

Pursuant to section 41020 the audit is required to be performed at the expense of the district, including any and all audit elements included under section 14501.²⁷⁸ Thus, while section 41020 causes school districts to conduct new activities and incur increased costs by expanding the scope of the audit as defined by section 14501, the same section causes county offices of

²⁷⁴ Education Code section 41020(b)(1) (Stats. 2002, ch. 1128 (AB 2834)).

²⁷⁵ Education Code section 41020(d, e, and f) (Stats. 2002, ch. 1128 (AB 2834)).

²⁷⁶ Education Code section 41020(i) (Stats. 2002, ch. 1128 (AB 2834)).

²⁷⁷ Education Code section 41020(i)(2) (Stats. 2004, ch. 900 (SB 550)).

²⁷⁸ Education Code section 41020(g)(1)(A) (Stats. 2004, ch. 900 (SB 550)) [referring to section 14500 et seq. for the procedural and technical requirements of the audits].

education to conduct new activities and to incur increased costs by expanding the scope of review of audit exceptions.

The Commission finds that section 41020 imposes state-mandated new programs or higher levels of service upon both county offices of education and upon school districts.²⁷⁹

3. Section 41344.4 does not impose a state-mandated program upon local educational agencies.

Existing section 41344 required school districts to be penalized for “significant audit exceptions,” either in the form of repayment or in the form of withholding from the next principal apportionment by the Controller.²⁸⁰ New section 41344.4 provides that “notwithstanding any other provision of law,” a local educational agency will not be required to repay an apportionment based on significant audit exceptions relating to instructional materials, teacher vacancies or misassignments, or inaccuracies in the school accountability report cards, if the county superintendent certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected or that an acceptable plan of correction has been submitted to the county superintendent.

This section is alleged to result in a duty on the school district, in order to avoid being held accountable for repayment, to put a plan of correction in place, and a duty on the county superintendent to certify the same to the Superintendent of Public Instruction.²⁸¹ These new activities are alleged to result in increased costs, and therefore to create a reimbursable state-mandated local program.

However, there is nothing in the plain language of section 41344.4 that imposes any mandatory activities or costs. To the extent that the school districts are required to correct audit exceptions or to submit to the county superintendent an acceptable plan of correction or face repayment or reduction of the next principal apportionment, those costs are, pursuant to *County of Los Angeles, supra*, and *Long Beach Unified School District v. State of California*, not reimbursable absent some mandated new program or higher level of service.²⁸² Moreover, under *City of San Jose*, as discussed above, where mandated activities or costs are imposed by another entity of local government, such as a county office of education, those costs are not “mandated by the state,” within the meaning of article XIII B, section 6 and Government Code section 17514. Here, as in *City of San Jose*, any costs imposed would be a result of either the school district’s failure to correct a significant audit exception identified by the review of audit exceptions conducted by the county office of education, or the county office of education’s failure to certify to the Superintendent of Public Instruction that an audit exception had been corrected or a plan of correction put in place.

The Commission finds that section 41344.4 does not impose a state-mandated program.

²⁷⁹ Statutes 2004, chapter 900 (SB 550).

²⁸⁰ Education Code section 41344 (Stats. 2003, ch. 552 § 14 (AB 300)).

²⁸¹ Education Code section 41344.4 (Stats. 2004, ch. 900 § 14 (SB 550))

²⁸² *Long Beach Unified School District v. State of California* (Cal. Ct. App. 2d Dist. 1990) 225 Cal.App.3d 155, 173 [“A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service.”].

4. The mandated new programs or higher levels of service under sections 14501 and 41020 result in increased costs mandated by the state, within the meaning of Government Code section 17514.

Claimants allege statewide cost estimates for Financial and Compliance Auditing for K-12 School Districts in amounts of \$96,486 for fiscal year 2004-2005 and \$97,000 for fiscal year 2005-2006. Claimants allege statewide cost estimates for Financial and Compliance Auditing for county offices of education in amounts of \$20,174 for fiscal year 2004-2005 and \$20,000 for fiscal year 2005-2006. No funding is identified for the activities required by sections 14501 and 41020. The Commission finds that Education Code sections 14501 and 41020 result in increased costs mandated by the state pursuant to Government Code section 17514.

5. Conclusion

The Commission finds that sections 14501 and 41020 impose a reimbursable state-mandated program for the following activities:

- School districts are required to include within their compliance audit, verification of reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.²⁸³
- County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the SARC. The reimbursement period for these activities begins September 29, 2004.²⁸⁴

The Commission finds that section 41344.4 does not impose a state-mandated program upon any LEAs.

H. Sufficiency of Textbooks and Instructional Materials Do Not Impose a State-Mandated Program.²⁸⁵

Education Code sections 60117 through 60119 contain the Pupil Textbooks and Instructional Materials Incentive Program, added to the code in 1994. Prior section 60119 required school districts to do the following:

- Hold an annual public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent

²⁸³ Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

²⁸⁴ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

²⁸⁵ Education Code sections 60119 (amended by Stats. 2004, ch. 900 § 18 (SB 550)); 60252 (Stats. 2004, ch. 900, § 20 (SB 550)).

with the content and cycles of the curriculum framework adopted by the state board.

- If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall (1) provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and (2) take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil *has, or will have, sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.*²⁸⁶
- School districts may use any funds available for textbooks and instructional materials from categorical programs appropriated in the budget, funds in excess of the amount needed during the prior fiscal year to purchase textbooks or instructional materials, and any other funds available to the school district for textbooks and instructional materials to ensure that each pupil has sufficient textbooks or instructional materials within a two-year period from the date the governing board determines there are insufficient materials.²⁸⁷

Under amendments to the Pupil Textbook and Instructional Materials Incentive Program enacted pursuant to the *Williams* settlement, school districts are required, in order to be eligible to receive funds, to:

- Hold a public hearing *on or before the end of the eighth week of the school year*, in which the governing board must make a determination, through a resolution, as to whether each pupil in each school in the district *has* sufficient textbooks or instructional materials or both in each core subject as identified by the amended section;²⁸⁸
- Ensure that students enrolled in foreign language or health courses must have sufficient textbooks or instructional materials; that high school students must have sufficient laboratory equipment; and that the governing board shall address those issues in its hearing; and,²⁸⁹
- If the school district determines that an insufficiency exists, the district is required to provide information regarding the insufficiency to parents and teachers, and to take any action to remedy the deficiency, “except an action that would require reimbursement by

²⁸⁶ Education Code section 60119(a) (Stats. 1999, ch. 646 § 32.2 (AB 1600)).

²⁸⁷ Education Code section 60119(a)(2)(B) (Stats. 1999, ch. 646 § 32.2 (AB 1600)). Beginning in fiscal year 2009-2010, and until fiscal year 2014-2015, school districts may use funds from several enumerated categorical block grants, previously limited to specified purposes, to fund any educational purpose. (Education Code section 42605, Stats. 2009, 3rd Ex. Sess., ch. 12 § 15 (ABX3 4)).

²⁸⁸ Education Code section 60119(a)(1) (Stats. 2004, ch. 900 § 18 (SB 550)).

²⁸⁹ Education Code section 60119(a)(1)(C) (Stats. 2004, ch. 900 § 18 (SB 550)) [former section only required a finding that each pupil has or will have appropriate textbooks or instructional materials “in each subject.” (Stats. 1999, ch. 646 § 32.2 (AB 1600))].

the Commission on State Mandates,” to ensure that each pupil has sufficient textbooks or instructional materials, or both, within *two months* of the beginning of the school year.²⁹⁰

- “Sufficient textbooks or instructional materials” is defined in the amended section to mean that each pupil has a textbook or instructional materials, or both, to use in class and to take home. This does not require two sets of textbooks, and does not include photocopied portions of a textbook.²⁹¹
- Amended section 60252 requires LEAs to ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.²⁹²

Claimants allege generally that amended sections 60119 and 60252 impose reimbursable state-mandated activities on LEAs.

1. Sections 60119 and 60252 do not impose a state-mandated program because local educational agencies are not legally compelled to participate in the Pupil Textbook and Instructional Materials Incentive Program.

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, and hence, not legally compelled to incur the notice and agenda costs required under the applicable open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs, and made themselves subject to the open meeting requirements.²⁹³

Here, school districts are not legally compelled by the state to comply with the requirements of the Pupil Textbook and Instructional Materials Incentive Program. Rather, school districts make a local decision to perform the activities in order to be eligible to receive funding. The plain language of Education Code section 60119 provides that “*in order to be eligible to receive funds,*” the governing board of a school district must provide for a public hearing, and adopt a resolution determining whether each student has sufficient textbooks or instructional materials.²⁹⁴ There is no legal compulsion to comply with the requirements of section 60119.

Section 60252, similarly, does not impose any mandated activities upon local educational agencies. In 1994, the Legislature created the Pupil Textbook and Instructional Materials Incentive Account to provide supplemental funding to school districts for textbooks and instructional materials, by adding Education Code section 60252.²⁹⁵ That statute was in effect

²⁹⁰ Education Code section 60119(a)(2)(A) (Stats. 2004, ch. 900 § 18 (SB 550) [The former section permitted *two years* to remedy the insufficiency (Stats. 1999, ch. 646 § 32.2 (AB 1600)); Stats. 2005, ch. 118 (AB 831); Stats. 2006, ch. 704 (AB 607)).

²⁹¹ Education Code section 60119(c) (Stats. 2004, ch. 900 § 18 (SB 550)[the former section contained no express definition of sufficiency]).

²⁹² Education Code section 60252 (Stats. 2004, ch. 900 § 20 (SB 550)).

²⁹³ *Kern, supra*, 30 Cal.4th 727, at pp. 744-745.

²⁹⁴ Education Code section 60119 (Stats. 2004, ch. 900 § 18 (SB 550)).

²⁹⁵ Statutes 1994, chapter 927.

until a 2002 amendment, which made section 60252 inoperative on January 1, 2003.²⁹⁶ The section was amended, and the account reinstated, in this test claim statute.²⁹⁷ The money in the account is intended to fund the Pupil Textbook and Instructional Materials Incentive Program, and is allocated to K-12 school districts that “satisfy each of the following criteria:”

- (1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.
- (2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.
- (3) A school district shall ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

Therefore, the requirements of both section 60119 and section 60252 are imposed only upon LEAs who choose to participate in the Pupil Textbook and Instructional Materials Incentive Program. There is no legal compulsion to participate in the program, and therefore the requirements of sections 60119 and 60252 are not mandated by the state.

2. Sections 60119 and 60252 do not impose a state-mandated program because local educational agencies are not practically compelled to participate in the Pupil Textbook and Instructional Materials Incentive Program.

As discussed above, in *Kern*, the school districts urged the court to define “state mandate” broadly to include situations in which participation in the program is practically compelled; where the absence of a reasonable alternative to participation creates a “de facto” mandate. Although the court in *Kern* declined to do so, the court did recognize the possibility of practical compulsion existing in the context of a voluntary funded program.

The court acknowledged that a participant in a funded program may be burdened by additional requirements imposed as a condition of continued participation in a program. Such conditions alone, however, do not make the program mandatory or reimbursable under article XIII B, section 6:

Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity’s

²⁹⁶ Statutes 2002, chapter 803 added subdivision (d) to section 60252, which stated: “This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007 deletes or extends the dates on which it becomes inoperative and is repealed.” In 2004, the Legislature deleted subdivision (d), making the statute operative again (Stats. 2004, ch. 900, S.B. 550).

²⁹⁷ Education Code section 60252 (Stats. 2004, Ch. 900, § 20 (SB 550)).

decision whether to continue its participation in the modified program any less voluntary.²⁹⁸

The court's reasoning applies here. If a school district decides not to participate in the Pupil Textbook and Instructional Materials Incentive Program, or elects to discontinue participation in the program, there is no evidence in the record that the district will face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to continue to receive funding.

One might argue, after *Williams*, that compliance with the Pupil Textbook and Instructional Materials Incentive Program is required; that a pupil's constitutional right to an equal educational opportunity may be impaired if every pupil does not have access to textbooks or instructional materials in each subject area; and that the compliance with the section 60119 is required in order to carry out the preexisting constitutional and statutory requirement to provide students with textbooks or instructional materials at no cost to the student.²⁹⁹ Indeed a failure to provide sufficient textbooks was one of the grounds upon which the *Williams* class action against the public schools was instituted, and noncompliance with the standards set by the amended provisions of the Pupil Textbook and Instructional Materials Incentive Program might well be expected to lead to further legal action. However persuasive that line of reasoning, it is entirely hypothetical; potential liability cannot reasonably be said to constitute "practical compulsion" within the meaning of *City of Sacramento*, and *Kern*, *supra*.

There is no evidence in the record to support a finding that a pupil's constitutional right to education is impaired if a school district does not comply with the Pupil Textbook and Instructional Materials Incentive Program and receive that additional funding. Neither is there evidence in the record that school districts' existing funding fails to provide sufficient funds to purchase textbooks and instructional materials for students, or that participation in the Pupil Textbook and Instructional Materials Incentive Program is the *only* reasonable means of carrying out the core mandatory function of providing sufficient textbooks and instructional materials to each pupil.³⁰⁰ Compliance with section 60119 is required to receive the supplemental funding under this program, but school districts are not legally compelled to comply. As described in the analysis above, school districts are not legally or practically compelled to comply with sections 60252 and 60119, and to seek supplemental funding for textbooks and instructional materials.

Accordingly, the Commission finds that Education Code sections 60119 and 60252 do not impose a state-mandated new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution.

I. Remaining Code Sections, Regulations, and Executive Orders Pled

²⁹⁸ *Kern*, *supra*, 30 Cal.4th 727, 748; 752-754.

²⁹⁹ Article IX, section 7.5 of the California Constitution provides that "The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute." Education Code section 60411 governs instructional materials for high school students and similarly provides that the books be provided to pupils at no charge.

³⁰⁰ *POBRA*, *supra* (2009) 170 Cal.App.4th 1355, 1368.

The following code sections were pled in the test claim but nowhere alleged specifically to result in new programs or higher levels of service, or to result in increased costs mandated by the state to LEAs.

- Section 88 provides that “state board” shall mean the State Board of Education. There is no activity mandated by this section.
- Section 32228.6 was repealed by the test claim statutes in section 4, chapter 118, Statutes 2005.³⁰¹ There are no activities required by this repealed section.
- Section 41207.5 created the Proposition 98 Reversion Account. There are no activities mandated by this section.³⁰²
- Sections 41500, 41501, and 41572 were amended in chapter 118 of Statutes 2005, in a manner not relevant to this test claim.³⁰³
- Section 44225.6, addressing the annual report to the Legislature and to the Governor by the Commission on Teacher Credentialing, was amended by Statutes 2004, chapter 902, but mandates activities only of the state Commission on Teacher Credentialing.³⁰⁴ Moreover, no costs have been alleged under this section.
- Sections 44274 and 44275.3 were amended to provide that where the commission [on Teacher Credentialing] determines that another state’s licensing requirements are at least comparable to California’s applicants from that state will not be required to meet California requirements for the basic skills proficiency test.³⁰⁵ These code sections do not impose mandated activities on school districts.
- AB 3001 amended sections 44325 and 44453 to bring districts’ and universities’ internship programs in line with the requirements of the federal No Child Left Behind Act of 2001.³⁰⁶ There are no state-mandated activities alleged under these sections.
- AB 3001 made technical, non-substantive changes to section 44511 that do not mandate a new program or higher level of service on school districts.³⁰⁷
- Section 52059 was amended to require that the Statewide System of School Support, consisting of regional consortia, including county offices of education and school districts, to provide assistance to schools and school districts in need of improvement by reviewing and analyzing all facets of the school’s operation, including recruitment, hiring, and retention of principals, teachers, and other staff; and the roles and

³⁰¹ Statutes 2005, chapter 118, section 4 (AB 831).

³⁰² Education Code section 41207.5 (Stats. 2004, ch. 899 § 4 (SB 6)).

³⁰³ Statutes 2005, chapter 118, sections 6-8 (AB 831).

³⁰⁴ Statutes 2004, chapter 902, section 2 (AB 3001).

³⁰⁵ Statutes 2004, chapter 902, sections 4-5 (AB 3001).

³⁰⁶ Statutes 2004, chapter 902, sections 6-7 (AB 3001).

³⁰⁷ Statutes 2004, chapter 902, section 8 (AB 3001).

responsibilities of district and school management personnel.³⁰⁸ There are no activities required of LEAs alleged under this section.

- Section 48642 provides for the sunseting and repeal of a number of other sections not relevant to this test claim.³⁰⁹ There are no activities required by this section.
- Sections 49436, 52295.35, and 56836.165, were amended in a manner not relevant to this test claim.³¹⁰
- Sections 52055.625 and 52055.640 add requirements, conditional upon the receipt of funds, to the High Priority Schools Grant Program. SB 550 also added section 52055.662, providing for new grants during the phase-out of schools from the High Priority Schools Grant Program.³¹¹ There are no new activities or costs alleged under this program in the test claim. Moreover, the program is a grant program, and any requirements that might be alleged under the test claim are downstream requirements of a voluntary funding program, and are therefore not mandated by the state.
- Section 62000.4 was repealed by the test claim statutes in section 21 of chapter 900, Statutes 2004.³¹² There are no activities required by this repealed section.

The foregoing code sections and regulations are not alleged to impose any new activities or costs mandated by the state upon LEAs. The claimants' narrative and declarations do not address the requirements of these statutes, and the Commission therefore finds no mandated activities or costs mandated by the state.

V. Conclusion

For the reasons above, the Commission finds that Education Code sections 33126(b), 35186, 14501, 41020, and 42127.6 impose a reimbursable state-mandated program for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the following activities:

1. Education Code section 33126(b), enacted in Statutes of 2004, chapter 900, imposes a reimbursable state-mandated program upon school districts, beginning September 29, 2004, for the following activities:
 - Reporting teacher misassignments and vacancies within the School Accountability Report Card.
 - Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
 - Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.

³⁰⁸ Statutes 2004, chapter 902, section 10 (AB 3001).

³⁰⁹ Statutes 2005, chapter 118, section 10 (AB 831).

³¹⁰ Statutes 2005, chapter 118, sections 11-14 (AB 831).

³¹¹ Statutes 2004, chapter 900, section 15-17 (SB 550); Statutes 2005, chapter 118, § 12.

³¹² Statutes 2004, chapter 900, section 21 (SB 550).

2. Education Code section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:
- Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.³¹³
 - Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁴
 - Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁵
 - Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁶
 - Remediating a valid complaint within a reasonable time period by not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁷
 - Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁸
 - Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.³¹⁹
 - Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.³²⁰

³¹³ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

³¹⁴ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

³¹⁵ Education Code section 35186(a)(3) (2004, ch. 900 § 12 (SB 550)).

³¹⁶ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

³¹⁷ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

³¹⁸ Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550)).

³¹⁹ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550)).

³²⁰ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

- Adding to the posted notice in each classroom that “[t]here should be no teacher vacancies or misassignments.” The eligible reimbursement period for this activity begins July 25, 2005.³²¹
 - Receiving complaints regarding “any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.” The eligible reimbursement period for this activity begins October 12, 2007.³²²
 - Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that “[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.” The eligible reimbursement period for this activity begins October 12, 2007.³²³
3. Education Code sections 14501 and 41020, as amended by Statutes 2004, chapter 900 (SB 550), impose a reimbursable state-mandated program for the following activities:
- School districts are required to include within their compliance audit verification of reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.³²⁴
 - County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.³²⁵
4. Education Code section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001), imposes a reimbursable state-mandated program upon school districts, beginning, for purposes of reimbursement eligibility, on September 29, 2004, and requiring them to:
- For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision

³²¹ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

³²² Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

³²³ Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

³²⁴ Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

³²⁵ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

(i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.³²⁶

The Commission denies the remaining allegations and finds that all other statutes, regulations, and alleged executive orders pled in this test claim that are not specifically identified in this section do not impose a reimbursable state-mandated program.

³²⁶ Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

COMMISSION ON STATE MANDATES

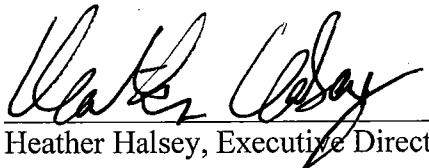
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RE: Adopted Statement of Decision

Williams Case Implementation I, II, III, 05-TC-04, 07-TC-06, and 08-TC-01
San Diego County Office of Education and Sweetwater Union High School District,
Claimants

On December 7, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.



Heather Halsey, Executive Director

Dated: December 18, 2012

Proposed for Adoption: April 19, 2013 (tentative)
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DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Education Code sections 14501, 33126, 35186, 41020, and 42127.6, as Added or Amended by Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347).

Williams Case Implementation I, II, III
 05-TC-04, 07-TC-06, and 08-TC-01

I. SUMMARY OF THE MANDATE

These parameters and guidelines arise from the consolidated *Williams* case implementation test claim. The test claim alleged reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state's settlement in *Eliezer Williams, et al. v. State of California (Williams)*. In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and capable teachers.

The case was settled under the Schwarzenegger administration, and the settlement agreement called for legislative action to ensure that students would be provided with sufficient instructional materials, qualified teachers, and clean and safe facilities and instructional spaces. The resulting legislation made a number of changes to the Education Code, addressing deficiencies in the provision of instructional materials, assignment and retention of qualified teachers, and the maintenance of clean and safe facilities and instructional spaces.

On December 7, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6 impose reimbursable state-mandated new programs or higher levels of service for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim with respect to the reimbursable activities found in Section IV, Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

This consolidated test claim consists of three initial test claim filings. The claimants, San Diego County Office of Education and Sweetwater High School District, filed the first test claim (*Williams I*, 05-TC-04) on September 21, 2005¹. The claimants filed the second test claim

¹ Based on the September 21, 2005 filing date, the potential period of reimbursement for the *Williams I* test claim would begin July 1, 2004. However, the test claim statutes alleged in *Williams I* were enacted as urgency legislation and became effective on September 29, 2004, and

(Williams II, 07-TC-06) on December 14, 2007². The claimants filed the third test claim (Williams III, 08-TC-01) on July 2, 2008³. Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. However, given the various test claim filing dates and various effective dates of statutes, the beginning of the reimbursement periods differ by approved activity, but range from September 29, 2004 to October 12, 2007. The beginning reimbursement periods for each approved activity are included in Section IV, Reimbursable Activities.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for

July 25, 2005, respectively, and therefore the date of enactment marks the potential period of reimbursement for those activities.

² Based on the December 14, 2007 filing date, the potential period of reimbursement for the *Williams II* test claim would begin July 1, 2006. However the test claim statutes alleged in *Williams II* were enacted September 29, 2006, became effective January 1, 2007, and therefore the period of reimbursement begins on the later effective date of January 1, 2007.

³ Based on the July 2, 2008 filing date, the potential period of reimbursement for the *Williams III* test claim would begin July 1, 2007. However the test claim statute at issue in *Williams III* was enacted as urgency legislation and became effective on October 12, 2007, and therefore the date of enactment marks the potential reimbursement period.

the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

1. Reimbursable activities for school districts:
 - a. Reporting the following information on the School Accountability Report Card, pursuant to Education Code section 33126(b), beginning September 29, 2004, for the following activities:⁴
 - i. Reporting teacher misassignments and vacancies within the School Accountability Report Card.
 - ii. Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
 - iii. Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.
 - b. Complying with the Williams Complaint Process pursuant to Education Code section 35186:
 - i. Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.⁵
 - ii. Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.⁶
 - iii. Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.⁷

⁴ Statutes 2004, chapter 900.

⁵ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550) Stats. 2004, ch. 903 (AB 2727)).

⁶ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

- iv. Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.⁸
- v. Remedying a valid complaint within a reasonable time period by not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.⁹
- vi. Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹⁰
- vii. Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹¹
- viii. Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.¹²
- ix. The one-time activity of adding to the posted notice in each classroom that "[t]here should be no teacher vacancies or misassignments." The eligible reimbursement period for this activity begins July 25, 2005.¹³
- x. Receiving complaints regarding "any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12." The eligible reimbursement period for this activity begins October 12, 2007.¹⁴
- xi. The one-time activity of adding to the posted notice in each classroom in schools that serve grades 10 to 12, that "[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the

⁷ Education Code section 35186(a)(3) (2004, ch. 900 § 12 (SB 550)).

⁸ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁹ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁰ Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹¹ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹² Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹³ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

¹⁴ Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

high school exit examination, whichever comes first.” The eligible reimbursement period for this activity begins October 12, 2007.¹⁵

- c. Compliance audits pursuant to Education Code sections 14501 and 41020:
 - i. School districts are required to include within their compliance audit verification of each of the following: reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The eligible reimbursement period for these activities begins September 29, 2004.¹⁶
- d. Forwarding reports to the county office of education pursuant to Education Code section 42127.6:
 - i. For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of section 42127.8. The eligible reimbursement period for this activity begins September 29, 2004.¹⁷

*Reimbursement for this activity is not required to the extent the study, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.*¹⁸

2. Reimbursable activities for county offices of education:

- a. Review of the audit exceptions pursuant to Education Code sections 14501 and 41020:
 - i. County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card. The eligible reimbursement period for these activities begins September 29, 2004.¹⁹

V. CLAIM PREPARATION AND SUBMISSION

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

¹⁵ Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

¹⁶ Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

¹⁷ Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

¹⁸ Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

¹⁹ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

5. Travel

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

B. Indirect Cost Rates

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

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

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter²⁰ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

²⁰ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

Received
December 28, 2012
Commission on
State Mandates



JOHN CHIANG
California State Controller

December 28, 2012

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

Re: Adopted Statement of Decision and Draft Expedited Parameters and Guidelines
Williams Case Implementation I, II, III (05-TC-04, 07-TC-06, and 08-TC-01)
Education Code Sections 14501 et al.
San Diego County Office of Education and Sweetwater Union High School District,
Claimants

Dear Ms. Halsey:

The State Controller's Office has reviewed the proposed parameters and guidelines drafted by your office and recommend no changes.

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729 or e-mail to spurser@sco.ca.gov.

Sincerely,

Kris for
JAY LAL, Manager
Local Reimbursements Section

Received
January 4, 2013
Commission on
State Mandates



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 3, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Halsey:

The Department of Finance has reviewed the expedited draft parameters and guidelines developed by the Commission on State Mandates staff for the consolidated test claim 05-TC-04, 07-TC-06, and 08-TC-01, *Williams Case Implementation I, II, and III*, submitted by the San Diego County Office of Education and the Sweetwater Union High School District.

Finance believes that the following amendments to the draft parameters and guidelines are necessary to ensure that the parameters and guidelines conform to the Commission's December 7, 2012, decision:

"Summary of the Mandate"

- In the first paragraph of the "Summary of the Mandate" section, the phrase "capable teachers" should be replaced with "qualified teachers." This amendment would more accurately reflect the complaint and the resulting settlement. This phrase is used accurately elsewhere in the draft parameters and guidelines.

"Reimbursable Activities"

- **Section 1.a.:** The parameters and guidelines should make clear that reimbursement is required only for the incremental costs of the three activities related to specific reporting requirements on the School Accountability Report Card. Reimbursement is not required for the costs of other statutory requirements related to the School Accountability Report Card, including the costs of producing the report card.

Finance requests that the following be added to the end of the draft section (a), consistent with the statement of decision adopted by the Commission and with Education Code section 33126:

"Reimbursement for this activity is required only to the extent that school districts can document that claimed costs would not have been incurred in the absence of these reporting requirements. Reimbursement for this activity is required only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Education Code section 41020. If the information is determined to be inaccurate, reimbursement is required if the information is corrected by May 15 following the audit."

- **Section 1.c.:** The parameters and guidelines should make clear the reimbursement is required only for the incremental costs of including verification of the three specific requirements in the compliance audit, consistent with the statement of decision adopted by the Commission.

Finance requests that the draft subsection be amended to read:

- “c. Including verification of the following in compliance audits, pursuant to Education Code sections 14051 and 41020:
- i. Reporting requirements for sufficiency of textbooks and instructional materials.
 - ii. Teacher misassignments.
 - iii. The accuracy of the information reported on the School Accountability Report Card.

The eligible reimbursement period for these activities begins September 29, 2004.

Reimbursement for this activity is required only to the extent that school districts can document that claimed costs would not have been incurred in the absence of a requirement to include verification of compliance with these requirements.”

- **Section 1.d.:** The parameters and guidelines should be amended to more accurately reflect the activities determined to be reimbursable in the statement of decision adopted by the Commission.

Finance requests that the draft subsection be amended to read:

- “d. Providing the county superintendent of schools, pursuant to Education Code sections 14051 and 41020:
- i. A copy of a study, report, evaluation, or audit that was commissioned by the Superintendent of Public Instruction or a state control agency and contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code section 33127.
 - ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.

Reimbursement for this activity is not required to the extent the study, report, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.

The eligible reimbursement period for these activities begins September 29, 2004.”

- **Section 2.a.:** The parameters and guidelines should make clear the reimbursement is required only for the incremental costs of reviewing audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card, consistent with the statement of decision adopted by the Commission.

Finance requests that the draft subsection be amended to read:

- “a. Reviewing audit exceptions related to the following, pursuant to Education Code sections 14501 and 41020:
- i. Sufficiency of textbooks and instructional materials.
 - ii. Teacher misassignments.
 - iii. Accuracy of information reported on the School Accountability Report Card.

Reimbursement for this activity is required only to the extent that county offices of education can document that claimed costs would not have been incurred in the absence of a requirement to review audit exceptions related to these requirements.”

Offsetting Revenues and Reimbursements

Finance requests that this section be made more specific so that school districts accurately reduce costs claimed for reporting on the School Accountability Report Card the availability of textbooks and instructional materials (activity 1.a.ii.) by the amount of funding available to the district that is required to be used to report to the public about the sufficiency of instructional materials.

Subparagraph (B) of subdivision (5) of subsection (a) of Education Code section 33126, included in the test claim, specifies that school districts must report on the School Accountability Report Card:

“The availability of sufficient, textbooks and other instructional materials, as determined pursuant to Section 60119, for each pupil, including English learners, in each of the areas enumerated in clauses (i) to (iv), inclusive. If the governing board determines, pursuant to Section 60119 that there are insufficient textbooks or instructional materials, or both, it shall include information for each school in which an insufficiency exists, identifying the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area...”

Education Code section 60119 requires a school district governing board to provide information to the public if the board determines there are insufficient textbooks or instructional materials. The information must include the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil does not have sufficient textbooks or instructional materials, or both. This is the same information that is required to be reported on the School Accountability Report Card.

The section also authorizes the governing board to use for this purpose:

- Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.
- Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.
- Any other funds available to the school district for textbooks or instructional materials, or both.

Furthermore, subsection (b) of Education Code section 60422 requires that a school district governing board must certify that it has complied with the instructional materials sufficiency requirements enumerated in section 60119 before it may use funding received through the Instructional Materials Funding Realignment Program for certain purposes.

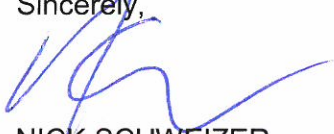
Finance recommends that the following be added at the end of the draft "Offsetting Revenues and Reimbursements" section:

"If a school district submits a valid reimbursement claim for the costs of reporting, on the School Accountability Report Card, the availability of textbooks and instructional materials, the reimbursement shall be reduced by the amount of funding available to the district to report to the public about the sufficiency of instructional materials, including funding apportioned to school districts through the Instructional Materials Funding Realignment Program pursuant to Chapter 3.25 of Part 33 of Division 4 of Title 2 of the Education Code (beginning with section 60420)."

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, this document is being e-filed with the Commission on State Mandates and will not be otherwise served on persons that have provided an e-mail address for the mailing list.

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

Sincerely,



NICK SCHWEIZER
Program Budget Manager



April 4, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the proposed parameters and guidelines and statement of decision drafted by the Commission on State Mandates staff for the consolidated test claim 05-TC-04, 07-TC-06, and 08-TC-01, *Williams Case Implementation I, II, and III*, submitted by the San Diego County Office of Education and the Sweetwater Union High School District.

Finance believes that the following amendment to the proposed parameters and guidelines is necessary to ensure that the parameters and guidelines conform to the Commission's December 7, 2012, statement of decision on the test claim:

“Reimbursable Activities”

Section 1.d.: The parameters and guidelines should be amended to conform to the requirements of the test claim statute and the activities determined to be reimbursable in the statement of decision.

Paragraph (1) of subsection (a) of section 42127.6 of the Education Code, the test claim statute, reads, in part:

“A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies **and** that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8...” (*emphasis added*)

In comments dated January 3, 2013, regarding the expedited draft parameters and guidelines, Finance requested that the draft subsection be amended to read:

- “d. Providing the county superintendent of schools, pursuant to Education Code sections 14051 and 41020:
 - i. A copy of a study, report, evaluation, or audit that was commissioned by the Superintendent of Public Instruction or a state control agency and contains

evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code section 33127.

- ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.

Reimbursement for this activity is not required to the extent the study, report, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.

The eligible reimbursement period for these activities begins September 29, 2004.”

The proposed statement of decision states, regarding Finance’s suggested amendments:

“The suggested change, however, is written too narrowly to encompass all studies, reports, evaluations, or audits that might implicate the requirement of the test claim statute to forward a report to the county...No findings were made in the test claim statement of decision, nor can it be inferred from the plain language of the statute, that the only other studies, reports, evaluations, or audits that would trigger the requirement to provide a copy to the county superintendent are those commissioned by the Superintendent of Public Instruction or a state control agency. Finance’s proposed language suggests that no other reports implicating the requirements of the test claim statute are possible...”

This is not an accurate analysis of the test claim statute. The statute requires that a school district provide the county superintendent of schools with a copy of a study, report, evaluation, or audit **only** if that study, report, evaluation, or audit meets both of two conditions (excluding reports on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8, which are addressed separately in the proposed parameters and guidelines):

1. The study, report, evaluation or audit was commissioned by one of four entities or groups of entities: (1) the school district, (2) the county superintendent, (3) the Superintendent of Public Instruction, or (4) state control agencies, **and**
2. The study, report, evaluation, or audit contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code section 33127.

The Commission’s statement of decision specifies that providing a copy of a study, report, evaluation or audit is not reimbursable if that study, report, evaluation, or audit was commissioned by the school district or by the county superintendent. Therefore, a school district only is eligible for reimbursement for the costs of providing a copy of a study, report, evaluation, or audit if that study, report, evaluation, or audit was commissioned by one of two entities or groups of entities: the Superintendent of Public Instruction or state control agencies.

This is reflected in **d.i.** of the suggested language included in Finance’s January 3, 2013, comments. Finance requests that this language be included in the parameters and guidelines.

Ms. Heather Halsey
April 4, 2013
Page 3

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, this document is being e-filed with the Commission on State Mandates and will not be otherwise served on persons that have provided an e-mail address for the mailing list.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'THODD', with a long horizontal flourish extending to the right.

THOMAS TODD
Assistant Program Budget Manager

1 [PLAINTIFFS' COUNSEL LISTED
ON SIGNATURE PAGE]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public
Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
EDUCATION,

Defendants.

No. 312236

NOTICE OF PROPOSED SETTLEMENT

Department: 210
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

CLASS ACTION

1 **INTRODUCTION**

2 California guarantees an equal education to every student — including the predominantly
3 low-income students and students of color who attend schools that must be improved. This case
4 has been about California’s duty to provide these students with instructional materials, safe and
5 decent school facilities, and quality teachers.

6 Serious and lengthy negotiations conducted by the Office of Governor Arnold
7 Schwarzenegger with dedicated participation by all parties have achieved a settlement in this case
8 that demonstrates the State’s commitment to improving the quality of education at low-
9 performing schools.

10 The settlement implements principles of education reform approved by Governor
11 Schwarzenegger:

12 Regarding management and finance, each school should have more authority in
13 defining and determining its own operation and districts should be provided
14 additional statutory and regulatory relief to increase local control. Although
15 total State expenditures may not matter as much as allocation at the local level
and improvements can result without additional resources, a key goal should be
to maximize resources that reach the classroom in order to enhance student
performance.

16 With respect to school facilities and instructional materials, all schools should
17 be safe and clean. The defendants will prepare a statewide inventory of school
18 facilities to determine the capacity, usage and present physical status of those
19 facilities. Districts should be accountable for providing standards-aligned
instructional materials for every student and adequately maintained school
facilities.

20 With respect to instruction and teaching, instructional programs and practices,
21 as well as teacher training and development, should be pedagogically sound,
22 focused on subject matter content and aligned to the State's academic content
standards. Every child in California should have access to qualified teachers
within the time frame prescribed by the federal No Child Left Behind Act with
priority given to providing fully credentialed teachers where most needed.

23 As to accountability and intervention, each child in California should receive a
24 quality education consistent with all statewide content and performance
25 standards adopted by the State Board of Education, and with a rigorous
26 assessment system and reporting program. Resources provided to high-priority
27 (low-performing) schools should be prioritized to improving the academic
28 performance of the lowest performing students. The State should improve
districts with schools that consistently fail to meet academic growth targets, or
the goals described above, in order to provide help to those schools and
students with the lowest academic performance.

1 (Letter dated May 14, 2004 from Legal Affairs Secretary Peter Siggins to all counsel at 2,
2 attached as Exhibit B to Declaration of Jack W. Londen (“Londen Decl.”))

3 Plaintiffs, individually and on behalf of the class they represent, seek the Court’s
4 preliminary approval of the settlement described in this Notice. Plaintiffs believe that the
5 Settlement Agreement is fair and reasonable, and that, indeed, the class will greatly benefit
6 from the proposed educational reforms to be enacted by the legislation implementing the
7 settlement. Plaintiffs also hereby approval of the parties’ agreed process for presenting the
8 settlement for final approval, and a continued stay of the litigation pending final approval.

9 Defendants, the State of California, the State Board of Education, the State Department
10 of Education, and the State Superintendent of Public Instruction, as well as the Intervenors, the
11 California School Boards Association, the Los Angeles Unified School District, the Long
12 Beach Unified School District, and the San Francisco Unified School District all have joined in
13 the settlement. The parties’ signed Settlement Implementation Agreement (“Settlement
14 Agreement”) is submitted with this Notice as Exhibit A to the Londen Decl.

15 **I. PROCEDURAL BACKGROUND**

16 **A. Litigation History**

17 This case was filed on May 17, 2000 by nearly one hundred California schoolchildren
18 who attended public schools with substandard learning conditions. Plaintiffs brought claims
19 against the State of California, the California Board of Education, the California Department of
20 Education, and the California Superintendent of Schools (collectively “defendants”). Plaintiffs
21 rely on the State’s constitutional duty to ensure that all public schoolchildren have equal access to
22 the basic educational tools they need to learn. Plaintiffs alleged that the defendants have failed to
23 meet this duty. As evidence of defendants’ failure, plaintiffs alleged that students across the State
24 lacked such basic educational opportunities as textbooks, qualified teachers, and decent facilities.
25 On August 14, 2000, plaintiffs filed a First Amended Complaint (“Complaint”), which added
26 additional plaintiffs and allegations.

27

28

1 On October 1, 2001, the Court certified the case as a class action after extensive briefing,
2 discovery, and presentation of evidence. (Order Granting Motion to Certify a Class.) The class
3 was defined as:

4 All students who are attending or will attend public elementary, middle or secondary
5 schools in California who suffer from one or more deprivations of basic educational
6 necessities. The specific deprivations are as follows:

7 A) a lack of instructional materials such that the student does not have his or her own
8 reasonably current textbook or educational materials, in useable condition, in each core
9 subject (1) to use in class without sharing with another student; or (2) to use at home each
10 evening for homework;

11 B) a lack of qualified teachers such that (1) the student attends a class or classes for which
12 no permanent teacher is assigned; or (2) the student attends a school in which more than
13 20% of teachers do not have full, non-emergency teaching credentials; or (3) the student is
14 an English Language Learner (“ELL”) and is assigned a teacher who has not been
15 specially qualified by the State to teach ELL students;

16 C) inadequate, unsafe and unhealthful school facilities such that (1) the student attends
17 classes in one or more rooms in which the temperature falls outside the 65-80 degrees
18 Fahrenheit range; or (2) the student attends classes in one or more rooms in which the
19 ambient or external noise levels regularly impede verbal communication between students
20 and teachers; or (3) there are insufficient numbers of clean, stocked and functioning toilets
21 and bathrooms; or (4) there are unsanitary and unhealthful conditions, including the
22 presence of vermin, mildew or rotting organic material;

23 D) a lack of educational resources such that (1) the school offers academic courses and
24 extracurricular offerings in which the student cannot participate without paying a fee or
25 obtaining a fee waiver; or (2) the school does not provide the student with access to
26 research materials necessary to satisfy course instruction, such as a library or the Internet;
27 or

28 E) overcrowded schools such that (1) the student is subject to a year-round, multi-track
schedule that provides for fewer days of annual instruction than schools on a traditional
calendar provide; or (2) the student is bused excessive distances from his or her
neighborhood school; or (3) the student attends classes in one or more rooms that are so
overcrowded that there are insufficient seats for each enrolled student to have his or her
own seat or where the average square footage per student is less than 25 square feet.

(Memorandum of Points and Authorities in Support of Motion for Class Certification at 3-4.)

B. Settlement Process and History

On October 22, 2001, the Court ordered the parties to engage in settlement negotiations,
recommending that the Honorable Patrick J. Mahoney act as mediator. (Pretrial Scheduling
Order dated Oct. 22, 2001.) Judge Mahoney held mediation sessions on December 17, 2001,
January 3, 2002, January 16, 2002, January 26, 2002, and January 31, 2002. (Londen Decl. at
¶ 6.) During these sessions, lead counsel for the parties were present and negotiations generally

1 lasted the entire day. (*Id.*) When it appeared that progress toward settlement was possible, the
2 parties agreed to stay the litigation. (*Id.*)

3 On February 1, 2002, the Court ordered a stay of the litigation to allow the parties an
4 opportunity to focus exclusively on mediation. (*Id.* at ¶ 7.) Over the following seven months, the
5 parties continued to attend mediation sessions with Judge Mahoney. (*Id.*) The parties met on:
6 February 22, 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002,
7 July 12, 2002, August 9, 2002, and August 29, 2002. (*Id.*) The parties negotiated vigorously,
8 prepared lengthy submissions to the mediator responding to his questions, and exchanged
9 multiple settlement proposals. (*Id.*) The parties also held many discussions regarding settlement
10 among the entire group and among subsets of the group. (*Id.*) Ultimately, however, the parties
11 were unable to reach agreement on settlement and decided to return to litigation in October, 2002.
12 (*Id.*)

13 While litigation continued at a fast pace, the parties agreed to continue mediation
14 discussions with Judge Mahoney in the Spring of 2003. (*Id.* at ¶ 8.) There were mediation
15 sessions with Judge Mahoney on March 3, 2003, June 2, 2003, June 18, 2003, August 1, 2003,
16 and September 5, 2003. (*Id.*) In addition to the in-person meetings, the parties also engaged in
17 extensive telephonic meetings both among the entire group and among subsets of the group
18 whom Judge Mahoney brought together. (*Id.*) In September, Judge Mahoney asked that a
19 representative for plaintiffs and for the State meet with him without counsel's participation in an
20 effort to advance the settlement process. (*Id.*) The parties had chosen designees and arranged a
21 time to meet with Judge Mahoney, but, before that meeting took place, Governor Arnold
22 Schwarzenegger was voted into office. (*Id.*) The parties postponed pending settlement
23 discussions until the new administration had an opportunity to review the substance and status of
24 the litigation. (*Id.*) On November 24, 2003, at the request of the parties, the Court ordered
25 another stay of the litigation again to focus on settlement. (*Id.*)

26 With the approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of
27 Governor Schwarzenegger to negotiate directly. (*Id.* at ¶ 9.) From the start, the new
28 administration manifested a determination to deal with problems in public education and to settle

1 this litigation. (*Id.*) During the discussions, the administration’s team included senior officials in
2 the Office of the Governor with regular direct supervision by Governor Schwarzenegger, himself.
3 (*Id.*)

4 In May, the Governor’s Legal Affairs Secretary notified counsel for the parties that these
5 discussions had progressed to the point where an agreement to resolve the litigation was possible
6 and within reach. (*Id.* at ¶ 10.) His letter set forth Governor Schwarzenegger’s principles of
7 educational reform, which the parties agreed would form the basis for legislative solutions to
8 specific problems facing California schools. (*Id.* & Letter dated May 14, 2004 from Peter Siggins
9 to all counsel at 2 attached as Exhibit B.) Throughout May and June, the parties held settlement
10 meetings in which they continued to discuss various proposals that would further the Governor’s
11 principles. (*Id.*)

12 On June 30, 2004, counsel for all parties appeared before this Court for a status
13 conference regarding the parties’ efforts to settle this case. (*Id.* at ¶ 11.) The parties reported on
14 their work together to draft proposals for legislation on the substantive issues raised by plaintiffs’
15 case. (*Id.*) The parties further reported that, on several issues, the proposals had reached the
16 stage that plaintiffs’ counsel could recommend to the plaintiff class representatives that the
17 proposals should be the basis for a settlement. (*Id.*) At that time, other issues were the subject of
18 continuing negotiations that were being conducted in the Governor’s office by his Legal Counsel
19 with plaintiffs’ counsel, counsel for the intervenors, and counsel for the State Agency defendants.
20 (*Id.*) The parties agreed to keep Judge Mahoney apprised of the status of the proposals and, if
21 necessary, to submit the outstanding issues to the Court for further discussion and resolution.
22 (*Id.*)

23 The parties continued to negotiate after the status conference, meeting many times and
24 circulating numerous drafts. (*Id.* at ¶ 12.) Settlement negotiations were attended by lead counsel,
25 negotiations were vigorous, and proposals were thoroughly analyzed and debated. (*Id.*) Counsel
26 for all parties worked hard to advocate for their clients’ positions on how best to improve
27 California’s schools. (*Id.*) In late July, the State’s counsel presented the parties with the State’s
28 final proposal for settling the case. (*Id.*) This proposal provides benefits to the class that far

1 exceed those that the State had agreed to previously. (*Id.*) The intervenors' advocacy for
2 increased funding to support education reform strongly benefited the class. (*Id.*) In addition,
3 LAUSD, in particular, has committed significant effort and resources to expanding its facilities
4 capacity in order to phase out the use of Concept 6. (*Id.*) All of the school districts and the
5 California School Boards Association should be commended for their dedication to improving the
6 schools on behalf of the children in their care. (*Id.*)

7 In late July and early August, counsel for plaintiffs spoke with nine of the class
8 representatives about the Settlement Agreement.¹ (*Id.* at ¶ 13.) Counsel explained the settlement
9 terms and the settlement process, and discussed why they believed the settlement to be a fair and
10 reasonable resolution of the case. (*Id.*) All of the available class representatives approve the
11 proposed settlement and have authorized plaintiffs' counsel to move forward with the proposed
12 agreement. (*Id.*)

13 II. TERMS OF THE PROPOSED SETTLEMENT

14 The Settlement Agreement provides for a package of legislative proposals to ensure that
15 all students will have books and that their schools will be clean and safe. (*Id.*) It takes steps
16 toward assuring they have qualified teachers. (*Id.*) The legislative proposals would create
17 measures to confirm that schools are delivering these fundamental elements to students, and
18 provide very substantial funding for these purposes: a program to authorize districts to spend up
19

20 ¹ Plaintiffs' counsel have discussed settlement with Cindy Diego; Lizette Ruiz; the
21 guardians for Moises Canel; the guardian for Krystal Ruiz; Manuel Ortiz and his guardian; the
22 guardian for Carlos and Richard Ramirez; and D'Andre Lampkin, Delwin Lampkin, and their
23 guardian. (Londen Decl. at ¶ 13.) Plaintiffs' counsel have been unable to schedule meetings with
24 Silas Moultrie and Samuel and Jonathan Tellechea, or their guardians. (*Id.* at ¶ 14.) Plaintiffs'
25 counsel recently notified these individuals regarding the possibility of settlement and intend to
26 continue efforts to reach them in person. (*Id.*) Plaintiffs' counsel also have sent a letter to their
27 last known address notifying them of the Settlement Agreement. (*Id.*) In addition, plaintiffs'
28 counsel has been informed by the guardian for Carlos Santos, Marcelino Lopez, that he does not
feel comfortable discussing the details of the Settlement Agreement because he is now a member
of the Ravenswood District school board, and lawyers for the district have advised him that there
is an appearance of a conflict. (*Id.*) Accordingly, he has stated that he trusts that counsel will do
what is right for the class and approves of settlement. (*Id.*)

1 to \$800 million over a period of years for repairs of emergent facilities conditions in the lowest
2 performing schools (those ranked in the bottom 3 deciles under the statewide Academic
3 Performance Index [API]); \$138.7 million for new instructional materials for students attending
4 schools in the bottom two API deciles, in addition to the funding for instructional materials to
5 all schools; and \$50 million to conduct an assessment of facilities conditions, supplement the
6 County Superintendents' capacity to oversee low performing schools, fund emergency repairs in
7 those schools, and cover other costs of implementation. (*Id.*) The legislative proposals also
8 include extending funding of at least \$200 million for the High Priority Schools Grant Program
9 (HPSGP) at current HPSGP and Immediate Intervention/Underperforming Schools Program
10 (II/USP) levels and by appropriating savings achieved as low performing schools are phased out
11 of the program to new grants for eligible schools. (*Id.*)

12 The settlement's implementing legislation is to:

- 13 • Provide financial assistance to repair low performing schools through a new \$800 million
School Facilities Emergency Repairs Account;
- 14 • Create a School Facilities Needs Assessment program;
- 15 • Create standards for instructional materials and facilities, and require the Concept 6
16 (shortened school year) calendar be eliminated no later than 2012;
- 17 • Post instructional materials and facilities standards in all classrooms;
- 18 • Collect data on compliance with these standards, and teacher requirements;
- 19 • Verify this data;
- 20 • Require a uniform complaint process in every district for complaints on inadequate
21 instructional materials, teacher vacancies and misassignments, and emergency facilities
22 problems;
- 23 • Intervene in decile 1-3 schools if the instructional materials and facilities standards are not
24 met, and in districts having difficulty attracting, retaining or properly assigning teachers;
- 25 • Improve the teacher supply by streamlining requirements for out-of-state credentialed
26 teachers to earn California credentials;
- 27 • Require each district to implement a facilities inspection system; and
- 28 • Include new schools in the High Priority Schools Grant Program when current schools are
phased out.

(*Id.* at ¶ 2 & Exhibit A.)

1 The 2004-05 State budget includes funding for some of the financial terms of the
2 settlement by including \$138.7 million for new instructional materials in decile 1-2 schools and
3 \$50 million to implement other settlement goals. (*Id.* at ¶ 3.) The budget also maintains the
4 instructional materials categorical program, with funding for this year of \$363 million before the
5 addition of the new instructional materials funding for decile 1 and 2 schools. (*Id.*)

6 **III. THE PROPOSED SETTLEMENT MORE THAN SATISFIES THE**
7 **STANDARDS FOR PRELIMINARY APPROVAL.**

8 **A. The Proposed Settlement Is Fair and Within the Range of Possible**
9 **Final Approval.**

10 Pursuant to California Rule of Court 1859(c), “[a]ny party to a settlement agreement may
11 submit a written notice of motion for preliminary approval of the settlement.” Cal. Rule of Ct.
12 1859(c). In ruling on class action settlements, this Court has broad discretion to determine
13 whether the settlement proposed by the parties is fair and reasonable. *Mallick v. Superior Court*,
14 89 Cal. App. 3d 434, 438 (1979).

15 The procedure for obtaining court approval of a class action settlement consists of three
16 steps:

- 17 1. Preliminary approval of the proposed settlement at an informal hearing;
- 18 2. Dissemination of notice of settlement to the class; and
- 19 3. A final settlement approval hearing, at which class members may be heard
20 regarding the settlement, and at which the parties present evidence concerning the fairness,
21 adequacy, and reasonableness of the settlement. *See* Cal. Rule of Ct. 1859; *Manual for Complex*
22 *Litigation Third* (1995) at § 30.41; *see also* 4 Newberg on Class Actions 4th (2002) §§ 11.24, *et*

23 In making a decision to grant preliminary approval, the Court must “evaluate the proposed
24 settlement agreement with the purpose of protecting the rights of absent class members who will
25 be bound by the settlement.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001)
26 (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)). It must “scrutinize the
27 proposed settlement agreement to the extent necessary to reach a reasoned judgment that the
28 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
2 concerned.” *Id.* (citations and internal quotations omitted). “If the preliminary evaluation of the
3 proposed settlement does not disclose grounds to doubt its fairness or other obvious
4 deficiencies . . . and appears to fall within the range of possible approval,” the standard for
5 preliminary approval is satisfied, and the Court should move to the step of approving notice to the
6 class. *Manual for Complex Litigation* at § 30.41; *see also Dunk*, 48 Cal. App. 4th at 1802. Courts
7 have held that approving dissemination of notice to the class “is at most a determination that there
8 is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-
9 scale hearing as to its fairness.” *See, e.g., In re Traffic Executive Association-Eastern Railroads*,
10 627 F.2d 631, 634 (2d Cir. 1980).

11 Finally, the settlement is presumed fair where: “(1) the settlement is reached through
12 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
13 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small.” *Dunk*, 48 Cal App. 4th at 1802 (citations omitted). The Settlement
15 Agreement before this Court fully satisfies these requirements.

16 As discussed in more detail above, the settlement was the product of extensive and hard-
17 fought adversarial negotiations by experienced counsel. (Londen Decl. at ¶¶ 15-28.) An
18 experienced and well-respected Judge of the Superior Court served for years as a neutral
19 mediator. (Londen Decl. at ¶ 5; Statement of Mediation Judge (to be submitted to the Court).)
20 The parties engaged in discovery and motion practice. (Londen Decl. at ¶5.) Discovery was
21 aggressive and hotly contested, and continued during and even following the parties’ mediation
22 efforts. (*Id.*)

23 Plaintiffs’ experienced counsel and the Mediation Judge believe that this settlement
24 represents a very favorable resolution of plaintiffs’ claims. (Londen Decl. at ¶ 2; Statement of
25 Mediation Judge (to be submitted to the Court).) The Mediation Judge has reviewed the terms of
26 the proposed settlement and says: “[The settlement] represents a major advancement in services
27 that the State previously had been willing to provide to the class.” (Statement of the Mediation
28 Judge (to be submitted to the Court).) He concludes: “I commend the parties and counsel for

1 their good faith efforts in reaching this settlement. It represents a significant step forward and is a
2 thoughtful resolution of this complex case.” (*Id.*)

3 **B. The Parties’ Proposed Schedule for Providing Notice and Holding A**
4 **Final Hearing Serves the Best Interests of the Class.**

5 The settling parties have agreed to seek the enactment of the legislation set forth in the
6 Settlement Agreement. (*See* Londen Decl. at ¶ 4 & Exhibit A.) The parties will keep the Court
7 apprised of the status of the legislation. (*Id.* at ¶ 4.) Since the settlement depends upon the
8 provisions being enacted into law in substantial conformity with the legislative proposals, the
9 exact content of the notice to the class will depend on the results of the legislative process. (*Id.*)
10 Thus, plaintiffs propose to submit, after enactment of the legislation, a motion for approval of the
11 content, form, and manner of giving notice to the class, and for approval of a schedule for
12 comment by class members, submissions by the parties, and a final approval hearing. (*Id.*)

13 **CONCLUSION**

14 The goals pursued in this case deserve, and have received, an enormous investment of
15 time and energy from all parties and all counsel. The parties have reached an outcome reflecting
16 compromise, but we believe that the proposed settlement is more than a fair and reasonable
17 compromise. It is a significant achievement on the part of all settling parties. We expect that the
18 enactment and implementation of the settlement will greatly improve California’s public schools.

19 Plaintiffs respectfully request the Court to grant preliminary approval of the proposed
20 settlement and enter the proposed Order submitted with this motion.

21 Dated: August 13, 2004

22 MARK D. ROSENBAUM (BAR NO. 59940)
23 CATHERINE E. LHAMON (BAR NO. 192751)
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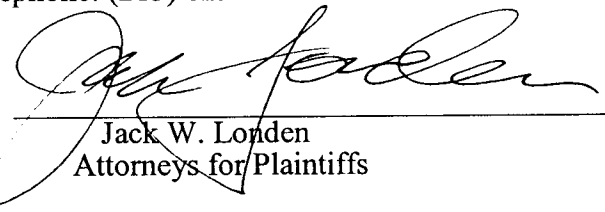
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By: 

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Attorneys for Plaintiffs
16 ELIEZER WILLIAMS, etc., *et al.*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
20 individually and on behalf of all others
similarly situated,

21 Plaintiffs,

22 v.

23 STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public
Instruction, STATE DEPARTMENT OF
24 EDUCATION, STATE BOARD OF
EDUCATION,

25 Defendants.
26

No. 312236

DECLARATION OF JACK W. LONDEN

Department: 210
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

CLASS ACTION

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I, JACK W. LONDEN, declare as follows:

1. I am a partner in Morrison & Foerster LLP, and a member of the State Bar of California. I make this declaration in support of Plaintiffs’ Notice of Settlement, to show that (1) plaintiffs' counsel have sufficient expertise in litigation of this sort to recommend to the class that the proposed settlement is a very favorable resolution of plaintiffs’ claims; and (2) the settlement was the product of extensive and hard-fought adversarial negotiations.

The Proposed Settlement

2. I believe the proposed Settlement Agreement represents a very favorable resolution of plaintiffs’ claims. The settlement’s implementing legislation is to:

- Provide financial assistance to repair low performing schools through a new \$800 million School Facilities Emergency Repairs Account;
- Create a School Facilities Needs Assessment program;
- Create standards for instructional materials and facilities, and require the Concept 6 (shortened school year) calendar be eliminated no later than 2012;
- Post instructional materials and facilities standards in all classrooms;
- Collect data on compliance with these standards, and teacher requirements;
- Verify this data;
- Require a uniform complaint process in every district for complaints on inadequate instructional materials, teacher vacancies and misassignments, and emergency facilities problems;
- Intervene in decile 1-3 schools if the instructional materials and facilities standards are not met, and in districts having difficulty attracting, retaining or properly assigning teachers;
- Improve the teacher supply by streamlining requirements for out-of-state credentialed teachers to earn California credentials;
- Require each district to implement a facilities inspection system; and
- Include new schools in the High Priority Schools Grant Program when current schools are phased out.

Attached to my declaration as Exhibit A is a true and correct copy of the parties’ signed Settlement Implementation Agreement (“Settlement Agreement”). The agreement includes the parties’ legislative proposals, a Covenant Not To Sue, and a provision regarding attorneys fees.

1 continued to attend mediation sessions with Judge Mahoney. The parties met on: February 22,
2 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002, July 12, 2002,
3 August 9, 2002, and August 29, 2002. The parties negotiated vigorously, prepared lengthy
4 submissions to the mediator responding to his questions, and exchanged multiple settlement
5 proposals. The parties also held many discussions regarding settlement among the entire group
6 and among subsets of the group. Ultimately, however, the parties were unable to reach agreement
7 on settlement and decided to return to litigation in October, 2002.

8 8. While litigation continued at a fast pace, the parties agreed to continue participating in
9 mediation discussions with Judge Mahoney in the Spring of 2003. The parties attended mediation
10 sessions with Judge Mahoney on March 3, 2003, June 2, 2003, June 18, 2003, August 1, 2003,
11 and September 5, 2003. In addition to the in-person meetings, the parties also engaged in
12 extensive telephonic meetings both among the entire group and among subsets of the group
13 whom Judge Mahoney brought together. In September, Judge Mahoney asked that a
14 representative for plaintiffs and for the State meet with him without counsel's participation in an
15 effort to advance the settlement process. The parties had chosen designees and arranged a time to
16 meet with Judge Mahoney, but, before that meeting took place, Governor Arnold Schwarzenegger
17 was voted into office. The parties postponed pending settlement discussions until the new
18 administration had an opportunity to review the substance and status of the litigation. On
19 November 24, 2003, at the request of the parties, the Court ordered another stay of the litigation
20 so that the parties could again focus on settlement.

21 9. With the approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of
22 Governor Schwarzenegger to negotiate directly. From the start, the new administration
23 manifested a determination to deal with problems in public education and to settle this litigation.
24 During the discussions, the administration's team included senior officials in the Office of the
25 Governor with regular direct supervision by Governor Schwarzenegger, himself.

26 10. In May, the Governor's Legal Affairs Secretary notified counsel for the parties that
27 these discussions had progressed to the point where an agreement to resolve the litigation was
28 possible and within reach. His letter set forth Governor Schwarzenegger's principles of

1 educational reform, which the parties agree would form the basis for legislative solutions to
2 specific problems facing California schools. Attached to my declaration as Exhibit B is a true and
3 correct copy of this letter. Throughout May and June, the parties held settlement meetings in
4 which they continued to discuss various proposals that would further the Governor's principles.

5 11. On June 30, 2004, counsel for all parties appeared before this Court for a status
6 conference regarding the parties' efforts to settle this case. The parties reported that they had
7 been working together to draft proposals for legislation on the substantive issues raised by
8 plaintiffs' case. The parties further reported that on several of those issues, the proposals had
9 reached the stage that plaintiffs' counsel could recommend to the plaintiff class representatives
10 that the proposals should be the basis for a settlement. At that time, other issues were the subject
11 of continuing negotiations that were being conducted in the Governor's office by his Legal
12 Counsel with plaintiffs' counsel, counsel for the intervenors, and counsel for the State Agency
13 defendants. The parties agreed to keep Judge Mahoney apprised of the status of the proposals
14 and, if necessary, to submit the outstanding issues to the Court for further discussion and
15 resolution.

16 12. The parties continued to negotiate after the status conference, meeting many times and
17 circulating numerous drafts. Settlement negotiations were attended by lead counsel, negotiations
18 were vigorous, and proposals were thoroughly analyzed and debated by all parties. Counsel for
19 all parties worked hard to advocate for their clients' positions on how best to improve California's
20 schools. In late July, the State's counsel presented the parties with the State's final proposal for
21 settling the case. This proposal provides benefits to the class that far exceed those that the State
22 had agreed to previously. The intervenors' advocacy for increased funding to support education
23 reform also strongly benefited the class. In addition, LAUSD, in particular, has committed
24 significant effort and resources to expanding its facilities capacity in order to phase out the use of
25 Concept 6. All of the school districts and the California School Boards Association should be
26 commended for their dedication to improving the schools on behalf of the children in their care.

27 13. In late July and early August, counsel for plaintiffs spoke with nine of the class
28 representatives about the Settlement Agreement. Plaintiffs' counsel have discussed settlement

1 with Cindy Diego; Lizette Ruiz; the guardians for Moises Canel; the guardian for Krystal Ruiz;
2 Manuel Ortiz and his guardian; the guardian for Carlos and Richard Ramirez; and D'Andre
3 Lampkin, Delwin Lampkin, and their guardian. Counsel explained the settlement terms and the
4 settlement process, and discussed why they believed the Settlement Agreement to be a fair and
5 reasonable resolution of the case. All of the available class representatives approve the proposed
6 settlement and have authorized plaintiffs' counsel to move forward with the Settlement
7 Agreement.

8 14. Plaintiffs' counsel have been unable to schedule meetings with Silas Moultrie and
9 Samuel and Jonathan Tellechea, or their guardians. Plaintiffs' counsel recently notified these
10 individuals regarding the possibility of settlement and intend to continue efforts to reach them in
11 person. Plaintiffs' counsel also have sent a letter to their last known address notifying them of the
12 Settlement Agreement. In addition, plaintiffs' counsel has been informed by the guardian for
13 Carlos Santos, Marcelino Lopez, that he does not feel comfortable discussing the details of the
14 Settlement Agreement because he is now a member of the Ravenswood District school board, and
15 lawyers for the district have advised him that there is an appearance of a conflict. Accordingly,
16 he has stated that he trusts that counsel will do what is right for the class and approves of
17 settlement.

18 **Experience of Plaintiffs' Counsel**

19 15. Plaintiffs' counsel in this case consist of a coalition of civil rights organizations,
20 public interest law groups, and private lawyers. Lead counsel are the ACLU Foundation of
21 Southern California, the ACLU Foundation of Northern California, Public Advocates, the
22 Mexican American Legal Defense Fund (MALDEF), and Morrison & Foerster. The lawyers
23 responsible for handling the case at these organizations have extensive experience litigating
24 similar cases and have the background and expertise to make the determination that the proposed
25 settlement is a fair and reasonable resolution of the claims brought by plaintiffs. I highlight the
26 experience and expertise of counsel in the following paragraphs.

27
28

1 **ACLU Foundation of Southern California**

2 16. Attorneys at the ACLU Foundation of Southern California (ACLU-SC) who have
3 represented the class include Mark Rosenbaum, Catherine Lhamon, and Peter Eliasberg, among
4 others.

5 17. Mark Rosenbaum is the legal director of the ACLU-SC. He has been an attorney with
6 the ACLU since January 1974 and legal director since 1994. He is an experienced counsel in the
7 areas of constitutional and civil rights law. For thirty years, he has litigated cases raising novel
8 and complex constitutional and civil rights claims, including in the areas of disability rights,
9 health care, education, and social services. Mr. Rosenbaum also has extensive experience
10 litigating class action cases and other cases involving educational equity and civil rights,
11 including the following: *Crawford v. Board of Education* (Los Angeles school desegregation
12 case), *Rodriguez v. Board of Education* (case regarding inequitable distribution of resources to
13 inner city students and unequal educational opportunities), *Serna v. Eastin* (case regarding
14 inadequate education, lack of textbooks, and deficient facilities at schools in Compton), *Smith v.*
15 *Board of Education* (case regarding lack of special education services for learning and emotional
16 disabilities in Los Angeles School District), *Tinsley v. Palo Alto School District* (metropolitan
17 desegregation case), and *Katie A. v. Bonta* (case regarding provision of mental health services to
18 foster children in Los Angeles).

19 18. Catherine Lhamon is a staff attorney at ACLU-SC with experience in civil rights
20 matters, including educational equity issues. Ms. Lhamon has worked at the ACLU-SC since
21 1999 focusing the majority of her time on *Williams v. State of California*. Prior to working on
22 this case, she co-counseled with Mark Rosenbaum on *Molina v. Los Angeles City Board of*
23 *Education et al.* (class action suit regarding inequitable access to school facilities). Peter
24 Eliasberg is the managing attorney of the ACLU-SC, and has also been involved in a number of
25 class action civil rights cases, including *Beauchamp, et al. v. Los Angeles County Mass Transit*
26 *Authority* (case involving disability issues), *Miles et al. v. County of Los Angeles* (case involving
27 disability issues), and *Daniel v. State of California* (unequal access to AP classes).

28 **Public Advocates**

1 19. Attorneys at Public Advocates who have represented the class include John Affeldt
2 and Jenny Pearlman.

3 20. John Affeldt has acted as senior counsel for the class at Public Advocates, Inc. Mr.
4 Affeldt is the legal director of Public Advocates and has been an attorney with Public Advocates
5 since 1991. At Public Advocates he has focused on educational equity issues, including working
6 on a case that challenged the California Basic Educational Skills Test and a case that challenged
7 of the use of IQ tests with African American school children. Mr. Affeldt also acted as lead
8 counsel in Public Advocates' *Yvetter Doe v. Belshe* and *LCHC v. Belshe* litigation, which halted
9 the State's denial of prenatal emergency medical care to tens of thousands of undocumented
10 immigrant residents.

11 **MALDEF**

12 21. Attorneys at MALDEF who have represented the class include Thomas Saenz and
13 Hector Villagra. Thomas Saenz and Hector Villagra are, respectively, the Vice President of
14 Litigation and Los Angeles Regional Counsel at MALDEF. Mr. Saenz has worked at MALDEF
15 since 1993 and Mr. Villagra has worked at MALDEF since 1996.

16 22. Mr. Saenz has served as counsel in numerous civil rights cases, involving such issues
17 as affirmative action, educational equity, employment discrimination, immigrants' rights, and
18 language rights. He served as MALDEF's lead counsel in successfully challenging California's
19 Proposition 187 in court, presenting extensive written and oral arguments on numerous occasions
20 in three different cases involving the anti-immigrant initiative. Mr. Villagra has served as counsel
21 in numerous civil rights cases involving such issues as educational equity, employment
22 discrimination, and language rights. Mr. Villagra was also MALDEF's lead counsel in the
23 successful challenge to the distribution of Proposition 1A funds.

24 **ACLU Foundation of Northern California**

25 23. Alan Schlosser has acted as senior counsel for the class at the ACLU of Northern
26 California. He is the legal director of the ACLU Foundation of Northern California. Mr.
27 Schlosser has been at the ACLU Foundation of Northern California since 1976 and legal director
28 since 2000. Mr. Schlosser has litigated a wide array of class action, civil rights and civil liberties

1 cases in state and federal courts, including the following: *International Molders Union v. U.S.*
2 *Immigration & Naturalization Service* (class action challenge to INS practices), *Brown v. Jordan*
3 (class action for damages on behalf of persons arrested during Rodney King verdicts); *Lazenby v.*
4 *City of Vallejo* (class action challenge to law enforcement searches of home of welfare
5 recipients), and *Golden Gateway Center v. Golden Gateway Tenants Association* (action
6 involving challenge to free speech).

7 **Morrison & Foerster**

8 24. Morrison & Foerster LLP is a large international law firm that has for many years
9 maintained one of the most extensive pro bono public interest law practices of any private law
10 firm. This action has been the largest pro bono case in our history in terms of resources
11 committed. Our legal team has spent over 73,000 hours on this case.

12 25. Michael Jacobs and I have acted as the managing partners of this case on behalf of
13 Morrison & Foerster. In addition to Mr. Jacobs and me, the Morrison & Foerster team
14 representing the class includes: Matt Kreeger, Anthony Press, Michael Feuer, Leecia Welch, and,
15 at various points in the case, nearly twenty associates, legal assistants, and other support staff.
16 Morrison & Foerster has undertaken this case as part of its commitment to rendering *pro bono*
17 legal services. Our firm has an active and well-supported *pro bono* program, which has for at
18 least fifteen years included a focus on issues affecting children, and education in particular.
19 Morrison & Foerster was one of counsel for the plaintiffs in *Butt v. State of California*, including
20 the appellate proceedings resulting in the opinion reported at 4 Cal. 4th 668, 688 (1992).

21 26. I associated with Morrison & Foerster in 1980, and became a partner of the firm in
22 1984. I have been involved in a general litigation practice for more than twenty years, including
23 complex civil rights cases and class actions. I have been involved in a number of class actions on
24 both the plaintiff and defendants' sides. I have also been involved in previous *pro bono* cases on
25 conditions in public schools. Among other cases, beginning in 1991, my partner, Matthew
26 Kreeger and I served as counsel to a certified plaintiff class of Latino students in a federal
27 desegregation case, *Vasquez v. San Jose Unified School District*, Civil No. 71-2130 RMW

28

1 (Northern District of California). Our work in that case has included litigation and negotiation
2 that resulted in a comprehensive Remedial Order, which was approved by the Court in 1994.

3 27. Mr. Jacobs joined Morrison & Foerster in 1983 and is a partner in its San Francisco
4 office. He served as co-head of the firm's 140-person Intellectual Property Group since its
5 founding in 1990 until February 2003. He also served as the firm's worldwide Managing Partner
6 for Operations from 1995 to 1997.

7 **Other Co-counsel**

8 28. In addition to the attorneys listed above, other cooperating co-counsel listed on the
9 pleadings have provided expertise in issues relating to civil rights, public education, and class
10 action advocacy throughout the litigation. The class has been ably represented by counsel with a
11 range of experience and expertise in similar cases.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on August 12, 2004 in San Francisco, California.

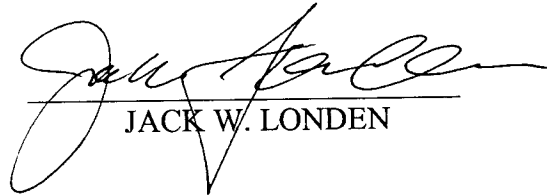
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15 JACK W. LONDEN
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EXHIBIT A

SETTLEMENT IMPLEMENTATION AGREEMENT

It is hereby agreed among the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, and the State Department of Education), the plaintiff class representatives (“Plaintiffs”), and the undersigned Intervenor (the “Settling Intervenor”) (collectively, the “Settling Parties”) in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco (“the Action”) that:

1. Promptly after the Settling Parties execute this Settlement Agreement, Plaintiffs (or, at the State’s option, the State and Plaintiffs jointly) shall file a Notice of Settlement. The Notice of Settlement will describe the terms of the settlement; seek the Court’s preliminary approval of the settlement; provide a procedure for giving notice to the members of the Plaintiffs’ class and seek approval to proceed according to the process established in this Settlement Agreement, including a continued stay of the litigation, pending final court approval. Plaintiffs’ counsel shall circulate the Notice of Settlement to the Settling Parties for their review and comment before the Notice is filed with the Court. Upon execution of this Settlement Agreement, Defendant State of California will file a notice of dismissal without prejudice of its cross-complaint in the Action (the “Cross Complaint”).

2. The Settling Parties agree to engage in good faith efforts to obtain the enactment of legislation that implements the legislative proposals attached to this Settlement Agreement (the “Legislative Proposals”) during the current legislative session and, to the extent that goal is not attained, as soon as possible thereafter. Consistent with this commitment, the Settling Parties also agree that they will not advocate or support any

legislative measures relating to the Legislature's consideration of the proposed legislation to implement the settlement which do not substantially conform to the Legislative Proposals. A legislative measure does not "Substantially Conform" to the Legislative Proposals if it: (1) is inconsistent with the language and intent of the Legislative Proposals, including all duties, limitations, and deadlines set forth therein; or (2) contains any revisions or modifications that add significant costs or cost pressures.

3. No later than October 15, 2004, Plaintiffs shall notify the Defendants and the Settling Intervenors whether they agree that the legislation that has been enacted by the Legislature in 2004 and signed by the Governor (the "2004 Legislation") Substantially Conforms to the Legislative Proposals, which agreement shall not unreasonably be withheld. If Plaintiffs agree that the 2004 Legislation Substantially Conforms, they shall promptly submit a motion for final approval of the settlement and dismissal of the Action as provided in this Settlement Agreement.

4. In the event that Plaintiffs, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education, or any of the Settling Intervenors believe that the 2004 Legislation does not Substantially Conform to the Legislative Proposals, they shall engage in consultation (as described in paragraph 7 below), giving written notice to all Settling Parties of the alleged deficiencies and providing the State with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. The State may give notice of the intention to seek enactment of the substance of the Legislative Proposals during the 2005 legislative session; and if so, Plaintiffs shall await the outcome of the efforts to enact the proposals during 2005. If Plaintiffs, the State Board of Education, the Superintendent of

Public Instruction, or any of the Settling Intervenors contend that what has been enacted during the 2005 legislative session (the “2005 Legislation”) does not substantially conform to the Legislative Proposals then, after consultation, they may apply to the Court for leave to withdraw from the Settlement Agreement based on a showing of substantial and material differences between the 2004 Legislation/2005 Legislation and the Legislative Proposals.

5. In the event the Court grants final approval of the settlement:

a. The Action shall be dismissed without prejudice; and Plaintiffs and, subject to approval by the Court pursuant to Cal. Civ. Proc. §581(k), members of the Plaintiffs’ class shall be bound by the separate Covenant Not To Sue which is, by this reference, incorporated into and made a part of this Settlement Agreement.

b. Defendant State of California will file a notice of dismissal with prejudice of the Cross Complaint.

c. The Settling Intervenors will file notices of dismissal without prejudice of their complaints in intervention in the Action.

d. As consideration for the Settling Parties’ execution of this Agreement, there shall be no application for an award of attorneys’ fees or costs to be paid by any party, except as provided in the separate Provision As To Claims for Attorneys’ Fees agreed between the State and plaintiffs. Settling Intervenors shall have no liability for any fees or costs related to or arising from the Action.

6. Any dismissal and any covenant not to sue that applies to members of the Plaintiff class shall be subject to Court review pursuant to Cal. Civ. Proc. §581(k). In the event of disapproval by the Court at any stage of such proceedings, the Settling Parties

shall meet and confer in the attempt to correct any deficiencies. This Settlement Agreement shall not be enforceable after a final order declining to approve the settlement.

7. Plaintiffs, Defendants and Settling Intervenors agree to engage in consultation with each other before taking an action that could provoke a reasonable objection based on the letter or spirit of this Settlement Agreement. This duty of consultation shall apply to any party who applies to the Court to withdraw from or modify the settlement, for relief from a covenant not to sue, or for any order in connection with the settlement.

8. Nothing in this Settlement Agreement and no action taken by any Settling Party in the course of the negotiation of this Settlement Agreement and its attachments, or the drafting of and lobbying for the Legislative Proposals, the 2004 Legislation or the 2005 Legislation shall waive or be construed as a waiver of any party's claim for reimbursement of a state mandate or entitlement to State payment pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes. The Settling Intervenors expressly reserve their rights to seek reimbursement for any state mandate pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes.

9. Requests by defendants or Settling Intervenors for funding to meet workload is consistent with this agreement and shall not be a breach of the covenant to support legislation. A request by any Settling Party to clarify a proposal is not inconsistent with this commitment.

10. Except where specifically so noted in this Settlement Agreement, the defendants take no position regarding the plaintiffs' contentions in this suit or regarding the ultimate conclusions that would follow from those contentions.

11. Pursuant to California Code of Civil Procedure § 583.330, the Settling Parties stipulate to waive the right to dismissal of this action if it has neither been resolved nor proceeded to trial by May 17, 2005, five years from the date of the commencement of this litigation.

Dated: August 12, 2004

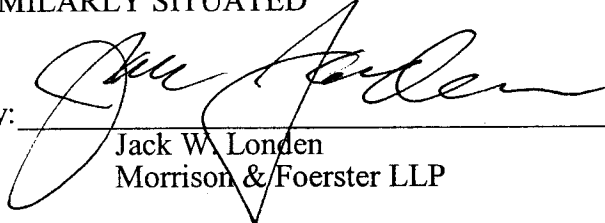
DEFENDANT THE STATE OF CALIFORNIA

By: _____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold
Schwarzenegger

DEFENDANTS THE STATE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
EDUCATION

By: _____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR,
BY SWEETIE WILLIAMS, HIS GUARDIAN
AD LITEM, ET AL., EACH INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

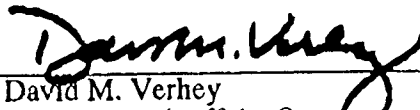
By: _____

Jack W. Londen
Morrison & Foerster LLP
Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern
California

11. Pursuant to California Code of Civil Procedure § 583.330, the Settling Parties stipulate to waive the right to dismissal of this action if it has neither been resolved nor proceeded to trial by May 17, 2005, five years from the date of the commencement of this litigation.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By: _____


David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold
Schwarzenegger

DEFENDANTS THE STATE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
EDUCATION

By: _____

Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR,
BY SWEETIE WILLIAMS, HIS GUARDIAN
AD LITEM, ET AL., EACH INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

By: _____

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Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern
California

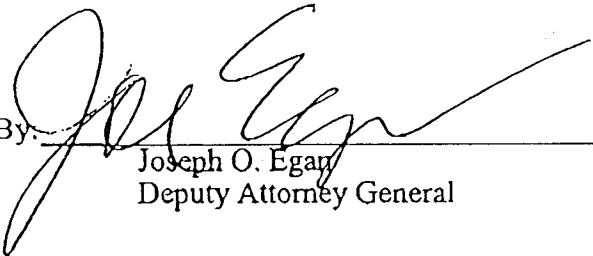
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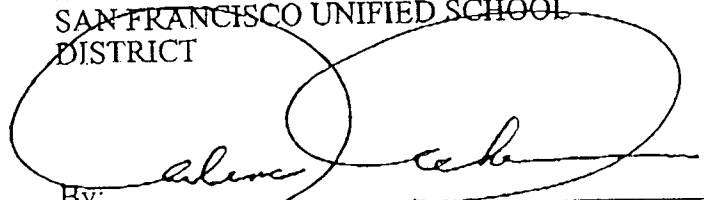


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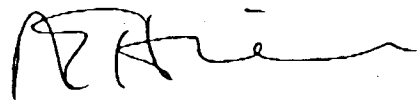
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LEGISLATIVE PROPOSALS

STANDARDS, BENCHMARKS, AND CORRECTIVE ACTION:

Parts I & II

August 12, 2004

“Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities.” (May 14, 2004 letter from Peter Siggins, page 2 point 2.)

Instructional Materials:

The following language represents the Administration’s proposal to ensure that every student is provided with standards-aligned instructional materials. Rather than a narrative format as has been used to date in our discussion, the concept language has been placed into appropriate Education Code sections to facilitate a more specific discussion of the concepts. The code section references are arranged in numerical order for easy reference.

1240. The superintendent of schools of each county, shall do all of the following:

* * *

(c) **(1) (A)** Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(B) As a condition of receipt of funds, the county superintendent, or his or her designee, must annually present a report describing the state of the schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index pursuant to Section 52056 in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools to the school district governing board and the board of supervisors of his or her county. For Amador, Alpine, Del Norte, San Francisco, Sierra, Mariposa, and Plumas Counties, these county offices of education shall contract with a neighboring county office of education or an independent auditor to conduct the required visits and make all required reports. The results of the visit shall be reported to the school district governing board on a quarterly basis at a regularly scheduled meeting, in accordance with public notification requirements.

The visits shall be conducted at least annually and must meet the following criteria:

(1) Not disrupt the operation of the school

(2) Be performed by individuals who meet the requirements of Section 45125.1, including an independent auditor that conducts the visits.

(3) Consist of not less than 25 percent unannounced visits. During unannounced visits the superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of or instructional materials, as defined by Section 60119.

(4) The priority objective of the visits for schools ranked in deciles 1 to 3, inclusive, shall be to determine if there are all of the following:

(A) Sufficient textbooks as defined in Section 60119, and as provided for in (i) of this section.

(B) Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils.

(C) Accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities including good repair as required in sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

* * *

(i) (1) Enforce the use of sufficient state textbooks or instructional materials and of high school textbooks or instructional materials regularly adopted by the proper authority. For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119. In enforcing the use of textbooks or instructional materials, the superintendent shall specifically review at least annually schools in deciles 1 to 3, inclusive, of the Academic Performance Index as a priority if those schools are not currently under review through a State or federal intervention program. The reviews shall be conducted within the first four weeks of the school year.

If the superintendent determines that the district does not have sufficient textbooks or instructional materials pursuant to subdivision (a)(1)(A) of 60119 and as defined by subdivision (c) of Section 60119, the superintendent shall do the following:

(1) Prepare a report that specifically identifies and documents the areas or instances of non-compliance.

(2) Promptly provide a copy of the report to the district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(3) Provide the district with the opportunity to remedy the deficiency. However, the county superintendent shall ensure resolution no later than the second month of the school year.

(4) If the deficiency is not remedied pursuant to paragraph (3), the county superintendent shall request the State Department of Education, with approval by the State Board of Education, to purchase textbooks or instructional materials, necessary to comply with sufficiency requirement of this section. If the State Board approves a recommendation from the department to purchase textbooks or instructional materials for the district, the Board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board failed to provide pupils with sufficient textbooks or instructional materials as required by this section. Prior to the purchase of textbooks or instructional materials, the department shall consult with the school district superintendent to determine the districts selection of textbooks or instructional materials. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420). The funds necessary for the

purchase shall be considered to be a loan to the school district receiving the textbooks or instructional materials. Unless the district repays the amount owed based upon an agreed upon schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks, from the district's next principal apportionment or other apportionment of state funds.

It is the intent of the Legislature to appropriate any savings achieved as a result of schools being phased out of from the High Priority Schools Grant Program to provide High Priority Schools Grant awards to eligible schools, pursuant to Section 52055.605, that have not previously received a grant under this program.

* * *

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not adopt all of the listed options as a condition of funding under the terms of this act. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of high-priority pupils.

(b) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(1) Pupil literacy and achievement.

(2) Quality of staff, including highly qualified teachers as required by the No Child Left Behind Act and provision of appropriately credentialed teachers for English learners.

(3) Parental involvement.

(4) Facilities in good repair as specified in subdivision (a) of Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089, and curriculum, instructional materials, at a minimum, consistent with the requirements of Section 60119, and support services. The amendments to this paragraph shall apply only to schools entering the program on or after the 2004-05 fiscal year.

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners, as defined in subdivision (c) of Section 60119. The amendments to this section shall apply only to schools entering the program on or after the 2004-05 fiscal year.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

* * *

60119. (a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)(A) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, ~~or will have prior to the end of that fiscal year,~~ sufficient textbooks or instructional materials, or both, in each subject (mathematics, science, history -social science and English/language arts (including any English Language Development component of an adopted program)) that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education. The public hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year, except for districts that operate schools on multitrack, year-round calendars, the hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year on any tracks that begin school years in the months of August or September.

(B) As part of the hearing required in this section, the governing board shall also make a written determination as to whether each pupil enrolled in Foreign language and Health courses in the district has sufficient textbooks or instructional materials, for those subjects that are consistent with the content and cycles of the curriculum framework adopted by the state board. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses in grades 9 to 12, inclusive. However, the provision of the textbooks or instructional materials or science equipment specified in this subparagraph shall not be a condition of receipt of funds as provided by this subdivision.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to

classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the extent of the insufficiency, the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period two months of the beginning of the school year in which the determination is made ~~from the date of the determination~~.

* * *

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c) (1) For purposes of this section sufficient textbooks or instructional materials means that each pupil, including English Learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments. This shall not be construed to require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

* * *

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(3) A school district shall ensure that textbooks or instructional materials are ordered before the school year begins, to the extent practicable.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the

statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section. —(e) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

Repeal Education Code Section 62000.4

62000.4. The Instructional Materials Program shall sunset on June 30, 2006. The implementation of the Instructional Materials Program during the 2002-03, 2003-04, 2004-05, and 2005-06 fiscal years shall be contingent upon funding in the annual Budget Act.

Additional Legislation

The Administration proposes to require publishers of instructional materials to provide high school districts and unified districts with a standards map related to the instructional materials with verification by the California Department of Education (CDE) with approval by the State Board of Education (SBE). However, the verification process is contingent upon the payment of a fee by the publisher, to be determined by CDE. Thus, the verification process is made available to publisher on a voluntary basis (fee vs. tax issues). Because of the great value in the State endorsement of materials, it is expected that the publishers will voluntarily submit their materials for verification. Currently Superintendent O'Connell is pursuing a similar proposal through Senate Bill 1405 (Karnette), which we would request be amended to reflect this proposal.

Audit Guide Changes

14501. (a) As used in this chapter, "financial and compliance audit" shall be consistent with the definition provided in the "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions" promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, "compliance audit" means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.

(c) Compliance audit shall also include the verification of each of the following:
(1) the reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119,
(2) teacher missassignments pursuant to Section 44258.9 and

(3) the accuracy of information reported on the School Accountability Report Card required by Section 33126. These requirements shall be added to the audit guide requirements pursuant to Section 14502.1 (b).

* * *

41020 (i) (1) Commencing with the 2002-03 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.

(2) Commencing with the 2004-05 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, use of Instructional Materials Program funds, teacher missassignments pursuant to Section 44258.9, information reported on the School Accountability Report Card required by Section 33126 and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.

* * *

41344.4 Notwithstanding any other provision of law, a local education agency shall not be required to repay an apportionment based on a significant audit exception related to the requirements specified in subdivision (c) of 14501, if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception has been corrected by the local education agency or that an acceptable plan of correction has been submitted to the county superintendent of schools, pursuant to Section 41020(k). With respect to textbooks and instructional materials the plan shall be consistent with the requirements of section 60119 (a)(2)(A).

* * *

Uniform Complaint Process

The Administration proposes that each district use its existing uniform complaint process, as set forth in Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. The process shall include, but is not limited to, each of the following components:

(A) Complaints may be filed anonymously. Complainants who identify themselves are entitled to a response, if they indicate they request a response (forms to include a check off if a response is requested). All complaints and responses shall be public records.

(B) The complaint form shall specify the location for filing these complaints and complainants may add as much text to expand on the complaint as they wish.

(C) Complaints should be filed with the Principal of the school or his or her designee. Complaints about problems beyond the authority of the school Principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate district official for resolution.

The Principal or district superintendent's designee, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The Principal or district superintendent's designee shall remedy the problem within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The Principal or district superintendent's designee shall report to the complainant of the resolution of the complaint within 45 working days of the initial filing. If the Principal makes this report, then the Principal shall also report the same information in the same timeframe to the district superintendent's designee.

Complainants not satisfied with the resolution of the Principal or superintendent's designee shall have the right to describe the complaint to the governing board of the district at a regularly scheduled hearing thereof. As to complaints involving emergency or urgent school facilities conditions, a complainant not satisfied with the resolution of the Principal or superintendent's designee shall have the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

Districts shall report summarized data on the natures and resolutions of all complaints on a quarterly basis to the county superintendent of education and the school governing board. The summaries shall be publicly reported on a quarterly basis at regularly scheduled school board meeting. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

These procedure are intended to address all of the following:

Complaints related to Instructional Materials where:

- Consistent with Section 60119:
 1. A student, including an English Learner, does not have standard-aligned textbooks or instructional materials, State Board adopted or district-adopted (for grades 9-12) text or other required instructional material to use in class.

2. A student does not have access to instructional materials to use at home/after school as needed to meet homework assignments.

- Materials are in poor or unusable condition, e.g. pages are missing, books are unreadable due to damage.

Complaints related to Teacher Vacancy or Misassignment:

- A semester begins and no permanent teacher is assigned to teach a class.
- A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20% English learner students in the class.
- A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

Complaints related to Facilities:

- Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff.

In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the district notifying parents and guardians of the following:

(1) Sufficiency of textbooks or instructional materials as defined in section 60119.
(2) School facilities must be clean and safe and in good repair pursuant to Sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

(3) The location from which to receive a form to file a complaint in case of a shortage. Posting the notice downloadable from the CDE website satisfies this requirement.

School Facilities

Good repair is determined by local health standards applicable to similar facilities. Sections 17014, 17032.5, 17070.75, and 17089 shall be amended to define "good repair" to mean, until at least July 31, 2005, satisfaction of local health standards applicable to restaurants, rental housing, and other similar facilities.

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition.

* * *

(e) As a condition of participation in the school facilities program and the receipt of funds pursuant to Section 17582, each district shall establish a facilities inspection system to ensure that school are in good repair **consistent with local health standards applicable to restaurants, rental housing and other similar facilities** (Health & Safety Code Section 16500).

* * *

TEACHERS

Part III

August 12, 2004

“With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State’s academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed.” (May 14, 2004 letter from Peter Siggins, page 2 point 3.)

The following language represents the Administration’s proposal to ensure that every student is provided with a qualified teacher who is also a highly qualified teacher under the federal No Child Left Behind Act (NCLB). The code sections are set forth in numerical order. For clarity, only changes related to teachers are presented in this document.

33126. (a)

* * *

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

* * *

(5) The total number of the school’s fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, and any assignment of teachers outside their subject areas of competence, **misassignments, including misassignments of English learner teachers, and the number of vacant teacher positions** for the most recent three-year period.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section “misassignment” means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

* * *

42127.6 (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the

current or two subsequent fiscal years or if a school district has a qualified certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:

(7) Assign the Fiscal Crisis and Management Assistance Team to review district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and extent of teacher misassignment and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a district is assigned this review, the district shall follow the recommendations made unless the district shows good cause for failure to do so.

* * *

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low . To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (e) (e).

(b) (1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment **and teacher vacancies** based on past experience or other available information. **However, priority shall be given to schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, if those schools are not currently under review through a State or federal intervention program.**

(B) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher in an assignment requiring a CLAD, BCLAD or SB 1969/395 training, completed the necessary requirements, for these certificates.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel **and teacher vacancies** shall be submitted to each affected district within 4530 calendar days of the monitoring activity.

(e) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing **and the Department of Education** summarizing the results of

all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by local district governing boards under the authority of Sections 44256, 44258.2, and 44263 of the Education Code.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) Information on certificated employee assignment practices in schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, to ensure that, at a minimum, in any classes in these schools in which 20 percent or more students are English learners the assigned teachers possess CLAD or BCLAD credentials or have SB 1969/395 training, or is otherwise authorized by law.

(4-5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

* * *

(i) The State Superintendent of Public Instruction shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (e) of this section to the Legislature. The Legislature shall hold, within a reasonable period after receipt of the summary, public hearings on student access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or to a joint committee, to determine: (a) the effectiveness of the reviews required pursuant to this section; (b) the extent, if any, of vacancies and misassignments; and (c) the need, if any, to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, eliminating vacancies and misassignments.

* * *

44274. (a) The commission shall conduct periodic reviews, beginning in 1998, to determine whether any state has established teacher preparation standards, **including standards for teachers of English learners**, that are at least comparable and equivalent to teacher preparation standards in California.

* * *

(c) The commission shall grant an appropriate credential to any applicant from another state who has completed teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the

commission pursuant to this section, if the applicant has met the requirements of California for the basic skills proficiency test pursuant to subdivision (d) of Section 44275.3 and teacher fitness pursuant to Sections 44339, 44340, and 44341.

* * *

44275.3. Notwithstanding any other provision of law:

* * *

(b) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject or single subject teaching credential or a five-year preliminary education specialist credential to any out-of-state prepared teacher who meets all of the following requirements:

* * *

~~(c) An out of state prepared teacher who has been issued a California five year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section.~~

(d) The commission shall issue a professional clear credential to an out-of-state prepared teacher who has met the requirements in subdivision (b) and who meets the following requirements:

~~(1) Passage of the state basic skills proficiency test administered by the commission pursuant to Section 44252.~~

* * *

~~(5) Completion of the study of health education pursuant to subparagraph (A) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.~~

~~(8) Completion of a fifth year program at a regionally accredited institution of higher education, except that the commission shall eliminate this requirement for any candidate who has completed an induction program for beginning teachers.~~

44325 (e): The California Commission on Teacher Credentialing shall ensure that each district internship program in California provides program elements to its interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.

44453: add: The California Commission on Teacher Credentialing shall ensure that each university internship program in California provides program elements to its

interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and

training in areas including, but not limited to, the following:

(1) School financial and personnel management. **This training shall specifically provide instruction related to personnel management, including hiring, recruitment and retention practices and misassignments of certificated personnel.**

* * *

(3) **Curriculum frameworks and instructional materials aligned to the state academic standards, including ensuring the provision of textbooks or instructional materials as defined in Section 60119.**

* * *

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

* * *

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. **Commencing with fiscal year 2004-05, for any districts with schools entering the program on or after July 2004, the report shall include whether the school does not have at least 80 percent of its teachers credentialed and the number of classes in which 20 percent or more students are English learners and assigned to teachers who do not possess that CLAD/BCLAD credentials or SB 1969/395 training, or is otherwise authorized under current law.**

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

* * *

52059.

* * *

(b) The system shall provide assistance to school districts and schools in need of improvement by:

(1) R reviewing and analyzing all facets of a school's operation including:

(A) Design and operation of the instructional program offered by the school, and by assisting.

(B) Recruitment, hiring and retention of principals, teachers and other staff, including vacancy issues. The system may access the assistance of the Fiscal Crisis and Management Assistance Team to review district or school recruitment, hiring and retention practices.

(C) Roles and responsibilities of district and school management personnel.

(2) Assisting the school district and its schools in developing recommendations for improving pupil performance and school operations.

(3) Assisting schools and districts in efforts to eliminate misassignments of certificated personnel.

* * *

Audit Guide Changes:

See Standards and Benchmarks I & II

Additional Legislation

- The annual report to the Legislature concerning the teaching force in California (Education Code section 44225.6) shall also include data on the extent to which pupils receive instruction from teachers who do not have a preliminary or professional clear credential, the extent to which English learners receive instruction by teachers without CLAD, BCLAD, or SB1969/395 authorization and if available, the percentage and distribution throughout the state of teachers possessing the different types of credentials set forth in section 44225.6 and including CLAD, BCLAD, and SB 1969/395 credentials. [If data is available, the report shall also include information on the number of teacher vacancies.]
- In an effort to meet the highly qualified teacher timelines of NCLB, districts are encouraged to provide first priority in the receipt of resumes and job applications from credentialed teachers, with hiring priority to all schools in deciles 1 to 3, inclusive, based on the API rankings established by Education Code section 52056(a). Thereafter, any school in the district may review and offer a position to a new applicant. Applicant teachers are not required to accept the offers from first priority schools as a condition for employment in the district.

FACILITIES INVENTORY & GRANT PROGRAM

Part IV

August 12, 2004

"The defendants will prepare a statewide inventory of all school facilities to determine the capacity, usage and present physical status of those facilities." (May 14, 2004 letter from Peter Siggins, page 2, point 2.)

The Administration is committed to identifying and resolving urgent facilities needs that effect the health and safety of students and staff at schools to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056. To that end, the Administration proposes an assessment of these schools as well as a state grant program to reimburse school sites and districts for costs associated with the resolution of specified facilities needs.

School Facilities Needs Assessment Grant Program

SEC. 1. Section 17591.500 is added to the Education Code to read:

(a) There is hereby established a School Facilities Needs Assessment Grant Program to provide for a comprehensive assessment of school facilities needs. The grant shall be administered jointly by the Superintendent of Public Instruction and the State Allocation Board.

(b) The grants shall be awarded to schoolsites ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school.

(c) The Superintendent shall allocate funds pursuant to subdivision (b) of this Section to school districts with jurisdiction over eligible schoolsites, based on schoolsite enrollment, with a minimum allocation of _____ thousand dollars (\$X,XXX) and a maximum allocation of _____ thousand dollars (\$XX,XXX) for each schoolsite.

(d) As a condition of receiving funds pursuant to this Section, school districts shall:

(1) use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at minimum, all of the following for each school building that is currently used for instructional purposes:

1. the year each building was constructed
2. the year, if any, it was modernized
3. the capacity of the school

4. the number of students actually enrolled in the school
5. the density of the school campus measured in students per acre
6. the total number of classrooms at the school
7. the number of portable classrooms at the school
8. whether the school is operating on a multi-track, year-round calendar, and if so, what type; and
9. whether the school has a lunchroom, or an auditorium or other space used for student eating and not for class instruction.
10. Useful life remaining of all major building systems for each structure housing instructional space including but not limited to sewer, water, gas, electrical, roofing, fire and life safety protection.
11. Estimated costs for five years necessary to maintain functionality of each instructional space to maintain health and safety and suitable learning environment, as applicable, including classrooms, counseling, administrative space, libraries, gymnasiums, multi-purpose and feeding space, and the accessibility to such spaces.

(2) The district shall provide the data currently filed with the State as part of the process of applying for and obtaining facilities modernization or construction funds, or information that is available in CBEDS for the element required in 4, 5, 6 and 7.

(3) Districts shall use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.5.

SEC. 2. Section 17591.501 is added to the Education Code to read:

17591.501 From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance to complete the comprehensive assessments pursuant to this section.

School Facilities Emergency Repairs Account (FERA)

SEC. X Section 17594 is added to the Education Code to read:

(a) There is hereby established in the State Treasury the School Facilities Emergency Repairs Account. The Office of Public School Construction in consultation with the Superintendent of Public Instruction shall administer the account. A total of \$800 million shall be made available for this account as funds become available from the sources described in this paragraph. Beginning with the 2005-06 budget, at least 50 percent of the unappropriated balance, but not less than \$100 million, from the Proposition 98 Reversion Account shall be annually transferred to this fund. In addition, any other one-time Proposition 98 General Fund sources as well as any monies donated by private entities may be transferred to this account. The amounts deposited into the account shall be used for the purpose of addressing unforeseeable emergency facilities needs at schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school. Any donations to the account shall be tax exempt and treated as a charitable contribution to the extent allowed under both federal and state law.

(b) (1) All monies in the Facilities Emergency Repairs Account are available for reimbursement to schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school, to cover the school district's cost repair projects that meet the criteria specified in paragraph (c) and as approved by the State Allocation Board.

(2) As a condition of reimbursement, districts shall complete the projects and shall certify to the Office of Public School Construction that the repair or replacement could not have been avoided as part of their ongoing maintenance or deferred maintenance programs. The Office of Public School Construction shall conduct random reviews of certifications submitted by school districts to ensure that the repairs are consistent with the intent of this section.

(c) For the purpose of this Section, unforeseeable emergency facilities needs shall mean structures or systems which are unusable for their current purpose and which, as a result, pose a threat to the health and safety of pupils or staff while at school. Such needs may include the following types of facility project repair or replacements:

1. Gas Leaks
2. Existing non-functioning heating, ventilation, fire sprinklers, air conditioning systems
3. Electrical power failure
4. Major sewer line stoppage
5. Major pest or vermin Infestation
6. Broken windows or exterior doors, gates, that will not lock and that pose a security risk.
7. Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff
8. Unforeseen structural damage creating a hazard or uninhabitable condition

For the purpose of this section, structures or components shall only be replaced if it is more cost effective than repair.

(d) For the purpose of this Section, unforeseeable emergency facilities needs shall not include any cosmetic, or non-essential repairs or repairs that would already be addressed in the districts' 5 year deferred maintenance plan or through ongoing scheduled maintenance.

SEC. X Section 17594.1 is added to the Education Code to read:

(a) In addition to all other powers and duties as are granted to the State Allocation Board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. The initial regulations adopted pursuant to this chapter shall be adopted by _____, X, 2004. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter. Regulations adopted pursuant to this subdivision shall be adopted by _____ X, 2004, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

CONCEPT 6 PROPOSAL

August 12, 2004

1. Education Code section 37670 shall be amended to provide that no district not currently operating a school on a three-track year-round calendar providing fewer than 180 days of school per year ("Concept 6 Calendar") shall be allowed to begin using any such calendar and no school not currently operating on a Concept 6 calendar may be converted to that calendar. No school district may open a school on a Concept 6 calendar if doing so would increase the number of schools in the district operating on that calendar beyond the number in operation in the district, on average, over the preceding two school years.

2. Education Code section 37670 shall be amended to prohibit the use of the Concept 6 calendar after July 1, 2012 or such earlier date as may be prescribed by the Legislature under AB 560. Section 37670 shall also be amended to state that, while 2012 is the formal end of the authority to use the Concept 6 calendar, it is the intent of the state that all schools cease using it as soon as practicable.

3. As a condition of operating any school on a Concept 6 calendar in the 2004-05 school year or thereafter, a district must, by January 1, 2005, present to the State Department of Education a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 calendar as soon as practicable.
 - a. This action plan shall include an analysis of the district's demographic forecasts, space use and needs, class sizes, programmatic constraints, facilities construction status, the amount of funding needed to create additional classroom space, and the proposed sources of that funding. A district may not rely upon the use of involuntary busing of more than 40 minutes each way, other than that otherwise done pursuant to a desegregation plan, as a means for achieving elimination of the Concept 6 calendar.

 - b. The action plan shall also contain (i) a detailed description of the multiple phases of planning and construction (e.g., site identification, site acquisition, construction commencement, construction completion/ occupancy) of projects designed to eliminate use of the Concept 6 calendar, including a reasonable projection of the number of additional seats to be provided through each of the multiple phases of planning and construction, and (ii) reasonable, district-wide numerical goals against which annual progress towards eliminating the use of the Concept 6 calendar can be measured (e.g., number of new seats added to reduce reliance on the Concept 6 calendar), including a reasonable projection of the number of students, if any, it estimates will remain on a Concept 6 calendar on July 1 of each year through 2012. However, where a district projects that it will cease use of the Concept 6 calendar before July 1, 2008, the district's comprehensive action plan need not include a detailed description, as required in (i), but only a narrative explanation of how it will accomplish the end of the use of the Concept 6 calendar and project the date that each school currently using it will cease to do so.

4. The Superintendent of Public Instruction shall evaluate the comprehensive action plans submitted by each district and shall make recommendations to the State Board of Education for approval or disapproval of the plans. The Superintendent's evaluation shall be based on the reasonableness of the district's plan in eliminating Concept 6 calendars by the earliest practicable date and no later than July 1, 2012, including whether adequate sources of funding have been identified to accomplish this end. In considering whether a district has identified adequate sources of funding, the Superintendent shall consult with the Office of Public School Construction. If the Board disapproves a plan, it shall specify the reasons for disapproval and require the district to submit a revised plan, within a specified time frame, to address the Board's concerns.

5. Each district operating a Concept 6 calendar shall report each January to the Superintendent of Public Instruction, who shall report to the State Board of Education, on progress made in reaching the annual numerical goals established in its comprehensive action plan.

Any failure to meet an annual goal shall require the district to identify the specific cause(s) of that failure and will necessitate the amendment of the comprehensive action plan showing the specific steps that will be taken to remedy that failure such that the district will still eliminate the use of the Concept 6 calendar by the ending date originally specified in the action plan.

Each district operating a Concept 6 calendar shall file a supplementary, mid-year report where the district's progress toward its numerical goals has or is projected to change materially. The report shall describe the nature and cause of the material change(s) and show the specific steps that will be taken, and detail state technical assistance needed, if any, to address the change(s).

The Superintendent of Public Instruction shall evaluate the supplementary, mid-year reports, if any, and make recommendations to the State Board of Education for approval or disapproval of the reports. The Superintendent's evaluation shall be based on the reasonableness of the district's supplemental plan to reach its annual numerical goals and eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. If the Board disapproves a supplemental report, it shall specify the reasons for disapproval and require the district to submit a revised report, within a specified time frame, to address the Board's concerns.

6. Districts planning to operate a Concept 6 calendar after June 30, 2006 must, by July 1 of 2006 and any succeeding year in which it will operate a Concept 6 calendar, as a condition of operating that calendar, prove to the satisfaction of the Superintendent of Public Instruction that substantial progress has been made toward moving all schools to a calendar of at least 180 days. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether substantial progress has been made.

Substantial progress shall be defined as having come within 10% of the annual numerical goals set forth in the district's comprehensive action plan.

If a district has failed to make substantial progress toward its annual numerical goals, as defined above, for any two consecutive years between 2005 and 2012, the district shall be precluded from approving any new construction or portable classroom project other than a project directly designed to eliminate the use of the Concept 6 calendar or reduce capacity-related busing that transports students more than 40 minutes to or from school; designating developer fees revenue for any purpose not directly related to eliminating Concept 6 or reducing capacity-related busing; and approving the issuance of any Certificates of Participation for any facilities-related purpose not directly related to the elimination of the Concept 6 calendar or the reduction of capacity-related busing. Construction deemed eligible and necessary by the State Allocation Board under 2 Cal. Code Regs. 1859.82(a)(1) shall not be precluded.

These restrictions on the approval of new school or portable classroom projects, designation of developer fees, and issuance of Certificates of Participation shall remain in effect until such time as the district has achieved substantial progress as determined by the State Board of Education.

7. Districts planning to operate a Concept 6 calendar after June 30, 2009 must, by July 1 of 2009 and any succeeding year in which it will operate a Concept 6 calendar, prove to the satisfaction of the Superintendent of Public Instruction that it has developed specific school building planning to deliver classroom seats sufficient to eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether the district has developed specific school building planning.

"Specific school building planning" shall mean, at a minimum, that the district has identified preferred sites and approved as required under CEQA the project(s) needed to create the capacity required, and that the district has identified and obtained the funding necessary to complete the project(s) required. If state funding is part of the funding so identified, "obtained" shall mean that the district has received 1) an apportionment from the state for the project, or 2) a preliminary apportionment for the project under the Critically Overcrowded School Facilities program.

8. If on or after July 31, 2008 and any succeeding year in which a district operates a Concept 6 calendar, the State Board of Education finds that a district has failed to make substantial progress in eliminating the Concept 6 calendar, or if on or after July 31, 2009 and any succeeding year in which a district operates a Concept 6 Calendar, the State Board of Education finds that a district has failed to develop specific school building planning, the Board shall hold a public hearing to determine the causes of such failure and the remedies to be undertaken by the state or imposed on the district to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012.

9. Before the public hearing, the Superintendent of Public Instruction and the State Allocation Board shall each provide a written analysis and opinion to the State Board of Education as to the causes of the failure and the remedies proposed to be undertaken. The

State Allocation Board shall render its opinion acting upon a written analysis prepared by the Office of Public School Construction. Any affected district may submit its own analysis as to the causes of the failure and remedies it proposes to be undertaken. After the public hearing, the State Board of Education shall adopt a remedial plan -- to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012 -- that the district shall follow.

10. If the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is due to circumstances beyond the control of the district and despite the district's good faith efforts, the Board's remedial plan may include the provision of technical assistance to the district from the Department of Education, the Office of Public School Construction and/or the Division of the State Architect. "Technical assistance" may include, but is not limited to, assistance in identifying and acquiring school sites, guidance in maximizing access to funding necessary to create alternative student housing, and facilitation of the process of obtaining state approval for new construction projects. The Board's remedial plan may also recommend action for state financial assistance necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If the State Board of Education determines, however, that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar or to execute the plan, the Board's remedial plan must mandate regular (at least quarterly) review and oversight of the district's efforts by the State Department of Education. In the exercise of the Board's discretion, such review and oversight may be weekly, monthly, quarterly, or whatever other regular interval the Board deems appropriate. The Board's remedial plan may also include any of the measures described in the paragraph above or other such measures as it deems necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If on or after July 1, 2009, the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar and/or to execute the plan, the Board shall hold a public hearing to determine whether the Board should implement direct oversight of the district's facilities construction program. If, in the exercise of its discretion, the Board determines implementation of direct oversight is needed to ensure elimination of the Concept 6 calendar no later than July 1, 2012, the Board shall implement such oversight within 90 days of its determination.

Direct oversight by the Board of Education shall consist of assigning to the district a monitor, who shall report to the Board at each of its regularly scheduled meetings on progress made by the district in working towards the elimination of the Concept 6 calendar. The monitor shall have relevant experience in engineering, construction or management of major public works projects and shall have the resources and authority to contract with appropriate

professionals in the fields of program management, project management and finance. In selecting any monitor, the State Board of Education shall receive nominees from, and consult with, the superintendent of the district subject to the monitor, the Office of Public School Construction, and the bond oversight committee of such district as has been established under Education Code section 15278.

The Board-appointed monitor shall make recommendations to the district with respect to the planning and implementation of its school-building program. The district shall follow the recommendations of the monitor unless the district shows, to the satisfaction of the State Board of Education, good cause for not doing so. Any recommendation of the monitor that is mandatory, as opposed to prohibitory, shall be stayed during the time the district contests the recommendation before the State Board. The Board shall meet to hear and decide any such contest within 30 days of the district's submitting its contest. The monitor shall report to the State Board of Education regarding the district's implementation of the monitor's recommendations. The Board shall have the authority to direct the district to implement the monitor's recommendations in the absence of the district showing good cause for not doing so. Any order of the Board directing the district to implement the monitor's recommendations and any determination of the district's good cause in failing to implement such recommendation shall be made upon recommendation of the Office of Public School Construction, with reasonable notice to the district, at a meeting of the Board, with an opportunity for the district to show in writing or in oral testimony the grounds for its position. The monitor's reports shall be made available to the district's superintendent, governing board and bond oversight committee at least 10 days before the meeting of the Board at which they are presented and the district and the bond oversight committee shall be given an opportunity to address the Board regarding such reports.

11. "Circumstances beyond the control of the district" shall be strictly defined and interpreted and the definition shall include at minimum the following:

- a. any increase in student population beyond district demographic projections set forth in the district comprehensive action plan or any amendments to the plan shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the increase was not reasonably foreseeable through the use of annual, informed re-estimation of demographic projections;
- b. any cost escalation, shortages in construction material or capacity, delay in completion of environmental reviews, or natural or human-made disaster materially affecting the district's facilities program shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the delay or increased cost was not reasonably foreseeable and the district exercised due diligence in planning for such risk;
- c. lack of sufficient state or local funding to complete necessary school construction shall not constitute a circumstance beyond the control of the district unless the district can demonstrate that from July 1, 2004 to date, it has not approved the expenditure of any state or local funds designated for new school construction for any purpose other than the construction of additional school seats to reduce reliance on the Concept 6 calendar and such additional

education-related facilities as are reasonably necessary to construct a new school, with the exception of construction deemed eligible and necessary by the State Allocation Board for funding under 2 Cal. Code Regs. 1859.82(a)(1).

12. The Critically Overcrowded Schools program shall be amended to ensure that any project that will relieve overcrowding at a Concept 6 school will meet the definition of, and be eligible for funding, as a Critically Overcrowded School Facilities Program project.

13. Reports mandated of districts operating on a Concept 6 calendar shall be made available to the public, and all interested parties shall be permitted the opportunity to submit comments to such reports within a reasonable time following the reports' submission to the appropriate state agency.

COVENANT NOT TO SUE

COVENANT NOT TO SUE

It is hereby agreed between the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education), and the representatives of the plaintiff class that:

1. Members of the plaintiff class shall be bound by a covenant not to sue the defendants on the claims pursued in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco (“the Action”) for a period of four years from the date the Court grants final approval of the Settlement Agreement; subject to the conditions and exclusions in paragraphs 2 through 5 below.

2. Members of the plaintiff class shall be bound by a covenant not to sue the defendants for constitutional violations based on allegations as to deficiencies in the quality of teachers, with this covenant not to sue in effect for the following periods: (a) through September 30, 2006 (three months after the current compliance deadline for States under the No Child Left Behind Act) for claims with regard to public schools that are not subject to an extended compliance deadline under the No Child Left Behind Act for schools in rural settings (“Extended NCLB Deadline Schools”); and (b) for a period of four years from the date the Court grants final approval of the Settlement Agreement as to claims with regard to Extended NCLB Deadline Schools.

3. Actions pending as of August 9, 2004 brought by parties other than the named plaintiffs in the Action will not be affected by the covenant not to sue.

4. The covenant not to sue shall not apply to an action contesting the denial of graduation from High School based on the results of the High School Exit Examination.

5. If, after final approval of the settlement and during the period of the covenants, plaintiffs contend that the implemented settlement no longer Substantially Conforms to the Legislative Proposals because of actions by the defendants, plaintiffs shall consult with the State and Settling Intervenors and provide defendants with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. After such consultation, plaintiffs may petition the Court to relieve them of the covenant not to sue, provided that such a petition shall be rejected absent clear and convincing evidence that affirmative actions of the defendants after enactment of the 2004 and/or 2004 Legislation caused the implemented settlement no longer to Substantially Conform to the Legislative Proposals. In addition, defendants shall not be required to respond to such a petition unless plaintiffs present a written offer of proof and obtain an order from the Court that the offer of proof is potentially sufficient to carry plaintiffs' ultimate burden as defined above.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

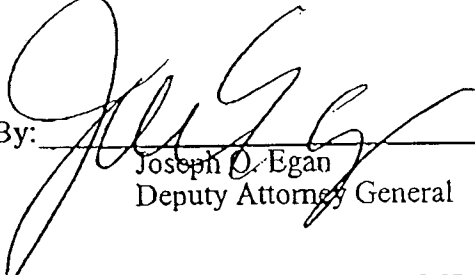
By: _____



David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold
Schwarzenegger

DEFENDANTS THE STATE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
EDUCATION

By: _____


Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR,
BY SWEETIE WILLIAMS, HIS GUARDIAN
AD LITEM, ET AL., EACH INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

By: _____

Jack W. Londen
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Mark D. Rosenbaum
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ACLU Foundation Of Southern
California

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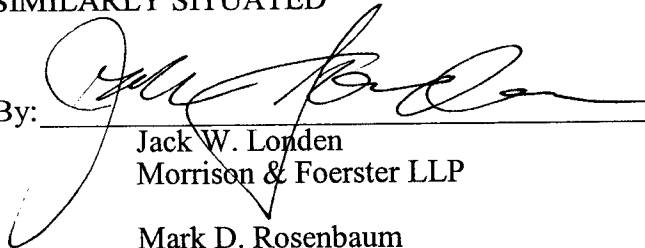
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Educational Fund

Attorneys for Plaintiffs

DEFENDANTS THE STATE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
EDUCATION

By: _____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR,
BY SWEETIE WILLIAMS, HIS GUARDIAN
AD LITEM, ET AL., EACH INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

By:  _____
Jack W. Londen
Morrison & Foerster LLP

Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern
California

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Public Advocates, Inc.

Thomas A. Saenz
Hector O. Villagra
Mexican American Legal Defense and
Educational Fund

Attorneys for Plaintiffs

PROVISION RE ATTORNEYS' FEES

PROVISION AS TO CLAIMS FOR ATTORNEYS' FEES

It is hereby agreed between the State of California and the representatives of the plaintiff class that:

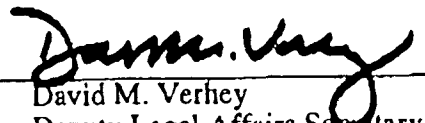
1. Plaintiffs' counsel will be entitled to recover reasonable attorneys' fees and costs from the State in an amount to be agreed between plaintiffs' counsel and the State or, if not agreed after consultation, to be determined by the Court. After dismissal of the Action in other respects the Court will retain jurisdiction to make that determination, if necessary.

2. Time and costs spent by all of plaintiffs' counsel, including Morrison & Foerster LLP, will be submitted to the Court to justify the amount of an award of attorneys' fees and costs if the Court is asked to determine the reasonableness of such an award. However, whether the amount is determined by agreement or Court award, the firm of Morrison & Foerster LLP will not seek to be paid for its time spent on the *Williams* case except for an amount, if the State agrees, that the firm will donate for charitable uses related to the goals of the settlement.

Dated: August 12, 2004

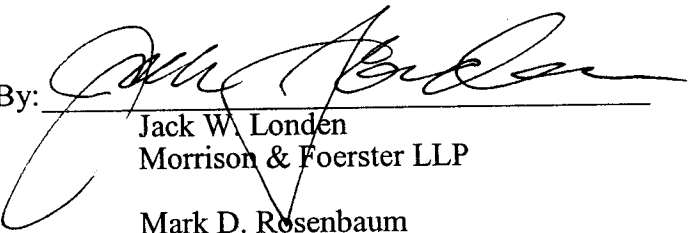
DEFENDANT THE STATE OF CALIFORNIA

By: _____


David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold
Schwarzenegger

PLAINTIFFS ELIEZER WILLIAMS, A MINOR,
BY SWEETIE WILLIAMS, HIS GUARDIAN
AD LITEM, ET AL., EACH INDIVIDUALLY

AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

By: 

Jack W. London
Morrison & Foerster LLP

Mark D. Rosenbaum
Catherine E. Lhamon
Peter J. Eliasberg
ACLU Foundation Of Southern
California

Alan Schlosser
ACLU Foundation Of Northern
California

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Thomas Saenz
Hector Villagra
Mexican American Legal Defense and
Educational Fund

Attorneys for Plaintiffs

EXHIBIT B



OFFICE OF THE GOVERNOR

May 14, 2004

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Re: Williams v. State of California

Dear Counsel:

Discussions among some of the parties have progressed to the point where an agreement to resolve this litigation is possible and within reach. For this reason, I write to ensure that all interested parties are aware of those discussions and the concepts that have the Governor's support.

At present, our proposal to resolve this case consists of two parts. The first is a commitment by the Governor to support four principles of educational reform, along with good faith efforts to obtain legislative solutions implementing those principles during the current legislative session. Those principles may be summarized as follows:

GOVERNOR ARNOLD SCHWARZENEGGER • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841



May 14, 2004

Page 2

1. Regarding management and finance, each school should have more authority in defining and determining its own operation and districts should be provided additional statutory and regulatory relief to increase local control. Although total State expenditures may not matter as much as allocation at the local level and improvements can result without additional resources, a key goal should be to maximize resources that reach the classroom in order to enhance student performance.
2. With respect to school facilities and instructional materials, all schools should be safe and clean. The defendants will prepare a statewide inventory of all school facilities to determine the capacity, usage and present physical status of those facilities. Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities.
3. With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State's academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed.
4. As to accountability and intervention, each child in California should receive a quality education consistent with all statewide content and performance standards adopted by the State Board of Education, and with a rigorous assessment system and reporting program. Resources provided to high-priority (low-performing) schools should be prioritized to improving the academic performance of the lowest performing students. The State should improve districts with schools that consistently fail to meet academic growth targets, or the goals described above, in order to provide help to those schools and students with the lowest academic performance.

We recognize that these solutions will be subject to negotiation and may include programs or school funding methodologies that have been proposed by interested parties during the course of this litigation. Your position on these proposals is important to us and we invite you to communicate any immediate concerns to our office as soon as possible.

The second part of our proposal consists of an agreement by all parties with respect to the following:

1. The education portion of the 2004-2005 budget for education will include funding for the Instructional Materials Block Grant in the amount of \$275 million dollars. All settling parties will support these budget bill provisions and work in good faith for their passage.

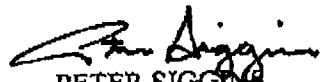
May 14, 2004
Page 3

2. The education portion of the 2004-2005 budget for education will include funding in the amount of \$138.7 million dollars, on a one-time basis, for instructional materials for schools identified in the bottom two deciles, as defined by Education Code section 52052. All settling parties will support this funding augmentation and work in good faith for its passage.
3. In addition to the requirements of Education Code section 17078.20, the Office of Public School Construction (OPSC) shall contact all school districts by mail to inform them of the availability of funds through Proposition 55, the basic eligibility requirements for funding, and all relevant deadlines. The mailing will advise that OPSC staff are available to provide reasonable assistance in applying for funds to districts that meet the school site density requirements for the Critically Overcrowded Schools program (Ed. Code, § 17078.10) and that are housing more than five (5) percent of their student population in portable classrooms leased pursuant to Education Code sections 17085-17096.
4. All settling parties will support legislation which repeals or renders inoperative Article 3 (commencing with § 42260) of Chapter 7, Part 24 of the Education Code, so that the increase in maximum school building capacity required by Education Code section 17071.35 is no longer required.

In closing, we note that the parties may be developing procedural mechanisms that will facilitate settlement of the suit along these lines, and we expect to resolve any questions that may arise in connection with those mechanisms in an expeditious manner. As this process unfolds, we will inform the assigned mediator of the status of our discussions, work with the parties to arrive at a final agreement for settlement and continue to work with the Legislature to develop legislative solutions that correspond to the Governor's policy objectives.

If you have any questions or concerns, please feel free to contact David M. Verhey, Deputy Legal Affairs Secretary, at (916) 445-0873.

Sincerely,


PETER SIGGINS
Legal Affairs Secretary

cc: Richard J. Riordan, Secretary for Education
Donna Arduin, Director of the Department of Finance
Joseph Egan, Deputy Attorney General
John Daum, Esq., O'Melvney & Myers

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Attorneys for Plaintiffs
16 ELIEZER WILLIAMS, etc., *et al.*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
20 individually and on behalf of all others
similarly situated,

21 Plaintiffs,

22 v.

23 STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public
Instruction, STATE DEPARTMENT OF
24 EDUCATION, STATE BOARD OF
EDUCATION,

25 Defendants.
26

No. 312236

[PROPOSED] ORDER REGARDING
PROPOSED SETTLEMENT

Department: 210
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

CLASS ACTION

1 The Court having considered the Notice of Proposed Settlement and supporting papers,
2 the oral argument of counsel, and the other papers of record in this action; good cause appearing,

3 IT IS HEREBY ORDERED that:

4 The proposed settlement satisfies the standards for preliminary approval, and such
5 approval is GRANTED.

6 The process set forth in paragraphs 2 through 4 of the Settlement Implementation
7 Agreement for moving toward final approval of the settlement, subject to the outcome of the
8 parties' efforts to achieve enactment of the agreed legislative proposals, is APPROVED. The
9 parties are directed to keep the Court apprised of the status of the legislation. When according to
10 the agreed procedures, legislation has been enacted that is the basis for a final settlement,
11 plaintiffs are further directed to submit, after consultation with the other parties, a motion for
12 approval of the content, form, and manner of giving notice to the class, and a proposed schedule
13 for submission of comments by class members, submissions by the parties, and a final approval
14 hearing.

15 The Court further ORDERS that the stay on this litigation shall continue in effect pending
16 the final approval hearing or further order of this Court.

17 Dated: August __, 2004

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Peter J. Busch
Judge of the Superior Court

**Standards and Procedures for Audits
of California K-12 Local Educational Agencies
2004-05**



Education Audit Appeals Panel

May 23, 2005

(Updated to include nonsubstantial, clarifying amendments
made through November 10, 2005)

Education Audit Appeals Panel

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Thomas E. Dithridge
Designee of the Director Finance

Thomas E. Henry
Chief Executive Officer, Fiscal Crisis and Management Assistance Team

Geno Flores
Designee of the Superintendent of Public Instruction

John Gilroy
Executive Officer

TITLE 5. Education

Division 1.5. Education Audit Appeals Panel

Chapter 3. Audits of California K-12 Local Education Agencies

Article 1. General Provisions

§ 19810. Scope.

These regulations constitute the audit guide, *Standards and Procedures for Audits of California K-12 Local Educational Agencies*, that shall be used in the performance of the audits required by Education Code Section 41020. These regulations do not provide a complete manual of procedures; auditors must exercise professional judgment.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19811. Qualifications of Auditors.

(a) Each audit shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local education agency from a directory of certified public accountants and public accountants deemed by the Controller as qualified to conduct audits of local education agencies published by the Controller not later than December 31 of each year.

(b) Except as provided in subdivision (d) of Education Code Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audit Appeals Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Section 41020, Education Code.

Article 2. Audit Reports

§ 19812. Auditing Standards.

Audits shall be conducted in accordance with auditing standards generally accepted in the United States of America, the standards set forth in *Government Auditing Standards* issued by the Comptroller General of the United States, and the provisions of this chapter.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: sections 14501, 14503 and 41020, Education Code.

§ 19813. Report Components.

The report of each audit performed pursuant to Education Code Section 41020 shall be as follows, except that the subelements of (d) may be in any order among themselves:

(a) Introductory Section.

(1) Table of Contents for the audit report.

(2) Other information as deemed appropriate by the auditee.

(b) Financial Section.

(1) Independent Auditor's Report.

(2) Management's Discussion and Analysis.

(3) Basic Financial Statements.

(4) Notes to the Basic Financial Statements.

(c) Required Supplementary Information.

Schedule of budgetary comparison data for the General Fund and any major special revenue funds that have legally adopted annual budgets disclosing excesses of expenditures over appropriations, if any, in individual funds presented in the budgetary comparison.

(d) Supplementary Information.

(1) Schedule of Average Daily Attendance.

(2) Schedule of Instructional Time.

(3) Schedule of Financial Trends and Analysis.

(4) Reconciliation of Annual Financial and Budget Report With Audited Financial Statements.

(5) Optionally, Combining Statements and Individual Fund Statements and Schedules.

(6) Schedule of Charter Schools.

(7) If required as set forth in the edition of OMB Circular A-133 applicable to the year being audited, Schedule of Expenditures of Federal Awards.

(8) Notes to Supplementary Information, if required.

(e) Other Independent Auditor's Reports.

(1) Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

(2) Report on State Compliance.

(3) If required as set forth in the edition of OMB Circular A-133 applicable to the year being audited, Report on Compliance With Requirements Applicable to Each Major Program and Internal Control Over Compliance in Accordance With OMB Circular A-133.

(f) Findings and Recommendations.

(1) Schedule of Findings and Questioned Costs.

(2) Schedule of Prior Audit Findings.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19814. Definitions.

The content of the audit report sections and subsections specified in Section 19813 is as described in the *Codification of Statements on Auditing Standards* published by the American Institute of Certified Public Accountants, the *Codification of Governmental Accounting and Financial Reporting Standards* published by the Governmental Accounting Standards Board (GASB), or *Government Auditing Standards* published by the Comptroller General of the United States in the respective editions applicable to the fiscal year being audited, or as defined in one of the following:

(a) “*Government Auditing Standards*” means the publication by the Comptroller General of the United States, United States General Accounting Office, originally issued in 1972 and revised from time to time, commonly known as the “Yellow Book,” that contains standards for audits of government organizations, programs, activities, and functions and that is referenced in Education Code sections 14501, 14503, and 41020(b)(4).

(b) “OMB Circular A-133” means the publication, produced by the federal Office of Management and Budget and titled *Audits of States, Local Governments, and Non-Profit Organizations*, that sets forth standards for attaining consistency and uniformity in the audits of governments and organizations expending federal awards.

(c) “Reconciliation of Annual Financial and Budget Report with Audited Financial Statements” means a schedule that displays the differences between the ending fund balance(s) from the audited financial statements and the unaudited ending fund balance(s) from the annual financial and budget report for each fund in which a variance occurred.

(d) “Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*” means the component of the Other Independent Auditor’s Reports that

specifies material instances of noncompliance, if any; defines reportable conditions and specifies the reportable conditions disclosed as a result of the audit; defines material weaknesses and specifies the material weaknesses, if any, that were disclosed by the audit; includes a statement that no material weaknesses were found, if that is the case; includes a statement that nonmaterial noncompliance and nonreportable conditions involving the internal control structure and its operation were communicated to management in a separate management letter, if that is the case; specifies all instances of fraud and illegal acts, if any, that were disclosed by the audit, unless clearly inconsequential; and specifies material abuse, if any, that was disclosed by the audit.

(e) "Report on State Compliance" means the component of the Other Independent Auditor's Reports that specifically and separately addresses each of the state compliance requirements included in this audit guide that are applicable to the year audited, stating whether or not the district is in compliance with those requirements; includes a chart that displays the number of audit procedures for each compliance requirement applicable to the year audited and states that the audit procedures included in the audit guide for each requirement were followed in the making of the audit, if that is the case, or, if not, what other procedures were followed; and includes an expression of positive assurance with respect to compliance with applicable laws and regulations for those items tested in accordance with those regulations, and negative assurance for untested items.

(1) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2003-04 are

Attendance Reporting, 6;

Kindergarten Continuance, 3;

Independent Study, 22;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6:

Instructional Time and Staff Development Reform Program, 7;

Instructional Time for school districts, 4, for county offices of education, 3;

Community Day Schools, 9;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3;

Option Two, 4; districts or charter schools with only one school serving K-3, 4;

Instructional Materials general requirements, 9; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Early Retirement Incentive Program, 4;

Gann Limit Calculation, 1.

(2) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2004-05 are

Attendance Reporting, 8;

Kindergarten Continuance, 3;

Independent Study, 22;

Continuation Education, 10

Adult Education, 9;

Regional Occupational Centers and Programs, 6:

Instructional Time and Staff Development Reform Program, 7;

Instructional Time for school districts, 4, for county offices of education, 3;

Community Day Schools, 9;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3;

Option Two, 4; districts or charter schools with only one school serving K-3, 4;

Instructional Materials general requirements, 12; K-8 only, 1; grades 9-12 only, 1;
Ratios of Administrative Employees to Teachers, 1;
Early Retirement Incentive Program, 4;
Gann Limit Calculation, 1;
School Construction Funds: School District Bonds, 3; State School Facilities Funds, 1;
Alternative Pension Plans, 2;
Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000), 2;
State Lottery Funds (California State Lottery Act of 1984), 2;
California School Age Families Education (Cal-SAFE) Program, 3;
School Accountability Report Card, 3.

(f) "Report on Compliance With Requirements Applicable to Each Major Program and Internal Control Over Compliance in Accordance With OMB Circular A-133" means the component of the Other Independent Auditor's Reports that states whether the auditee has complied with federal laws, regulations, and the provisions of federal contracts or grant agreements and has established and maintained effective internal control over compliance with the requirements for major federal programs.

(g) "Schedule of Average Daily Attendance" means the schedule in the Supplementary Information section that displays Average Daily Attendance data for both the Second Period and Annual reports, by grade level and program as appropriate.

(h) "Schedule of Charter Schools" means the schedule in the Supplementary Information section that lists all charter schools chartered by the school district or county office of education, and displays information for each charter school on whether or not the charter school is included in the school district or county office of education audit.

(i) "Schedule of Financial Trends and Analysis" means the schedule in the Supplementary Information section that displays information regarding the auditee's financial position and going concern status, in the form of actual financial and attendance figures for at least the most recent three-year period (ending with the audit year), plus the current year's budget, for the following items: General Fund financial activity, including total revenue, expenditures, and other sources and uses; General Fund balance; available reserve balances (funds designated for economic uncertainty, and any other remaining undesignated fund balance) within the General Fund, Special Reserve Fund, and any Article XIII-B Trust Funds; available reserve balances expressed as a percentage of total General Fund outgo (expenditures, transfers out, and other uses), including a comparison to the applicable state-recommended available reserve percentage; total long-term debt; and elementary and secondary Second Principal Average Daily Attendance, excluding Regional Occupational Centers and Programs and Adult Average Daily Attendance; and, when the auditee's percentage of available reserves to total General Fund outgo is below the state-recommended percentage, management's plans for increasing the auditee's available reserve percentage.

(j) "Schedule of Findings and Questioned Costs" means that part of the Findings and Recommendations section that presents all audit year findings, and a copy of each management letter issued, if any, with each finding assigned the appropriate code from among the following: 10000 Attendance, 20000 Inventory of Equipment, 30000 Internal Control, 40000 State Compliance, 50000 Federal Compliance, 60000 Miscellaneous, and includes the following elements:

- (1) criteria
- (2) condition
- (3) effect

(4) cause

(5) a statement of the number of units of Average Daily Attendance, if any, that were inappropriately reported for apportionment; and a statement consistent with its basis of funding, for any other inappropriately reported claim—such as number of staff development days, or number of pupils for Class Size Reduction, or amount in dollars for Instructional Materials, and so forth

(6) a recommendation for the resolution of the finding

(7) a corrective action plan prepared by the auditee that describes in specific terms the actions planned or taken to correct the problem, or a statement from the auditee that the corrective action recommended by the auditor is not necessary or appropriate and giving the specific reasons why, if that is the case, and a statement that the corrective action plan was not available if no corrective action plan was submitted before the audit report was prepared.

(k) “Schedule of Instructional Time” means the schedule in the Supplementary Information section that displays, for all auditees, including basic aid districts, data that show whether the auditee complied with the provisions of Article 8 (commencing with Section 46200) of Chapter 2 of Part 26 of the Education Code.

(l) “Schedule of Prior Audit Findings” means that part of the Findings and Recommendations section that presents the status of actions taken by the auditee on each of the findings and recommendations reported in the prior year audit, and includes as current year findings and recommendations those prior year findings that have not been resolved.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19814.1. Applicability of Audit Procedures by Audit Year.

Of the compliance requirements set forth in Article 3:

(a) Sections 19815 through 19831 are applicable to fiscal year 2003-04 audits;

(b) Sections 19815, 19816, 19817.1 through 19825, 19826.1, and 19828.1 through 19837 are applicable to fiscal year 2004-05 audits.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

Article 3. State Compliance Requirements

§ 19815. Materiality Levels for Compliance Auditing.

Each program for which Average Daily Attendance is reported to the California Department of Education for apportionment purposes must be audited for compliance with specific requirements of law, as further set forth in this article, if the number of units of Average Daily Attendance reported is material as shown in the following table:

Local Education Agency's Total Reported Average Daily Attendance (ADA)	Number of ADA Constituting Materiality for Each Program
1 – 1,000	10 or more
1,001 – 2,500	20 or more
2,501 – 10,000	50 or more
More than 10,000	100 or more

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19816. Auditor Judgment.

For each state compliance requirement, the auditor shall follow the procedures included in this audit guide, unless, in the exercise of his or her professional judgment, the auditor determines other procedures are more appropriate in particular circumstances.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14503 and 41020, Education Code.

§ 19817.1. Attendance Reporting.

For fiscal year 2004-05 and each fiscal year thereafter, perform the following audit steps:

(a) Determine whether the Second Principal and Annual reports of attendance submitted to the California Department of Education reconcile to the supporting documents by verifying the local education agency's Average Daily Attendance calculations for each reporting line item, including the informational line items. Trace the Average Daily Attendance numbers from the Second Principal and Annual reports of attendance to the local education agency's summaries.

(b) Verify that the monthly site summaries used for summarizing attendance provide accurate information, by selecting a representative sample of schools and performing the following procedures (include special day classes in this sample; other special programs are identified separately in subsequent sections of this audit guide):

(1) Reconcile the monthly totals (days of apportionment attendance) on the school's attendance summary to the summary maintained by the local education agency for the Second Principal and the Annual attendance reports.

(2) Select at least one test month in the Second Principal or Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the school's attendance summary.

(3) Select a representative sample of classes (teachers) and trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(c) Select a sample of absences and compare to documentation supporting Average Daily Attendance reported to the California Department of Education to verify that absences were not

included in Average Daily Attendance. The documentation maintained by the local education agency with regard to its absences may be in the form of notes, logs, or other records, depending on the board-adopted policy concerning verification of absences.

(d) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(e) For each teacher selected pursuant to subparagraph (b)(3) of this section, test to determine whether the teacher possessed a valid certification document. If any teacher did not possess a valid certification document, calculate the penalty or penalties pursuant to the provisions of Education Code Section 45037 and include the actual calculation in an audit finding in the Findings and Recommendations section.

(f)(1) For each teacher selected pursuant to subparagraph (b)(3) of this section, test to determine whether the teacher was assigned to teach in a position

(A) consistent with the authorization of his or her certification document, or

(B) otherwise authorized by law pursuant to

1. a governing board resolution in conformance with the provisions of any of subdivision (b) of Education Code Section 44256, Section 44258.2, Section 44258.3, or Section 44263, or

2. approval of a committee on assignments pursuant to the provisions of subdivision (c) or (d) of Section 44258.7.

(2) If any teacher selected pursuant to subparagraph (b)(3) of this section was assigned to teach a class in which more than 20 percent of the pupils were English learners, determine

whether the teacher was authorized to instruct limited-English-proficient pupils pursuant to the provisions of Education Code Section 44253.3, 44253.4, or 44253.10.

(3) If any teacher was assigned to teach in a position for which he or she was not authorized, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

§ 19818. Kindergarten Continuance.

(a) Select a representative sample of kindergarten classes. Perform the following procedures.

(b) Obtain a list of kindergarten pupils enrolled in the selected kindergarten classes for the year audited and the year prior. Compare the enrollment lists and identify those kindergarten pupils, if any, who are on both lists.

(c) Review the record of each pupil identified on both lists to determine whether the pupil continued in kindergarten after completing one school year of kindergarten. For a pupil who begins kindergarten mid-year, one school year of kindergarten is completed on the last day prior to the anniversary of the pupil's first day of kindergarten.

(d) Verify that the local education agency has a signed parental agreement to continue form, approved in form and content by the California Department of Education, for each such pupil.

(e) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19819. Independent Study.

If the local education agency reported Average Daily Attendance generated through independent study, perform the following procedures

(a) At the agency level:

(1) Reconcile the local education agency's independent study attendance records to Average Daily Attendance generated through full-time independent study reported to the California Department of Education.

(2) Verify the local education agency's calculation of the ratio of independent study teachers to Average Daily Attendance generated through full-time independent study by pupils 18 years of age or less as specified by the California Department of Education pursuant to subdivision (a) of Education Code Section 51745.6. Determine the number of ineligible units of Average Daily Attendance pursuant to the provisions of subdivision (b) of Education Code Section 51745.6.

(3) Interview administrative personnel and school counselors of the local education agency to determine if the local education agency had policies and procedures to ensure that any pupil terminating an independent study agreement was permitted to immediately recommence classroom study.

(4) Interview local education agency administrative personnel as well as a sample of independent study teachers and review written agreements to determine whether it was the local education agency's policy or practice to provide independent study pupils or their parents/guardians with monetary funding or any other things of value such as equipment or paid private instruction. If so, determine whether classroom pupils or their parents/guardians had the same access to funding or things of value. Read program materials provided to all

parents/guardians to determine that opportunities were equal and that pupils engaged in independent study were neither offered nor given incentives or special benefits.

(b) Select a sample of schools that is representative of the local education agency and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the local education agency's compliance with independent study requirements. Verify that the monthly site summaries used for summarizing attendance provide accurate information by performing the following procedures:

(1) At each school, examine the attendance accounting records to verify that the attendance of pupils or adult education students or both while engaged in independent study was maintained on separate registers or the local education agency had another mechanism in place to track Average Daily Attendance generated through independent study separately from other Average Daily Attendance.

(2) Determine the total number of days of attendance reported for each sampled school that resulted from attendance by pupils or adult education students or both while engaged in independent study. Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the local education agency for the Second Principal and the Annual attendance reports.

(3) Select a test month in the Second Principal or Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace totals to the school's attendance summary.

(4) Verify that a certificated employee of the local education agency coordinated, evaluated, and provided general supervision of each pupil's or adult education student's independent study.

(5) Select a representative sample of teachers. Verify the mathematical accuracy of the teachers' attendance records of pupil or adult education student attendance. Trace the monthly totals from the monthly report to the attendance records.

(6) If 100 percent apportionment attendance was recorded for all independent study pupils or adult education students or both, ensure that the teacher did not accrue more days of apportionment credit for any assignment than there were school days in that assignment ("banking"); or accrue days of attendance for work submitted subsequent to the specified due date for the assignment ("make-up").

(7) For programs in which hourly attendance accounting is not required pursuant to Section 406, verify that attendance credit was recorded in whole days based on the supervising teacher's personal review, evaluation, and assignment of time value to the pupil's or adult education student's work product, or the supervising teacher's review of the evaluation and assignment of time value made by another certificated teacher.

(c) From the attendance records, select a representative sample of pupils/adult education students for whom Average Daily Attendance generated through independent study was claimed, including pupils on intermittent ("short term") independent study if the local education agency offered that option, and perform the following procedures:

(1) Verify that no pupil was enrolled in the local education agency pursuant to subdivision (b) of Education Code Section 48204 while engaged in full-time independent study.

(2) Determine each selected pupil's or adult education student's county of residence at the time of commencing independent study and verify that it is the county in which the apportionment claim is reported or a contiguous county within California.

(3) Determine whether mailing addresses or other evidence of residency changed during the time the pupils/adult education students were in independent study and, if so, whether each pupil or adult education student remained resident of the same or a contiguous county within California.

(4) Verify that a total of not more than one day of attendance generated through independent study was recorded for each pupil, including pupils enrolled in more than one program, for any calendar day on which school was in session.

(5) Verify that a written agreement exists for each pupil/adult education student selected.

(6) Verify that every pupil whose independent study attendance was claimed for apportionment was participating under an agreement for a minimum of five consecutive school days.

(7) Verify that every written agreement contained all the required elements:

(A) The manner, time, frequency, and place for submitting a pupil's or adult education student's assignments and for reporting his or her progress.

(B) The objectives and methods of study (pupil/adult education student activities selected by the supervising teacher as the means to reach the educational objectives set forth in the written agreement) for the pupil's or adult education student's work.

(C) The methods utilized to evaluate that work (any specified procedure through which a certificated teacher personally assesses the extent to which achievement of the pupils/adult education students meets the objectives set forth in the written assignment).

(D) The specific resources, including materials and personnel, to be made available to the pupils/adult education students (resources reasonably necessary to the achievement of the objectives in the written agreement, not to exclude resources normally available to all pupils/adult education students on the same terms as the terms on which they are normally available to all pupils/adult education students).

(E) A statement of the policies adopted pursuant to subdivisions (a) and (b) of Education Code Section 51747 regarding the maximum length of time allowed between the assignment and the completion of a pupil's or adult education student's assigned work, and the number of assignments a pupil or adult education student may miss before there must be an evaluation of whether it is in the pupil's or adult education student's best interests to continue in independent study.

(F) The duration of the independent study agreement, including the beginning and ending dates for the pupil's or adult education student's participation in independent study under the agreement, with no agreement being for a period longer than one semester, or one-half year for a school on a year-round calendar.

(G) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil/adult education student upon completion.

(H) A statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate. In the case of a pupil who is referred or assigned to any school, class, or program pursuant to Section 48915 or 48917, the agreement also shall include the statement that instruction may be provided to the pupil through independent study only if the pupil is offered the alternative of classroom instruction.

(I) Signatures, affixed prior to the commencement of independent study, by

1. the pupil or adult education student;
2. the pupil's parent, legal guardian, or caregiver as that term is used in Family Code Section 6550 and following, if the pupil is less than 18 years of age;
3. the certificated employee who has been designated as having responsibility for the general supervision of independent study; and

4. all other persons, if any, who had direct responsibility for providing assistance to the pupil or adult education student.

(8) Verify that no days of attendance were reported for dates prior to the signing of the agreement by all parties.

(9) Trace each pupil's or adult education student's attendance from the attendance records to the teacher's register, record of the pupil's or adult education student's work completed, and the corresponding work assignment record. Verify that evaluated pupil/-adult education student work samples, bearing signed or initialed and dated notations by the supervising teacher indicating that he or she personally evaluated the work, or that he or she personally reviewed the evaluations made by another certificated teacher, have been retained in the file.

(10) Verify that the pupil/adult education student work product samples are related to the assignment pursuant to which the work was undertaken and reflect the curriculum adopted by the local governing board and not an alternative curriculum.

(11) Review records and other relevant documentation to verify that each pupil's choice to commence or to continue in independent study was entirely voluntary and uncoerced.

(d) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19820. Continuation Education.

Verify that the monthly site attendance summaries provide accurate information by performing the following procedures:

(a) Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the district for the Second Principal and the Annual attendance reports.

(b) Select a test month in the Second Principal attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the site's attendance summary.

(c) Select a representative sample of classes (teachers). Trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(d) Select a representative sample of pupils and perform the following procedures:

(1) Trace each pupil's attendance in the weekly attendance records to the teacher's attendance register or other approved record.

(2) Verify that hourly attendance accounting was used.

(3) Verify that attendance was not credited for more than the scheduled class time.

(e) Review weekly attendance records to verify that the district did not claim more than 15 hours per week, or a proportionally reduced number of hours per week when there were fewer than five school days.

(f) Select a representative sample of continuation pupils enrolled in work experience education.

(1) Review the weekly attendance reports and attendance registers to verify that each pupil actually attended, as set forth in Education Code Section 48400, four 60-minute hours in each

week in which he/she generated additional hours of work experience apportionment attendance credit.

(2) Verify that the pupils received at least one instructional period per week of classroom work experience instruction or counseling as required by Education Code Section 51760.3(b).

(3) Verify that not more than 10 percent of each continuation high school's Average Daily Attendance at Second Principal (exclusive of Average Daily Attendance for a pupil who was pregnant or was a parent and the primary caregiver for one or more of his or her children) was generated through independent study as provided in Education Code Section 51745(b).

(g) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19821. Adult Education.

Verify that the monthly site attendance summaries provide accurate information by performing the following procedures:

(a) Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the district for the Annual attendance reports.

(b) Select a test month in the Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the site's attendance summary.

(c) Select a representative sample of classes (teachers) for both exclusively adult education students and concurrently enrolled K-12 pupils (if any). Trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(d) Verify that hourly attendance accounting was used.

(e) Verify that attendance was not credited for more than the scheduled class time.

(f) Verify that the district used individual teacher-certified records of the minutes of each pupil's or student's actual attendance for classes (sometimes termed ad hoc or laboratory class settings) that provided more total hours of class time than the minimum required to be attended for pupils or students to receive full credit for the class.

(g) Select a representative sample of K-12 pupils concurrently enrolled in adult education, if any. For each pupil selected, determine, from the adult school files, the K-12 program/school site in which the pupil was enrolled. Review the pupil's K-12 program/class schedule and/or transcript located at the K-12 program/school site and verify that the pupil was concurrently enrolled in adult education courses that supplemented and enriched, and did not supplant, the regular course offerings required to complete the curriculum for the K-12 program in which the pupil was enrolled.

(h) Review each concurrently enrolled pupil's file to ensure there is documentation of a counseling session—a communication whether by phone or in person which involved the pupil, a certificated representative of the high school, and the pupil's parent, guardian, or caretaker—that met the requirements of Education Code Section 52500.1(b).

(i) Review the district's records to ensure that it submitted to the California Department of Education for approval, in advance, a list of all courses provided.

(j) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19822. Regional Occupational Centers and Programs.

Verify that the monthly site attendance summaries provide accurate information by performing the following procedures:

(a) Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the local education agency for the Annual attendance reports.

(b) Select a test month in the Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the site's attendance summary.

(c) Select a representative sample of classes (teachers), and trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(d) Verify that hourly attendance accounting was used.

(e) Verify that attendance was not credited for more than the scheduled class time.

(f) Verify that the local education agency used individual teacher-certified records of the minutes of each pupil's or student's actual attendance for classes (sometimes termed laboratory class, community classroom, workplace learning, or cooperative education setting) that were not

conducted in a fashion that required all pupils/students to be present at a set time or in which more hours of class time were available than the minimum number of hours pupils/students had to attend to receive full credit.

(g) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19823. Instructional Time and Staff Development Reform Program.

Review the site calendars and perform the following procedures:

(a) Verify that the number of Instructional Time and Staff Development Reform Program staff development days claimed did not exceed three for each certificated classroom teacher, and one for each classified classroom instructional aide or certificated teaching assistant.

(b) Verify that each Instructional Time and Staff Development Reform Program staff development day was intended to provide training in one or more of the following: instructional methods, including teaching strategies, classroom management and other training designed to improve pupil performance, conflict resolution, and academic content in the core curriculum areas that are provided by the local education agency. Staff development days held on or after January 1, 2004, additionally may be intended to provide training in intolerance and hatred prevention.

(c) Verify that contemporaneous records support the number of Instructional Time and Staff Development Reform Program staff development days funded.

(d) Verify that no Instructional Time and Staff Development Reform Program staff development days were counted as instructional days for apportionment purposes.

(e) Verify that Instructional Time and Staff Development Reform Program staff development was not conducted after school on any minimum day of which parents or guardians were notified pursuant to Education Code Section 48980(c), except as provided for staff in multitrack year-round schools.

(f) Verify that each staff development day was at least as long as the full-time instructional workday for certificated or classified instructional employees.

(g) Verify that each participant was present for a full-time instructional work day or the aggregate equivalent.

(h) If any ineligible Instructional Time and Staff Development Reform Program staff development days are identified through the foregoing procedures, prepare a schedule of the number of days audited and the number of ineligible days identified. Calculate the disallowance and estimate the dollar value, and include the schedule in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19824. Instructional Time.

(a) School districts: Perform the following procedures:

(1) Select a sample of schools that is representative of the district and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the district's compliance with instructional time requirements. Review the school attendance calendar and bell (class) schedules of the sampled schools. Compare the instructional minutes from each school site's bell (class) schedule to total instructional minutes computed by the business office.

(2) Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as set forth in Education Code Section 46201, and to the amount offered by the district during the 1982-83 year.

(3) Determine whether the district offered optional classes to satisfy incentive funding requirements. If enrollment in optional classes is low, review the district's documentation of class offerings to ensure that the district has acted effectively to comply with the law. Practices that are not consistent with effectively offering additional instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period or by attending school outside the schedule of district-provided bus service.

(4) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report, showing by grade span the number(s) of instructional minutes offered by the district in the 1982-83 year; the 1986-87 instructional time requirements specified in Education Code Section 46201, the instructional minutes offered during the year audited showing the school with the lowest number of minutes offered at each grade span; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; and whether the district complied with the instructional minutes and days provisions. State in a note to the schedule whether the district received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives.

(5) If any schools were not in compliance with the instructional minutes or days provisions, or both, prepare a separate schedule for each school showing only those grade spans that were not in compliance, and calculate the penalty or penalties pursuant to Education Code Section 46200(c), 46201(d), or 46202(b). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(b) County offices of education: If the county office of education received Longer Instructional Day or Longer Year incentive funding, or both, for the fiscal year audited for special day classes, perform the following procedures:

(1) Review the school attendance calendar and bell (class) schedules. Determine the amount of instructional time offered by each school.

(2) Determine whether the county office of education complied with the instructional time incentive funding requirements by comparing the amount of time offered for each grade level during the year being audited to the required amount of instructional time as set forth in Education Code Section 46201.5.

(3) Prepare the "Schedule of Instructional Time," that must be presented in the Supplementary Information section of the audit report showing by grade span the 1986-87 instructional time requirements specified in Education Code Section 46201.5; the instructional minutes offered during the year audited showing the school with the lowest number of minutes; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; whether the county office of education complied with the instructional minutes requirements; and, if the county office of education received an apportionment pursuant to Education Code Section 46200.5(a), whether the county office of education complied with the instructional days provisions. State in a note to the schedule whether the county office of education received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives and whether it received an apportionment pursuant to Education Code Section 46200.5(a).

(4) If any schools were not in compliance with the instructional minutes or days provisions, or both, prepare a separate schedule for each such school showing only those grade spans that were not in compliance and calculate the penalty or penalties set forth in Education Code Section

46200.5(c) or 46201.5(e). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19825. Community Day Schools.

(a) Verify that the minimum school day included at least 360 minutes of community day school classroom instruction by reviewing the bell schedule(s) of the school district's or county office of education's community day school(s), and that the school's practice was to schedule all pupils, other than pupils with exceptional needs whose Individualized Education Programs specified otherwise, to attend for at least the minimum day.

(b) Select a representative sample of pupils and verify that they were scheduled to attend the community day school for at least 360 minutes each day by reviewing their class assignments.

(c) Verify that pupils were provided classroom instruction by a certificated employee of the school district or county office of education for at least the minimum school day, by reviewing teacher room assignments and employment records.

(d) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(e) Select a representative sample of pupils who were enrolled in the district's or county office's community day school(s) and perform the following procedures:

(1) Trace the credit reported for each sampled pupil's attendance in the fifth and sixth hours of attendance back to the record prepared by the classroom teacher.

(2) Verify that hourly attendance accounting was used.

(3) Verify that pupils who attended fewer than five hours in a school day were not reported for attendance credit for the additional funding, that attendance of five hours was reported for one-half day of attendance credit for the additional funding, and that attendance of six hours or more was reported for one whole day of attendance credit for the additional funding.

(f) If any inappropriately reported units of Average Daily Attendance are identified through the immediately foregoing procedure, prepare a schedule displaying the hours of attendance credit inappropriately reported and recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(g) Select a representative sample of pupils who were enrolled in the district's or county office's community day school(s) and perform the following procedures:

(1) Trace the credit reported for each sampled pupil's attendance in the seventh and eighth hours back to the data origination record.

(2) Verify that hourly attendance accounting was used.

(3) Verify that no pupils who had not completed the full six-hour instructional school day were reported for attendance credit for the additional funding.

(4) Verify that the pupils' attendance during the seventh and eighth hours was supervised by an employee of the district or the county office of education.

(h) If any inappropriately reported hours of attendance are identified through the immediately foregoing procedure, prepare a schedule displaying the hours of attendance inappropriately reported and an estimate of their dollar value, and include it in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19826.1. Class Size Reduction.

For fiscal year 2004-05 and each fiscal year thereafter, perform the following audit steps:

If the school district or charter school received Class Size Reduction Program funding for the year audited, perform the following procedures, using daily averaging in all instances in which averaging is required.

(a) Verify the mathematical accuracy of the Class Size Reduction Program claim form submitted to the California Department of Education.

(b) Option One Classes

(1) Select a sample of classes from those that were certified as eligible for Option One Class Size Reduction Program funding, using the following procedures:

(A) The number of classes to be reviewed shall be based on auditor judgment, but the selection of classes shall be made randomly.

(B) For each class selected, the sample shall include at least 15 days randomly selected from all instructional days that occurred between the first day of instruction and April 15, inclusive, of the year audited.

(C) If class size for the sampled classes was more than 20.4 when averaged over a period from the first day of instruction to April 15, inclusive, the auditor shall conduct a more in-depth review.

The in-depth review shall be either of the following:

1. A review of all instructional days for all classes for which a district or charter school has requested funding pursuant to the provisions of Education Code Section 52126.

2. A randomly selected sample of all classes and instructional days, of sufficient size and designed in such a manner that the auditor can conclude, with a 95 percent degree of confidence, that the average daily class size for each class, when averaged over the period from the first day of instruction to April 15, did not exceed 20.4.

(D) The district or charter school shall make the determination as to which of the two in-depth review methods set forth in the immediately preceding subparagraph shall be used.

(2) For sampled classes, review the data used to prepare the list of Option One classes reported to the California Department of Education, to verify that the report is supported by contemporaneous records.

(3) For sampled classes, review teacher assignments and other available pupil and teacher assignment data to verify that the number of students reported as being under the immediate supervision of each assigned teacher for each class reported was the actual class size for a substantial majority of the full regular school day.

(c) Option Two Classes

(1) Select a sample of classes from those that were certified as eligible for Option Two Class Size Reduction Program funding, using the following procedures:

(A) The number of classes to be reviewed shall be based on auditor judgment, but the selection of classes shall be made randomly.

(B) For each class selected, the sample shall include at least 15 days randomly selected from all instructional days that occurred between the first day of instruction and April 15, inclusive, of the year audited.

(C) If class size for the sampled classes was more than 20.4 when averaged over a period from the first day of instruction to April 15, inclusive, the auditor shall conduct a more in-depth review.

The in-depth review shall be either of the following:

1. A review of all instructional days for all classes for which a district or charter school has requested funding pursuant to the provisions of Education Code Section 52126.

2. A randomly selected sample of all classes and instructional days, of sufficient size and designed in such a manner that the auditor can conclude, with a 95 percent degree of confidence, that the average daily class size for each class, when averaged over the period from the first day of instruction to April 15, did not exceed 20.4.

(D) The district or charter school shall make the determination as to which of the two in-depth review methods set forth in the immediately preceding subparagraph shall be used.

(2) For sampled classes, review the data used to prepare the list of Option Two classes reported to the California Department of Education, to verify that the report is supported by contemporaneous records.

(3) For sampled classes, review teacher assignments and other available data to ensure that the class size reported was the maximum actual class size for at least one-half of the instructional minutes offered per day in each grade for which Option Two Class Size Reduction funding was claimed.

(4) Review class schedules to ensure that the time that pupils spent in Option Two classes was primarily devoted to instruction in reading or mathematics.

(d) Class Size Reduction option for districts or charter schools with only one school serving K-3:

For school districts or charter schools that participate in Class Size Reduction pursuant to the provisions of subdivision (h) of Education Code Section 52122, verify that:

(1) The school had no more than two classes per participating grade level,

(2) The governing board made a public declaration as set forth in subdivision (h)(2) of Education Code Section 52122,

(3) The average class size of all classes participating in Class Size Reduction, combined, did not exceed 20.4, and

(4) The pupil-to-teacher ratio did not exceed 22.4 to 1 in any class.

(e) General requirements:

(1) For all sampled classes, and for classes claimed for Class Size Reduction funding in districts or charter schools with only one school serving kindergarten and grades 1 through 3, review the school level information used to complete the California Department of Education's reporting form. Verify that:

(A) classes claimed for funding were for pupils in kindergarten, or grades 1 to 3, inclusive;

(B) if only one grade level was reduced, it was grade 1;

(C) if two grade levels were reduced, they were grades 1 and 2; and

(D) priority was given to the reduction of classes in grades 1 and 2 before classes in kindergarten or grade 3 were reduced.

(2) For the sampled classes, verify that the district or charter school did not report to the California Department of Education on the Class Size Reduction reporting form:

(A) any classes consisting of special education pupils enrolled in special day classes on a full-time basis,

(B) any pupil who was enrolled in independent study or home study for the full regular school day,

(C) any pupil who was enrolled in independent study or home study for any portion of the full regular school day, for that portion of each day that the pupil was on independent study or

home study, or

(D) any pupil enrolled in a Class Size Reduction combination class who was at a grade level ineligible for Class Size Reduction funding.

(3) For the sampled classes, verify that counts began on the first teaching day each class existed.

(4) If a district elected to reduce class size through the use of an early-late instructional program and claimed Class Size Reduction funding for Option One classes, verify that it did not follow the provisions of Education Code Section 46205 when calculating instructional time used to qualify for Longer Instructional Day and Year incentive funding unless the district operated an early-late instructional program pursuant to the provisions of Education Code Section 46205 prior to July 1, 1996.

(5) If a district elected to reduce class size through the use of an early-late instructional program and claimed Class Size Reduction funding for Option Two classes, verify that it did not follow the provisions of Education Code Section 46205 when calculating instructional time used to qualify for Longer Instructional Day and Year incentive funding.

(f) If any of the classes reported for Class Size Reduction funding is found to be ineligible for such funding pursuant to any of the foregoing audit procedures, or if any individual pupils in eligible classes are found to have been ineligible because of their grade level(s) but to have been included in the number of eligible pupils reported, or both, prepare, and include in the Findings and Recommendations section of the audit report, a schedule summarizing the results of all procedures and displaying the numbers of noncompliant classes by grade level, number of pupils incorrectly reported as eligible, and Class Size Reduction funding claimed on the basis of those classes and pupils. Include the data for each ineligible class only once, even if found to have been ineligible for Class Size Reduction funding in more than one of the steps in the audit procedures.

Display information separately for classes with annual average enrollments determined, pursuant to the provisions of Education Code Section 52124.5, to be

(1) equal to or greater than 20.5 but less than 21.0, with a 20 percent reduction of the amount to which the district would otherwise be eligible for each such class;

(2) equal to or greater than 21.0 but less than 21.5, with a 40 percent reduction of the amount to which the district would otherwise be eligible for each such class;

(3) equal to or greater than 21.5 but less than 21.9, with an 80 percent reduction of the amount to which the district would otherwise be eligible for each such class; and

(4) equal to or greater than 21.9, with a 100 percent reduction of the amount to which the district would otherwise be eligible for each such class.

(g) Interview management regarding the district's staff development program.

(1) Verify that the staff development program required, as set forth in Education Code Section 52127, that any certificated teacher providing direct instruction to a class in the Class Size Reduction Program receive the appropriate training necessary to maximize the educational advantages of Class Size Reduction, including but not limited to methods for providing individualized instruction; effective teaching, including classroom management, in smaller classes; identifying and responding to student needs; and opportunities to build on the individual strengths of students.

(2) If the district did not have a staff development program as set forth in Education Code Section 52127, include a finding in the Findings and Recommendations section of the audit report showing the full amount of Class Size Reduction funding received as disallowed.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19828.1. Instructional Materials.

For fiscal year 2004-05 and each fiscal year thereafter, perform the following audit steps:

(a) Determine whether the year audited is one for which the governing boards of school districts or county boards of education that receive funds for instructional materials from any state source are subject to the provisions of Education Code Section 60119, as set forth in subdivision (d) of that section.

(b) If the year audited is one in which the school district or county office of education was required to conduct a hearing as provided in Education Code Section 60119, perform the following audit procedures.

(1) For fiscal year 2005-06 and each fiscal year thereafter, determine whether the school district governing board or county board of education, prior to making a determination through a resolution as to the sufficiency of textbooks or other instructional materials, held the public hearing or hearings required by the provisions of Education Code Section 60119 on or before the end of the eighth week from the first day pupils attended school for that year, or, in a school district or county office of education having schools that operate on a multitrack, year-round calendar, on or before the end of the eighth week from the first day pupils attended school for that year on any track that began in August or September.

(2) Determine whether the school district governing board or county board of education provided 10-day notice of the required public hearing or hearings.

(3) Determine whether each notice included the time, place, and purpose of the hearing and whether the school district or county office of education posted the notice at a minimum of three public locations in the school district or county, respectively.

(4) Determine whether the hearing was held at a time that encouraged the attendance of teachers and parents and guardians of pupils who attend the schools in the district and did not take place during or immediately following school hours.

(5) Determine whether the resolution stated that each pupil in each school had sufficient textbooks or instructional materials, or instead that there was an insufficiency of textbooks or instructional materials, or both, in any one or more of mathematics, science, history-social science, and English/language arts including the English language development component of an adopted program, as appropriate, that were consistent with the content and cycles of the curriculum framework adopted by the State Board of Education. If the resolution stated any insufficiency, verify that the school district governing board or county board of education provided information to classroom teachers and to the public setting forth, for each school in which an insufficiency existed, the reasons that each pupil did not have sufficient textbooks or instructional materials, or both, and took action to ensure that each pupil would have sufficient textbooks or instructional materials, or both, within two months of the beginning of the school year in which the determination was made.

(6) Verify whether the governing board made a written determination as to whether each pupil enrolled in a foreign language or health course had sufficient textbooks or instructional materials that were consistent with the content and cycles of the curriculum frameworks adopted by the state board of education for those subjects.

(7) Verify whether the governing board determined the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive.

(c) If the school district or county office of education was not in compliance with any of the requirements set forth in procedures 1 through 5 of subdivision (b) of this section, the school district or county office of education was not eligible to receive an Instructional Materials

Funding Realignment Program allowance for the fiscal year audited. Include a finding in the Findings and Recommendations section of the audit report showing the full amount of Instructional Materials Funding Realignment Program allowance received as disallowed.

(d) If the school district or county office of education was not in compliance with any of the requirements set forth in procedures 6 or 7 of subdivision (b) of this section, report the noncompliance in a finding in the Findings and Recommendations section of the audit report.

(e) Instructional Materials Funding Realignment Program:

(1) Determine the amount of the Instructional Materials Funding Realignment Program allowance received by the local education agency.

(2) Verify that the allowance received was accounted for separately.

(3) For kindergarten and grades 1 through 8, review the local education agency's list of instructional materials purchased and select a sample to verify that the materials were adopted by the State Board of Education in March 1999 or later, are in one of the four eligible subject areas, and bear the copyright date and are of editions of the materials adopted by the State Board of Education.

(4) For grades 9 through 12, review the local education agency's list of instructional materials purchased and select a sample to verify that the materials were reviewed and approved through a resolution adopted by the local education agency's governing board as being aligned with State Board of Education-adopted content standards.

(5) Determine whether the governing board certified, as set forth in Education Code Section 60422, that each pupil had been provided with a standards-aligned textbook or basic instructional materials.

(6) If the governing board did certify as set forth in Education Code Section 60422, review the Instructional Materials Funding Realignment Program expenditures initiated after the certification

was made and select a sample to verify that the textbooks or materials were from the following categories:

(A) Purchase of instructional materials adopted by the State Board of Education pursuant to the provisions of Education Code Section 60200 for kindergarten and grades 1 through 8, or by the governing board pursuant to the provisions of Education Code Section 60400 for grades 9 through 12.

(B) Purchase, at the local education agency's discretion, of instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials from any source.

(C) Purchase of tests.

(D) Binding of textbooks that were otherwise usable and were on the most recent list of basic instructional materials adopted by the State Board of Education and made available pursuant to the provisions of Education Code Section 60200.

(E) Funding of in-service training related to instructional materials.

(F) Purchase of classroom library materials for kindergarten and grades 1 through 4, if the local education agency had a plan as specified in Education Code Section 60242(d).

(f) If any of the instructional materials funds are found to have been expended inappropriately, include the amount inappropriately spent in a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

§ 19829. Ratios of Administrative Employees to Teachers.

(a) For school districts, verify that the district is in compliance with the administrator-to-teacher ratio requirement for the year audited by determining that the employees were properly

classified and the ratio was calculated consistent with the provisions of Education Code Section 41403.

(b) If the number of administrators per hundred teachers exceeded the allowable ratio set forth in Education Code Section 41402, indicate the number of excess administrators and the associated penalty, as set forth in Education Code Section 41404, in the Findings and Recommendations section of the audit report.

(c) If the school district cannot show that it was in compliance with the ratio during the year audited, include a statement in the Findings and Recommendations section of the audit report that the ratio could not be confirmed.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19830. Early Retirement Incentive.

(a) Obtain a copy of the certification required by Education Code sections 22714, 22714.5, and 44929 and verify that the school district received approval from the county office of education or that the county office of education received approval from the Superintendent of Public Instruction as appropriate.

(b) Verify that the reason(s) contained in the certification are consistent with the results of the early retirement incentive program.

(c) Verify the data disclosed as a result of the district's or county office's adoption of the early retirement incentive program.

(d) Include a disclosure in the Notes to the Basic Financial Statements that presents the number and type of positions vacated; the age, service credit, salary, and, separately, the benefits of the retirees receiving additional service credit; a comparison of the salary and benefits of each

retiree with the salary and benefits of the replacement employee, if any; the resulting retirement cost, including interest, if any, and postretirement health benefit costs, incurred by the employer.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19831. Gann Limit Calculation.

The following audit procedures apply to the current year appropriations limit calculation for county offices of education and school districts.

(a) Verify that the data used by the district or the county office is accurate, ensuring that the "Prior Year Gann ADA" used by the local education agency matches the data on the prior year appropriations limit calculation previously submitted to the California Department of Education. If the data has been revised, verify that the district or the county office has recalculated the prior year appropriations limit and attached a copy of the recalculation to the current year appropriations limit.

(b) If the agency is found out of compliance, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Section 1.5 of Article XIII B, California Constitution.

§ 19832. School Construction Funds.

(a) School district bonds.

(1) Verify that the proceeds from the sale of bonds issued pursuant to the provisions of Education Code Section 15140 were deposited in accordance with the provisions of Education Code Section 15146.

(2) Select a sample of expenditures and verify that bond proceeds were expended only for the purpose(s) for which the bonds were issued, as specified in the official statement or statements of

bond indenture submitted by the school district governing board to the county auditor or county treasurer.

(3) Verify that any money transferred to the general fund of the district from the interest and sinking fund was transferred in compliance with the provisions of Education Code Section 15234.

(4) If any proceeds from the sale of bonds are found to have been deposited inappropriately or to have been expended for purposes other than those specified in the official statement or statements of bond indenture, or if any money is found to have been transferred inappropriately from the interest and sinking fund, include a finding in the Findings and Recommendations section of the audit report stating the amount inappropriately deposited, expended, or transferred.

(b) State School Facilities Funds.

(1) Select a sample of expenditures and verify that expenditures from the school district's account in the county school facilities fund were made only for qualifying school facilities expenditures as provided in subdivision (c) of Education Code Section 17070.43 and additionally set forth in Education Code Section 17072.35, or in Education Code Section 17074.25 as further defined in subdivision (f) of Education Code Section 17070.15; or for other high priority capital outlay purposes in accordance with the provisions of subdivision (c) of Education Code Section 17070.63.

(2) If any expenditures of funds from the school district's account in the county school facilities fund are found to have been made for non-qualifying purposes, include a finding in the Findings and Recommendations section of the audit report stating the amount inappropriately expended.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19833. Alternative Pension Plans.

(a) As used in this section, “alternative pension plan” means a pension plan not administered by the California Public Employees Retirement System (Government Code Section 20000 and following) or the State Teachers Retirement System (Education Code Section 22000 and following).

(b) Interview administrative personnel and determine whether the local education agency has created an entity, joined a joint powers authority, or entered into a joint venture that provides for an alternative pension plan for its current or former permanent, full-time employees.

(c) If the local education agency has done so, determine that the activity is fully disclosed in the Notes to the Basic Financial Statements.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19834. Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000).

Determine the amount of the Proposition 20 restricted lottery allowance received from the State Controller.

(a) Verify that the allowance received was accounted for separately.

(b) From the expenditures of the Proposition 20 restricted lottery allowance funds, select a sample and verify that they were for instructional materials as defined in subdivisions (h), (m), or (n) of Education Code Section 60010.

(c) If any expenditure was not for instructional materials, include its amount in a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19835. State Lottery Funds (California State Lottery Act of 1984).

Determine the amount of the non-Proposition 20 lottery allowance received from the State Controller.

(a) Verify that the allowance was accounted for separately as required by subdivision (k) of Government Code Section 8880.5.

(b) From the expenditures of the non-Proposition 20 lottery allowance funds, select a sample and determine whether any funds were used for the acquisition of real property, construction of facilities, or financing of research.

(c) If any non-Proposition 20 lottery funds are identified as having been expended for the acquisition of real property, construction of facilities, or financing of research, include the amount of the expenditure in a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19836. California School Age Families Education (Cal-SAFE) Program.

If the school district, county office of education, or charter school received Cal-SAFE funds for the audited year, perform the following procedures. Do not apply the materiality provisions set forth in Section 19815.

(a) Determine whether the Cal-SAFE annual report of attendance submitted to the California Department of Education reconciles to supporting documentation by verifying the local education agency's calculation of each reporting line item.

(b) For each line item, select a representative sample of Cal-SAFE pupils whose Average Daily Attendance was included. For each pupil in each sample, verify the Average Daily Attendance calculation, and trace the pupil's daily attendance to the data origination documentation.

(c) Determine whether any Cal-SAFE pupils generated Average Daily Attendance in more than one program. Select a representative sample from among such pupils. Verify that not more than a total of one unit of Average Daily Attendance generated by each pupil was included in the report.

(d) If the total reported units of Average Daily Attendance generated by Cal-SAFE pupils in their education programs include more than one unit of Average Daily Attendance for any pupil, include a statement in the Findings and Recommendations section of the audit report of the number of excess unit(s).

(e) If any inappropriately reported units of Average Daily Attendance are identified through the audit procedures in subdivisions (a) and (b), subtract the inappropriately reported units of Average Daily Attendance from the total reported. From the resulting total, subtract any excess units of Average Daily Attendance identified through the audit procedures in subdivision (c). Include a statement in the Findings and Recommendations section of the audit report of the correct number of support services allowances and the dollar value of the inappropriately claimed support services allowances.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19837. School Accountability Report Card.

(a) Obtain copies of the quarterly report of summarized complaint data compiled pursuant to the provisions of subdivision (d) of Education Code Section 35186. Identify any complaints related to teacher misassignment or vacancies included in the summarized data and compare each such complaint to the information on teacher misassignment or vacancies stated in the School Accountability Report Card for the school identified in the complaint, as required by the provisions of subdivision (b)(5) of Education Code Section 33126. If the information in the

School Accountability Report Card is inconsistent with the information in the complaint, interview management to determine the basis of the inconsistency. If the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

(b) For each school in the sample of schools selected pursuant to Section 19817.1(b), obtain the school district's or county office of education's completed copy of the interim evaluation instrument developed by the Office of Public School Construction pursuant to the provisions of subdivision (d) of Education Code Section 17002. If the interim evaluation instrument was completed prior to the publication of the school's School Accountability Report Card, compare the information contained in the instrument to the information on safety, cleanliness, and adequacy of school facilities contained in the School Accountability Report Card for that school as required by the provisions of subdivision (b)(9) of Education Code Section 33126. If the information in the School Accountability Report Card is inconsistent with the information in the interim evaluation instrument, interview management to determine the basis of the inconsistency. If the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

(c) For each school in the sample of schools selected pursuant to Section 19817.1(b), compare the information on the availability of sufficient textbooks and other instructional materials included in the School Accountability Report Card pursuant to the provisions of subdivision (b)(6)(B) of Education Code Section 33126 with the information in the resolution reviewed pursuant to Section 19828.1(b)(5) and the information in the determinations reviewed pursuant to Section 19828.1(b)(6) and Section 19828.1(b)(7). If the information in the School Accountability Report Card is inconsistent with the information in the resolution or the determinations, interview management to determine the basis of the inconsistency. If the School Accountability Report

Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

Appendix A

Federal Compliance Requirements

Office of Management and Budget Circular A-133 (revised June 2003), titled *Audits of States, Local Governments, and Non-Profit Organizations*, was issued pursuant to the Single Audit Act of 1984 (Public Law 98-502) and the Single Audit Act Amendments of 1996 (P.L. 104-156). It sets forth standards intended to bring about consistency and uniformity in the auditing of entities expending federally granted funds, and is available through this website:

<http://www.whitehouse.gov/omb/circulars/index-slg.html>

The compliance requirements for testing federal program expenditures are set forth in the OMB Circular A-133 Compliance Supplement. The 2005 Compliance Supplement Update effective for audits of fiscal years beginning after June 30, 2004, should be used in conjunction with the Compliance Supplement issued in March 2004. The 2004 Supplement and the 2005 Update are available at the following websites:

http://www.whitehouse.gov/omb/circulars/a133_compliance/04/04toc.html

http://www.whitehouse.gov/omb/circulars/a133_compliance/05/cs5updates.html

The Compliance Supplement sets forth program requirements accompanied by suggested audit procedures for testing compliance. The State Controller's Office advises that these procedures are not the only ones that can be utilized by the auditor, nor are they mandatory procedures. Auditors should apply professional judgment to choose procedures and determine the extent of tests performed, and the audit procedures should be tailored to individual programs and circumstances. The auditor is also responsible for ensuring that specific requirements that are modified by a change in a law or regulation are included in the audit procedures.

The Compliance Supplement may not include all the federal programs and procedures required to be audited for compliance; therefore, independent auditors may have to contact funding agencies for compliance requirements and applicable procedures. Program regulations and guidelines are also referenced in the Catalog of Federal Domestic Assistance (CFDA), which can be accessed online through this website:

<http://www.cfda.gov>

The California Department of Education provides CFDA information in a document available through the "Federal Awards" link on the following web page:

<http://www.cde.ca.gov/fg/au/ag/auditresfed.asp>

The Federal Audit Clearinghouse, which operates on behalf of OMB, provides the required forms for submission of federally-required audit reports and other information at its home page:

<http://harvester.census.gov/sac/index.html>

Appendix B

Agency Addresses and Contacts

Mailing Address

State Controller's Office
Division of Audits
School District Audits
Post Office Box 942850
Sacramento, California 94250-5874

Telephone: (916) 322-4846

California Department of Education
School Fiscal Services Division
Audit Resolution Staff
1430 N Street, Suite 3800
Sacramento, California 95814

Telephone: (916) 323-8068

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Telephone: (800) 253-0696 (toll free)

Private Carrier Delivery

State Controller's Office
Division of Audits
School District Audits
300 Capitol Mall, Fifth Floor
Sacramento, California 95814

**Standards and Procedures for Audits
of California K-12 Local Education Agencies
2011-12**



Education Audit Appeals Panel

February 9, 2012

Education Audit Appeals Panel

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Diana L. Ducay
Designee of the Director Finance

Joel Montero
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Mary C. Kelly
Executive Officer

**Standards and Procedures for Audits
of California K-12 Local Education Agencies**

**Title 5. Education
Division 1.5. Education Audit Appeals Panel
Chapter 3. Audits of California K - 12 Local Education Agencies**

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- § 19811. Qualifications of Auditors.
- § 19812. Auditing Standards.
- § 19813. Materiality Levels for Compliance Auditing.
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- § 19815. Report Components.
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**Article 3. State Compliance Procedures: Local Education Agencies
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- § 19818. Kindergarten Continuance.
- § 19819. Independent Study.
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- § 19828.4. Instructional Materials.
- § 19829. Ratios of Administrative Employees to Teachers.
- § 19829.5. Classroom Teacher Salaries.
- § 19830.1. Early Retirement Incentive Program.
- § 19831. Gann Limit Calculation.
- § 19837.3. School Accountability Report Card.
- § 19839. Public Hearing Requirement – Receipt of Funds.
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Article 3.1. State Compliance Procedures: School Districts and Charter Schools

- § 19845.2. Class Size Reduction.
- § 19846.1. After School Education and Safety Program.

Article 4. State Compliance Procedures: Charter Schools

- § 19850. Contemporaneous Records of Attendance.
- § 19851. Mode of Instruction.
- § 19851.1. Mode of Instruction (2011-12).
- § 19852. Nonclassroom-Based Instruction/Independent Study.
- § 19853. Determination of Funding for Nonclassroom-Based Instruction.
- § 19854. Annual Instructional Minutes – Classroom Based.
- § 19854.1. Annual Instructional Minutes - Classroom Based (2011-12).

TITLE 5. Education
Division 1.5. Education Audit Appeals Panel
Chapter 3. Audits of California K-12 Local Education Agencies
Article 1. General Provisions

§ 19810. Scope.

These regulations constitute the audit guide, *Standards and Procedures for Audits of California K-12 Local Educational Agencies*, that shall be used in the performance of the audits required by Education Code Section 41020. These regulations do not provide a complete manual of procedures; auditors must exercise professional judgment.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19811. Qualifications of Auditors.

(a) Each audit shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local education agency from a directory of certified public accountants and public accountants deemed by the Controller as qualified to conduct audits of local education agencies published by the Controller not later than December 31 of each year.

(b) Except as provided in subdivision (d) of Education Code Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audit Appeals Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Section 41020,

Education Code.

§ 19812. Auditing Standards.

Audits shall be conducted in accordance with auditing standards generally accepted in the United States of America, the standards set forth in *Government Auditing Standards* issued by the Comptroller General of the United States, and the provisions of this chapter.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: sections 14501, 14503 and 41020, Education Code.

§ 19813. Materiality Levels for Compliance Auditing.

Each program for which Average Daily Attendance is reported to the California Department of Education for apportionment purposes must be audited for compliance with specific requirements of law, as further set forth in this article, if the number of units of Average Daily Attendance reported is material as shown in the following table:

Local Education Agency's Total Reported Average Daily Attendance (ADA)	Number of ADA Constituting Materiality for Each Program
1 – 1,000	10 or more
1,001 – 2,500	20 or more
2,501 – 10,000	50 or more
More than 10,000	100 or more

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19814. Auditor Judgment.

For each state compliance requirement, the auditor shall follow the procedures included in this audit guide, unless, in the exercise of his or her professional judgment, the auditor determines other procedures are more appropriate in particular circumstances.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14503 and 41020, Education Code.

Article 2. Audit Reports

§ 19815. Report Components.

The report of each audit performed pursuant to Education Code Section 41020 shall be as follows, except that the subelements of (d) may be in any order among themselves:

(a) **Introductory Section.**

- (1) Table of Contents for the audit report.
- (2) Other information as deemed appropriate by the auditee.

(b) **Financial Section.**

- (1) Independent Auditor's Report.
- (2) Management's Discussion and Analysis.
- (3) Basic Financial Statements.

(4) Notes to the Basic Financial Statements.

(c) **Required Supplementary Information.**

Schedule of budgetary comparison data, by object for the 2009-10 fiscal year and following, for the General Fund and any major special revenue funds that have legally adopted annual budgets, disclosing excesses of expenditures over appropriations, if any, in individual funds presented in the budgetary comparison.

(d) **Supplementary Information.**

- (1) Local Education Agency Organization Structure.
- (2) Schedule of Average Daily Attendance.
- (3) Schedule of Instructional Time.
- (4) Schedule of Financial Trends and Analysis.

(5) Reconciliation of Annual Financial and Budget Report With Audited Financial Statements.

(6) Optionally, Combining Statements and Individual Fund Statements and Schedules.

(7) Schedule of Charter Schools.

(8) If required as set forth in the edition of OMB Circular A-133 applicable to the year being audited, Schedule of Expenditures of Federal Awards.

(9) Notes to Supplementary Information, if required.

(e) Other Independent Auditor's Reports.

(1) Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

(2) Report on State Compliance.

(3) Report on Compliance With Requirements Applicable to Each Major Program and Internal Control Over Compliance in Accordance With OMB Circular A-133, for fiscal years 2003-04 through 2010-11, if required as set forth in the edition of OMB Circular A-133 applicable to the year being audited.

(4) Report on Compliance With Requirements that Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133, for fiscal years 2011-12 and following, if required as set forth in the edition of OMB Circular A-133 applicable to the year being audited.

(f) Findings and Recommendations.

(1) Schedule of Findings and Questioned Costs.

(2) Schedule of Prior Audit Findings.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1,

14503 and 41020, Education Code.

§ 19816. Definitions.

The content of the audit report sections and subsections specified in Section 19815 is as described in the *Codification of Statements on Auditing Standards*, published by the American Institute of Certified Public Accountants, the *Codification of Governmental Accounting and Financial Reporting Standards*, published by the Governmental Accounting Standards Board (GASB), or *Government Auditing Standards* published by the Comptroller General of the United States, in the respective editions applicable to the fiscal year being audited, or as defined in one of the following:

(a) “*Government Auditing Standards*” means the publication by the Comptroller General of the United States, United States General Accounting Office, originally issued in 1972 and revised from time to time, commonly known as the “Yellow Book,” that contains standards for audits of government organizations, programs, activities, and functions and that is referenced in Education Code sections 14501, 14503, and 41020(b)(4).

(b) “Local Education Agency Organization Structure” means a description in the Supplementary Information section that sets forth the following information, at a minimum:

(1) The date on which the local education agency was established, and for charter schools the date and granting authority of each charter;

(2) The date and a general description of any change during the year audited in a school district’s boundaries;

(3) The numbers by type of schools in the local education agency;

(4) The names, titles, terms, and term expiration dates of all members of the governing board;

(5) The names, with their titles, of the superintendent, chief business official, and

deputy/associate/assistant superintendents.

(c) “OMB Circular A-133” means the publication, produced by the federal Office of Management and Budget and titled *Audits of States, Local Governments, and Non-Profit Organizations*, that sets forth standards for attaining consistency and uniformity in the audits of governments and organizations expending federal awards.

(d) “Reconciliation of Annual Financial and Budget Report with Audited Financial Statements” means a schedule that displays the differences between the ending fund balance(s) from the audited financial statements and the unaudited ending fund balance(s) from the annual financial and budget report for each fund in which a variance occurred.

(e) “Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*” means, for fiscal years 2003-04 through 2008-09, the component of the Other Independent Auditor’s Reports that specifies material instances of noncompliance, if any; defines reportable conditions and specifies the reportable conditions disclosed as a result of the audit; defines material weaknesses and specifies the material weaknesses, if any, that were disclosed by the audit; includes a statement that no material weaknesses were found, if that is the case; includes a statement that nonmaterial noncompliance and nonreportable conditions involving the internal control structure and its operation were communicated to management in a separate management letter, if that is the case; specifies all instances of fraud and illegal acts, if any, that were disclosed by the audit, unless clearly inconsequential; and specifies material abuse, if any, that was disclosed by the audit.

(f) “Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*” means,

(1) for fiscal years 2009-10 through 2010-11, the component of the Other Independent Auditor's Reports that specifies material instances of noncompliance, if any; defines control deficiency and significant deficiency and specifies the significant deficiencies disclosed by the audit; defines material weaknesses and specifies the material weaknesses, if any, that were disclosed by the audit; if no significant deficiencies were identified, includes a statement that no material weaknesses were noted; if significant deficiencies were noted, a statement that the auditor's consideration of internal control over financial reporting would not necessarily identify all deficiencies in the internal control that might be significant deficiencies and a statement about whether the auditor believes any of the significant deficiencies noted were material weaknesses; includes a statement that additional matters were communicated to the auditee in a management letter, if that is the case; specifies all instances of fraud and illegal acts, if any, that were disclosed by the audit, unless clearly inconsequential; specifies material violations of provisions of contracts and grant agreements, if any; and specifies material abuse, if any, that was disclosed by the audit;

(2) for fiscal year 2011-12 and following, the component of the Other Independent Auditor's Reports that reports on these matters in accordance with the financial reporting requirements specified in the *Codification of Statements on Auditing Standards* and in *Government Auditing Standards*, as applicable to the year being audited.

(g) "Report on State Compliance" means, for fiscal years 2003-04 through 2010-11, the component of the Other Independent Auditor's Reports that specifically and separately addresses each of the state compliance requirements included in this audit guide that are applicable to the year audited, stating whether or not the district is in compliance with those requirements; includes a chart that displays the number of audit procedures for each compliance requirement applicable to the year audited and states that the audit procedures

included in the audit guide for each requirement were followed in the making of the audit, if that is the case, or, if not, what other procedures were followed; and includes an expression of positive assurance with respect to compliance with applicable laws and regulations for those items tested in accordance with those regulations, and negative assurance for untested items.

(1) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2003-04 are

Attendance Reporting, 6;

Kindergarten Continuance, 3;

Independent Study, 22;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6;

Instructional Time and Staff Development Reform Program, 7;

Instructional Time for school districts, 4; for county offices of education, 3;

Community Day Schools, 9;

Instructional Materials general requirements, 9; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4.

(2) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2004-05 are

Attendance Reporting, 8;

Kindergarten Continuance, 3;

Independent Study, 22;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6;

Instructional Time and Staff Development Reform Program, 7;

Instructional Time for school districts, 4; for county offices of education, 3;

Community Day Schools, 9;

Instructional Materials general requirements, 12; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Construction Funds: School District Bonds, 3; State School Facilities Funds, 1;

Alternative Pension Plans, 2;

Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000), 2;

State Lottery Funds (California State Lottery Act of 1984), 2;

California School Age Families Education (Cal-SAFE) Program, 3;

School Accountability Report Card, 3;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4.

(3) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2005-06 are

Attendance Reporting, 8;

Kindergarten Continuance, 3;

Independent Study, 22;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6;

Instructional Time for school districts, 4; for county offices of education, 3;

Community Day Schools, 9;

Morgan-Hart Class Size Reduction Program, 7;

Instructional Materials general requirements, 12; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Construction Funds: School District Bonds, 3; State School Facilities Funds, 1;

Alternative Pension Plans, 2;

Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000), 2;

State Lottery Funds (California State Lottery Act of 1984), 2;

California School Age Families Education (Cal-SAFE) Program, 3;

School Accountability Report Card, 3;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;

Contemporaneous Records of Attendance, for charter schools, 1;

Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;

Additional Nonclassroom-Based Instruction, for charter schools, 1;

Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;

Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(4) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2006-07 are

Attendance Reporting, 8;

Kindergarten Continuance, 3;

Independent Study, 23;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6;

Instructional Time for school districts, 6; for county offices of education, 3;

Community Day Schools, 9;

Morgan-Hart Class Size Reduction Program, 7;

Instructional Materials general requirements, 12; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Construction Funds: School District Bonds, 3; State School Facilities Funds, 1;

Alternative Pension Plans, 2;

Excess Sick Leave, 2 or 3;

Notice of Right To Elect California State Teachers Retirement System (CalSTRS) Membership, 1;

Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000), 2;

State Lottery Funds (California State Lottery Act of 1984), 2;

California School Age Families Education (Cal-SAFE) Program, 3;

School Accountability Report Card, 3;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;

Contemporaneous Records of Attendance, for charter schools, 1;

Mode of Instruction, for charter schools, 1;

Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;

Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;

Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(5) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2007-08 are

Attendance Reporting, 8;

Kindergarten Continuance, 3;

Independent Study, 23;

Continuation Education, 10;

Adult Education, 9;

Regional Occupational Centers and Programs, 6;

Instructional Time for school districts, 6; for county offices of education, 3;

Community Day Schools, 9;

Morgan-Hart Class Size Reduction Program, 7;

Instructional Materials general requirements, 12; K-8 only, 1; grades 9-12 only, 1;

Ratios of Administrative Employees to Teachers, 1;

Classroom Teacher Salaries, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Construction Funds: School District Bonds, 3; State School Facilities Funds, 1;

Excess Sick Leave, 2 or 3;

Notice of Right To Elect California State Teachers Retirement System (CalSTRS) Membership, 1;

Proposition 20 Lottery Funds (Cardenas Textbook Act of 2000), 2;

State Lottery Funds (California State Lottery Act of 1984), 2;

California School Age Families Education (Cal-SAFE) Program, 3;

School Accountability Report Card, 3;

Mathematics and Reading Professional Development, 4;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;

After School Education and Safety Program: general requirements, 4; after school, 4; before school, 5;

Contemporaneous Records of Attendance, for charter schools, 1;

Mode of Instruction, for charter schools, 1;

Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;

Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;

Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(6) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2008-09 are

Attendance Reporting, 8;

Independent Study, 23;

Continuation Education, 10;

Instructional Time for school districts, 6; for county offices of education, 3;

Community Day Schools, 3;

Instructional Materials general requirements, 8;
Ratios of Administrative Employees to Teachers, 1;
Classroom Teacher Salaries, 1;
Early Retirement Incentive, 4;
Gann Limit Calculation, 1;
School Accountability Report Card, 3;
Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;
After School Education and Safety Program: general requirements, 4; after school, 4; before school, 5;
Contemporaneous Records of Attendance, for charter schools, 1;
Mode of Instruction, for charter schools, 1;
Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;
Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;
Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(7) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2009-10 are

Attendance Reporting, 8;
Kindergarten Continuance, 3;
Independent Study, 23;
Continuation Education, 10;
Instructional Time for school districts, 6; for county offices of education, 3;
Instructional Materials general requirements, 8;
Ratios of Administrative Employees to Teachers, 1;

Classroom Teacher Salaries, 1;
Early Retirement Incentive, 4;
Gann Limit Calculation, 1;
School Accountability Report Card, 3;
Public Hearing Requirement – Receipt of Funds, 1;
Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;
After School Education and Safety Program: general requirements, 4; after school, 4; before school, 5;
Contemporaneous Records of Attendance, for charter schools, 1;
Mode of Instruction, for charter schools, 1;
Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;
Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;
Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(8) The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2010-11 are

Attendance Reporting, 8;
Kindergarten Continuance, 3;
Independent Study, 23;
Continuation Education, 10;
Instructional Time for school districts, 6; for county offices of education, 3;
Instructional Materials general requirements, 8;
Ratios of Administrative Employees to Teachers, 1;
Classroom Teacher Salaries, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Accountability Report Card, 3;

Public Hearing Requirement – Receipt of Funds, 1;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;

After School Education and Safety Program: general requirements, 4; after school, 4; before school, 5;

Contemporaneous Records of Attendance, for charter schools, 1;

Mode of Instruction, for charter schools, 1;

Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;

Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;

Annual Instructional Minutes – Classroom Based, for charter schools, 3.

(h) “Report on State Compliance” means, for fiscal year 2011-12 and following, the component of the Other Independent Auditor’s Reports that specifically and separately addresses each of the state compliance requirements included in this audit guide that are applicable to the year audited, stating that compliance with the applicable compliance requirements is the responsibility of the auditee’s management, and stating whether or not the auditee is in compliance with those requirements; includes a chart that displays each compliance requirement and the corresponding number of audit procedures applicable to the year audited and states that the audit procedures included in the audit guide for each compliance requirement were followed in the making of the audit, if that is the case, or, if not, what other procedures were followed; and includes an expression of opinion on whether the auditee complied, in all material respects, with applicable compliance requirements.

The numbers of audit procedures for the compliance requirements included in this audit guide for audits of fiscal year 2011-12 are

Attendance Reporting, 6;

Teacher Certification and Misassignments, 3;

Kindergarten Continuance, 3;

Independent Study, 23;

Continuation Education, 10;

Instructional Time for school districts, 6; for county offices of education, 3;

Instructional Materials general requirements, 8;

Ratios of Administrative Employees to Teachers, 1;

Classroom Teacher Salaries, 1;

Early Retirement Incentive, 4;

Gann Limit Calculation, 1;

School Accountability Report Card, 3;

Public Hearing Requirement – Receipt of Funds, 1;

Juvenile Court Schools, 8;

Exclusion of Pupils – Pertussis Immunization, 2;

Class Size Reduction (including in charter schools): general requirements, 7; Option One, 3; Option Two, 4; districts or charter schools with only one school serving K-3, 4;

After School Education and Safety Program: general requirements, 4; after school, 5; before school, 6;

Contemporaneous Records of Attendance, for charter schools, 3;

Mode of Instruction, for charter schools, 1;

Nonclassroom-Based Instruction/Independent Study, for charter schools, 15;

Determination of Funding for Nonclassroom-Based Instruction, for charter schools, 3;

Annual Instructional Minutes – Classroom Based, for charter schools, 4.

(i)(1) “Report on Compliance With Requirements Applicable to Each Major Program and Internal Control Over Compliance in Accordance With OMB Circular A-133” means, for fiscal years 2003-04 through 2010-11, the component of the Other Independent Auditor’s Reports that states whether the auditee has complied with federal laws, regulations, and the provisions of federal contracts or grant agreements and has established and maintained effective internal control over compliance with the requirements for major federal programs.

(2) “Report on Compliance With Requirements that Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133,” means, for fiscal years 2011-12 and following, the component of the Other Independent Auditor’s Reports that states that compliance with the applicable compliance requirements is the responsibility of the auditee’s management; includes an expression of opinion on whether the auditee complied, in all material respects, with federal laws, regulations, and the provisions of federal contracts or grant agreements; and whether the auditee has established and maintained effective internal control over compliance with the requirements for major federal programs.

(j) “Schedule of Average Daily Attendance” means the schedule in the Supplementary Information section that displays

(1) for fiscal years 2003-04 through 2008-09, Average Daily Attendance data for both the Second Period and Annual reports, by grade level and program as appropriate, and, for charter schools, includes total Average Daily Attendance and Average Daily Attendance generated through classroom-based instruction;

(2) for fiscal years 2009-10 through 2010-11, Average Daily Attendance data for both the

Second Period and Annual reports, by grade level and program as appropriate, and, for charter schools, includes total Average Daily Attendance and Average Daily Attendance generated through classroom-based instruction; and if there are any Average Daily Attendance adjustments due to audit findings, displays additional columns for the Second Period and Annual reports reflecting the final Average Daily Attendance after audit finding adjustments;

(3) for fiscal year 2011-12 and following, Average Daily Attendance data for both the Second Period and Annual reports, by grade level and program as appropriate; and separately for each charter school, shows the total Average Daily Attendance and the Average Daily Attendance generated through classroom-based instruction by grade level, as appropriate; and if there are any Average Daily Attendance adjustments due to audit findings, displays additional columns for the Second Period and Annual reports reflecting the final Average Daily Attendance after audit finding adjustments.

(k) "Schedule of Charter Schools" means the schedule in the Supplementary Information section that lists all charter schools chartered by the school district or county office of education, and displays information for each charter school on whether or not the charter school is included in the school district or county office of education audit.

(l) "Schedule of Financial Trends and Analysis" means, for fiscal year 2003-04, the schedule in the Supplementary Information section that displays information regarding the auditee's financial position and going concern status, in the form of actual financial and attendance figures for at least the most recent three-year period (ending with the audit year), plus the current year's budget, for the following items: General Fund financial activity, including total revenue, expenditures, and other sources and uses; General Fund balance; available reserve balances (funds designated for economic uncertainty, and any other remaining undesignated fund balance) within the General Fund, Special Reserve Fund, and any

Article XIII-B Trust Funds; available reserve balances expressed as a percentage of total General Fund outgo (expenditures, transfers out, and other uses), including a comparison to the applicable state-recommended available reserve percentage; total long-term debt; and elementary and secondary Second Principal Average Daily Attendance, excluding Regional Occupational Centers and Programs and Adult Average Daily Attendance; and, when the auditee's percentage of available reserves to total General Fund outgo is below the state-recommended percentage, management's plans for increasing the auditee's available reserve percentage.

(m) "Schedule of Financial Trends and Analysis" means, for fiscal year 2004-05 and each fiscal year thereafter, the schedule in the Supplementary Information section that displays information regarding the auditee's financial position and going concern status, in the form of actual financial and attendance figures for at least the most recent three-year period (ending with the audit year), plus the current year's budget, for the following items: General Fund financial activity, including total revenue, expenditures, and other sources and uses; General Fund balance; available reserve balances (funds designated for economic uncertainty, and any other remaining undesignated fund balance) within the General Fund or Special Reserve Fund; available reserve balances expressed as a percentage of total General Fund outgo (expenditures, transfers out, and other uses), including a comparison to the applicable state-recommended available reserve percentage; total long-term debt; and elementary and secondary Second Principal Average Daily Attendance, excluding Regional Occupational Centers and Programs and Adult Average Daily Attendance; and, when the auditee's percentage of available reserves to total General Fund outgo is below the state-recommended percentage, management's plans for increasing the auditee's available reserve percentage.

(n) "Schedule of Findings and Questioned Costs" means that part of the Findings and

Recommendations section that presents all audit year findings, and a copy of each management letter issued, if any, with each finding assigned the appropriate code from among the following: 10000 Attendance, 20000 Inventory of Equipment, 30000 Internal Control, 40000 State Compliance, 41000 CalSTRS, 50000 Federal Compliance, 60000 Miscellaneous, 61000 Classroom Teacher Salaries, 70000 Instructional Materials, 71000 Teacher Misassignments, 72000 School Accountability Report Card, and includes the following elements:

(1) criteria

(2) condition

(3) effect

(4) cause

(5) a statement of the number of units of Average Daily Attendance, if any, that were inappropriately reported for apportionment; and a statement consistent with its basis of funding, for any other inappropriately reported claim—such as number of staff development days, or number of pupils for Class Size Reduction, or amount in dollars for Instructional Materials, and so forth

(6) a recommendation for the resolution of the finding

(7) a corrective action plan prepared by the auditee that describes in specific terms the actions planned or taken to correct the problem, or a statement from the auditee that the corrective action recommended by the auditor is not necessary or appropriate and giving the specific reasons why, if that is the case, and a statement that the corrective action plan was not available if no corrective action plan was submitted before the audit report was prepared.

(o) “Schedule of Instructional Time” means a schedule in the Supplementary Information section that displays, for school districts, including basic aid districts, and county offices of education, data that show whether the auditee complied with the provisions of Article 8

(commencing with Section 46200) of Chapter 2 of Part 26 of the Education Code; and for charter schools, data that show whether the auditee complied with the provisions of subdivision (a)(1) of Education Code Section 47612.5.

(p) "Schedule of Prior Audit Findings" means that part of the Findings and Recommendations section that presents the status of actions taken by the auditee on each of the findings and recommendations reported in the prior year audit, and includes as current year findings and recommendations those prior year findings that have not been resolved.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503, 41020 and 47634.2, Education Code.

§ 19816.1. Applicability of Audit Procedures by Audit Year.

(a) Of the compliance requirements set forth in Article 3:

(1) Sections 19817 through 19825, and 19828 through 19831 are applicable to fiscal year 2003-04 audits;

(2) Sections 19817.1 through 19825, and 19828.1 through 19837 are applicable to fiscal year 2004-05 audits.

(3) Sections 19817.1 through 19822, 19824, 19825, 19827, and 19828.1 through 19837 are applicable to fiscal year 2005-06 audits.

(4) Sections 19817.1 through 19822, 19824, 19825, 19827, and 19828.1 through 19837 are applicable to fiscal year 2006-07 audits.

(5) Sections 19817.1 through 19822, 19824, 19825, 19827, 19828.2 through 19832, and 19833.5 through 19838 are applicable to fiscal year 2007-08 audits.

(6) Sections 19817.1, 19819, 19820, 19824, 19825, 19828.3 through 19831, and 19837.2 are applicable to fiscal year 2008-09 audits.

(7) Sections 19817.1 through 19820, 19824, 19828.4 through 19831, 19837.3, and 19839,

are applicable to fiscal year 2009-10 audits.

(8) Sections 19817.1 through 19820, 19824, 19828.4 through 19831, 19837.3, and 19839, are applicable to fiscal year 2010-11 audits.

(9) Sections 19817.2 through 19820, 19824.1, 19828.4 through 19831, 19837.3, and 19839 through 19841 are applicable to fiscal year 2011-12 audits.

(b) Of the compliance requirements set forth in Article 3.1,

(1) Section 19845 is applicable to fiscal year 2003-04 audits;

(2) Section 19845.1 is applicable to fiscal year 2004-05 audits;

(3) Section 19845.1 is applicable to fiscal year 2005-06 audits;

(4) Section 19845.1 is applicable to fiscal year 2006-07 audits;

(5) Sections 19845.1 and 19846 are applicable to fiscal year 2007-08 audits.

(6) Sections 19845.2 and 19846 are applicable to fiscal year 2008-09 audits.

(7) Sections 19845.2 and 19846 are applicable to fiscal year 2009-10 audits.

(8) Sections 19845.2 and 19846 are applicable to fiscal year 2010-11 audits.

(9) Sections 19845.2 and 19846.1 are applicable to fiscal year 2011-12 audits.

(c) Of the compliance requirements set forth in Article 4,

(1) Sections 19850 through 19854 are applicable to fiscal year 2005-06 audits.

(2) Sections 19850 through 19854 are applicable to fiscal year 2006-07 audits.

(3) Sections 19850 through 19854 are applicable to fiscal year 2007-08 audits.

(4) Sections 19850 through 19854 are applicable to fiscal year 2008-09 audits.

(5) Sections 19850 through 19854 are applicable to fiscal year 2009-10 audits.

(6) Sections 19850 through 19854 are applicable to fiscal year 2010-11 audits.

(7) Sections 19850 through 19854.1 are applicable to fiscal year 2011-12 audits.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501,

14502.1, 14503, 41020 and 47634.2, Education Code.

**Article 3. State Compliance Procedures: Local Education Agencies
Other Than Charter Schools**

§ 19817.2. Attendance Reporting.

For fiscal years 2011-12 and following, perform the following audit steps:

(a) Determine whether the Second Principal and Annual reports of attendance submitted to the California Department of Education reconcile to the supporting documents by verifying the local education agency's Average Daily Attendance calculations for each reporting line item, including the informational line items, subject to the materiality levels as described in Section 19813.

(b) Trace the Average Daily Attendance numbers from the Second Principal and Annual reports of attendance to the local education agency's summaries.

(c) Verify that the monthly site summaries used for summarizing attendance provide accurate information, by selecting a representative sample of schools and performing the following procedures (exclude the programs identified separately in subsequent sections of this audit guide):

(1) Reconcile the monthly totals (days of apportionment attendance) on the school's attendance summary to the summary maintained by the local education agency for the Second Principal and the Annual attendance reports.

(2) Select at least one test month in the Second Principal or Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the school's attendance summary.

(3) Select a representative sample of classes (teachers) and trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of

the attendance registers, scantron summaries, or other data arrays.

(d) Select a sample of absences and compare to documentation supporting Average Daily Attendance reported to the California Department of Education to verify that absences were not included in Average Daily Attendance. The documentation maintained by the local education agency with regard to its absences may be in the form of notes, logs, or other records, depending on the board-adopted policy concerning verification of absences.

(e) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19817.5. Teacher Certification and Misassignments.

For fiscal year 2011-12 and following, perform the following audit steps:

(a) For each teacher selected pursuant to subparagraph (c)(3) of Section 19817.2, test to determine whether the teacher possessed a valid certification document.

(b) If any teacher did not possess a valid certification document, calculate the penalty or penalties pursuant to the provisions of Education Code Section 45037 and include the actual calculation in an audit finding in the Findings and Recommendations section.

(c) For each teacher selected pursuant to subparagraph (c)(3) of Section 19817.2, test to determine whether the teacher was assigned to teach in a position

(1) consistent with the authorization of his or her certification document, or

(2) otherwise authorized by law pursuant to

(A) a governing board resolution in conformance with the provisions of any of subdivision (b) of Education Code Section 44256, Section 44258.2, Section 44258.3, or Section 44263, or

(B) approval of a committee on assignments pursuant to the provisions of subdivision (c) or (d) of Education Code Section 44258.7.

(d) If any teacher selected pursuant to subparagraph (c)(3) of Section 19817.2 was assigned to teach a class in which more than 20 percent of the pupils were English learners, determine whether the teacher was authorized to instruct limited-English-proficient pupils pursuant to the provisions of Education Code Section 44253.3, 44253.4, or 44253.10.

(e) If any teacher was assigned to teach in a position for which he or she was not authorized, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

§ 19818. Kindergarten Continuance.

(a) Select a representative sample of kindergarten classes. Perform the following procedures.

(b) Obtain a list of kindergarten pupils enrolled in the selected kindergarten classes for the year audited and the year prior. Compare the enrollment lists and identify those kindergarten pupils, if any, who are on both lists.

(c) Review the record of each pupil identified on both lists to determine whether the pupil continued in kindergarten after completing one school year of kindergarten. For a pupil who begins kindergarten mid-year, one school year of kindergarten is completed on the last day prior to the anniversary of the pupil's first day of kindergarten.

(d) Verify that the local education agency has a signed parental agreement to continue

form, approved in form and content by the California Department of Education, for each such pupil.

(e) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19819. Independent Study.

If the local education agency reported Average Daily Attendance generated through independent study, perform the following procedures

(a) At the agency level:

(1) Reconcile the local education agency's independent study attendance records to Average Daily Attendance generated through full-time independent study reported to the California Department of Education.

(2) From the independent study attendance records, select a representative sample of pupils for whom Average Daily Attendance generated through independent study was claimed, including pupils on intermittent or "short term" independent study if the local education agency offered that option, and confirm that every pupil in the sample is identified in the written records of the district or county board by grade level, by program placement, and by the school in which he or she is enrolled.

(3) If, pursuant to the foregoing audit procedure, any pupils are found that were not

identified in the written records of the district or county board by any one or more of grade level, program placement, and the school in which he or she was enrolled, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of pupils and the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(4) Verify the local education agency's calculation, made pursuant to the provisions of subdivision (a) of Education Code Section 51745.6, of ineligible Average Daily Attendance, if any, generated through full-time independent study by pupils 18 years of age or less.

(5) Interview administrative personnel and school counselors of the local education agency to determine if the local education agency had policies and procedures to ensure that any pupil terminating an independent study agreement was permitted to immediately recommence classroom study.

(6) Interview local education agency administrative personnel as well as a sample of independent study teachers and review written agreements to determine whether it was the local education agency's policy or practice to provide independent study pupils or their parents/guardians with monetary funding or any other things of value such as equipment or paid private instruction. If so, determine whether classroom pupils or their parents/guardians had the same access to funding or things of value. Read program materials provided to all parents/guardians to determine that opportunities were equal and that pupils engaged in independent study were neither offered nor given incentives or special benefits.

(b) Select a sample of schools that is representative of the local education agency and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the local

education agency's compliance with independent study requirements. Verify that the monthly site summaries used for summarizing attendance provide accurate information by performing the following procedures:

(1) At each school, examine the attendance accounting records to verify that the attendance of pupils or adult education students or both while engaged in independent study was maintained on separate registers or the local education agency had another mechanism in place to track Average Daily Attendance generated through independent study separately from other Average Daily Attendance.

(2) Determine the total number of days of attendance reported for each sampled school that resulted from attendance by pupils or adult education students or both while engaged in independent study. Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the local education agency for the Second Principal and the Annual attendance reports.

(3) Select a test month in the Second Principal or Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace totals to the school's attendance summary.

(4) Verify that a certificated employee of the local education agency coordinated, evaluated, and provided general supervision, as that term is defined in Section 11700(b), of each pupil's or adult education student's independent study, as required by the provisions of subdivision (a) of Education Code Section 51747.5.

(5) Select a representative sample of teachers. Verify the mathematical accuracy of the teachers' attendance records of pupil or adult education student attendance. Trace the monthly totals from the monthly report to the attendance records.

(6) If 100 percent apportionment attendance was recorded for all independent study pupils

or adult education students or both, ensure that the teacher did not accrue more days of apportionment credit for any assignment than there were school days in that assignment (“banking”); or accrue days of attendance for work submitted subsequent to the specified due date for the assignment (“make-up”).

(7) For programs in which hourly attendance accounting is not required pursuant to Section 406, verify that attendance credit was recorded in whole days based on the supervising teacher’s personal review, evaluation, and assignment of time value to the pupil’s or adult education student’s work product, or the supervising teacher’s review of the evaluation and assignment of time value made by another certificated teacher.

(c) From the attendance records, select a representative sample of pupils/adult education students for whom Average Daily Attendance generated through independent study was claimed, including pupils on intermittent (“short term”) independent study if the local education agency offered that option, and perform the following procedures:

(1) Verify that no pupil was enrolled in the local education agency pursuant to subdivision (b) of Education Code Section 48204 while engaged in full-time independent study.

(2) Determine each selected pupil’s or adult education student’s county of residence at the time of commencing independent study and verify that it is the county in which the apportionment claim is reported or a contiguous county within California.

(3) Determine whether mailing addresses or other evidence of residency changed during the time the pupils/adult education students were in independent study and, if so, whether each pupil or adult education student remained resident of the same or a contiguous county within California.

(4) Verify that a total of not more than one day of attendance generated through independent study was recorded for each pupil, including pupils enrolled in more than one

program, for any calendar day on which school was in session.

(5) Verify that a written agreement exists for each pupil/adult education student selected.

(6) Verify that every pupil whose independent study attendance was claimed for apportionment was participating under an agreement for a minimum of five consecutive school days.

(7) Verify that every written agreement contained all the required elements:

(A) The manner, time, frequency, and place for submitting a pupil's or adult education student's assignments and for reporting his or her progress.

(B) The objectives and methods of study (pupil/adult education student activities selected by the supervising teacher as the means to reach the educational objectives set forth in the written agreement) for the pupil's or adult education student's work.

(C) The methods utilized to evaluate that work (any specified procedure through which a certificated teacher personally assesses the extent to which achievement of the pupils/adult education students meets the objectives set forth in the written assignment).

(D) The specific resources, including materials and personnel, to be made available to the pupils/adult education students (resources reasonably necessary to the achievement of the objectives in the written agreement, not to exclude resources normally available to all pupils/adult education students on the same terms as the terms on which they are normally available to all pupils/adult education students).

(E) A statement of the policies adopted pursuant to subdivisions (a) and (b) of Education Code Section 51747 regarding the maximum length of time allowed between the assignment and the completion of a pupil's or adult education student's assigned work, and the number of assignments a pupil or adult education student may miss before there must be an evaluation of whether it is in the pupil's or adult education student's best interests to continue in independent

study.

(F) The duration of the independent study agreement, including the beginning and ending dates for the pupil's or adult education student's participation in independent study under the agreement, with no agreement being for a period longer than one semester, or one-half year for a school on a year-round calendar.

(G) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil/adult education student upon completion.

(H) A statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate. In the case of a pupil who is referred or assigned to any school, class, or program pursuant to Section 48915 or 48917, the agreement also shall include the statement that instruction may be provided to the pupil through independent study only if the pupil is offered the alternative of classroom instruction.

(I) Signatures, affixed prior to the commencement of independent study, by

1. the pupil or adult education student;
2. the pupil's parent, legal guardian, or caregiver as that term is used in Family Code Section 6550 and following, if the pupil is less than 18 years of age;
3. the certificated employee who has been designated as having responsibility for the general supervision of independent study; and
4. all other persons, if any, who had direct responsibility for providing assistance to the pupil or adult education student.

(8) Verify that no days of attendance were reported for dates prior to the signing of the agreement by all parties.

(9) Trace each pupil's or adult education student's attendance from the attendance records to the teacher's register, record of the pupil's or adult education student's work completed, and the corresponding work assignment record. Verify that evaluated pupil/adult education student work samples, bearing signed or initialed and dated notations by the supervising teacher indicating that he or she personally evaluated the work, or that he or she personally reviewed the evaluations made by another certificated teacher, have been retained in the file.

(10) Verify that the pupil/adult education student work product samples are related to the assignment pursuant to which the work was undertaken and reflect the curriculum adopted by the local governing board and not an alternative curriculum.

(11) Review records and other relevant documentation to verify that each pupil's choice to commence or to continue in independent study was entirely voluntary and uncoerced.

(d) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19820. Continuation Education.

Verify that the monthly site attendance summaries provide accurate information by performing the following procedures:

(a) Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the district for the Second Principal and

the Annual attendance reports.

(b) Select a test month in the Second Principal attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the site's attendance summary.

(c) Select a representative sample of classes (teachers). Trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(d) Select a representative sample of pupils and perform the following procedures:

(1) Trace each pupil's attendance in the weekly attendance records to the teacher's attendance register or other approved record.

(2) Verify that hourly attendance accounting was used.

(3) Verify that attendance was not credited for more than the scheduled class time.

(e) Review weekly attendance records to verify that the district did not claim more than 15 hours per week, or a proportionally reduced number of hours per week when there were fewer than five school days.

(f) Select a representative sample of continuation pupils enrolled in work experience education.

(1) Review the weekly attendance reports and attendance registers to verify that each pupil actually attended, as set forth in Education Code Section 48400, four 60-minute hours in each week in which he/she generated additional hours of work experience apportionment attendance credit.

(2) Verify that the pupils received at least one instructional period per week of classroom work experience instruction or counseling as required by Education Code Section 51760.3(b).

(3) Verify that not more than 10 percent of each continuation high school's Average Daily

Attendance at Second Principal (exclusive of Average Daily Attendance for a pupil who was pregnant or was a parent and the primary caregiver for one or more of his or her children) was generated through independent study as provided in Education Code Section 51745(b).

(g) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19824. Instructional Time.

For fiscal year 2011-12 only, do not perform the procedures set forth in this section. Perform the procedures set forth in Section 19824.1 instead.

(a) School districts: For fiscal years 2003-04 through 2008-09, perform the following procedures:

(1) Select a sample of schools that is representative of the district and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the district's compliance with instructional time requirements. Review the school attendance calendar and bell (class) schedules of the sampled schools. Ascertain whether any individual days are shorter than the usual length, by grade level, in that school. Compare the instructional minutes from each school site's bell (class) schedule to total instructional minutes computed by the business office.

(2) Determine, by grade level, the total number of days in each sampled school's attendance

calendar that were of at least the minimum length required, pursuant to Education Code sections 46112, 46113, 46114, 46115, 46117, and 46119, for elementary schools, or sections 46141, and 46142, for junior high schools and high schools, and compare the totals to the standards set forth in Education Code section 41420 or 37670, as applicable.

(3) If all sampled regular day schools have fewer than the applicable minimum number of days, determine whether the same is true for all the regular day schools of the district.

(4) If all regular day schools have fewer than the applicable minimum number of days, the district is subject to the penalty provided in subdivision (a) of Education Code Section 41420. Include a statement of that fact and the amount of the penalty in the Findings and Recommendations section of the audit report.

If the district is not subject to the penalty provided in subdivision (a) of Education Code Section 41420 but is subject to one or more penalties as provided in subdivision (b) of Education Code Section 41420, prepare a separate schedule for each school that was not in compliance showing the number of additional days the school would have had to maintain operations to meet the 175 day requirement, or the 163 day requirement if the school was operated on a multitrack year-round schedule, and calculate the penalty or penalties. Include both the schedule(s) and the amount(s) of the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(5) Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as set forth in Education Code Section 46201, and to the amount offered by the district during the 1982-83 year.

(6) Determine whether the district offered optional classes to satisfy incentive funding requirements. If enrollment in optional classes is low, review the district's documentation of class offerings to ensure that the district has acted effectively to comply with the law. Practices

that are not consistent with effectively offering additional instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period or by attending school outside the schedule of district-provided bus service.

(7) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report, showing by grade level the number(s) of instructional minutes offered by the district in the 1982-83 year; the 1986-87 instructional time requirements specified in Education Code Section 46201; the instructional minutes offered during the year audited showing the school with the lowest number of minutes offered at each grade level; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; and whether the district complied with the instructional minutes and days provisions. State in a note to the schedule whether the district received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives.

(8) If any schools were not in compliance with the instructional minutes or days provisions, or both, prepare a separate schedule for each school showing only those grade levels that were not in compliance and calculate the penalty or penalties pursuant to Education Code Section 46200(c), 46201(d), or 46202(b). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(b) School districts: In accordance with the provisions of subdivision (a) of Education Code Section 46201.2 and consistent with subdivision (a) of Education Code Section 46201.3, for fiscal years 2009-10 and 2010-11, and fiscal years 2012-13 through 2014-15, perform the following procedures:

(1) Select a sample of schools that is representative of the district and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the district's compliance with instructional time requirements. Review the school attendance calendar and bell (class) schedules of the sampled schools. Ascertain whether any individual days are shorter than the usual length, by grade level, in that school. Compare the instructional minutes from each school site's bell (class) schedule to total instructional minutes computed by the business office.

(2) Determine, by grade level, the total number of days in each sampled school's attendance calendar that were of at least the minimum length required, pursuant to Education Code sections 46112, 46113, 46114, 46115, 46117, and 46119, for elementary schools, or sections 46141, and 46142, for junior high schools and high schools. Compare the total qualifying days by grade level for each sampled school to the standards set forth in Education Code section 41420 or 37670, as applicable, as reduced by the provisions of subdivision (a) of Education Code Section 46201.2 to 170 days for schools on a traditional calendar, or to 158 days for multitrack year-round schools.

(3) If all sampled regular day schools have fewer than the applicable minimum number of days as set forth in subparagraph (b)(2) of this section, determine whether the same is true for all the regular day schools of the district.

(4) If all regular day schools have fewer than the applicable minimum number of days, the district is subject to the penalty provided in subdivision (a) of Education Code Section 41420. Include a statement of that fact and the calculation and amount of the penalty in the Findings and Recommendations section of the audit report.

(5) If the district is not subject to the penalty provided in subdivision (a) of Education Code Section 41420 but is subject to one or more penalties as provided in subdivision (b) of

Education Code Section 41420, prepare a separate schedule for each school that was not in compliance showing the number of additional days the school would have had to maintain operations to meet the 170 day requirement, or the 158 day requirement if the school was operated on a multitrack year-round schedule. Calculate the penalty or penalties. Include the schedule(s), the calculation(s), and amount(s) of the penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(6) Determine whether the district received an apportionment pursuant to the Longer Day incentives prescribed by the provisions of Education Code Section 46201.

(A) If the district received an apportionment for Longer Day and received an apportionment pursuant to the Longer Year incentives prescribed by the provisions of subdivision (a) of the Education Code Section 46200:

1. Determine the required amount of instructional time by reducing the amount of time by grade level specified in Education Code Section 46201 and the amount offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 180 and multiplying by 5.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (b)(6)(A)1. of this section.

(B) If the district received an apportionment for Longer Day but did not receive an apportionment for Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by grade level specified in Education Code Section 46201 and the amount offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 175 and multiplying by 5.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (b)(6)(B)1. of this section.

(C) If the district did not receive an apportionment for the Longer Day but did receive an apportionment for Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by grade level offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 180 and multiplying by 5.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (b)(6)(C)1. of this section.

(D) If the district did not receive an apportionment for Longer Day and did not receive an apportionment for the Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by grade level offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 175 and multiplying by 5.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (b)(6)(D)1. of this section.

(7) Determine whether the district offered optional classes to satisfy incentive funding requirements. If enrollment in optional classes is low, review the district's documentation of class offerings to ensure that the district has acted effectively to comply with the law. Practices that are not consistent with effectively offering additional instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only

for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period or by attending school outside the schedule of district-provided bus service.

(8) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report, showing by grade level the number(s) of instructional minutes offered by the district in the 1982-83 year, and the district's 1982-83 instructional minutes as reduced pursuant to subparagraph (b)(6) of this section as applicable; the 1986-87 instructional time requirements specified in Education Code Section 46201, and the 1986-87 instructional time requirements as reduced pursuant to subparagraph (b)(6) of this section as applicable; the instructional minutes offered during the year audited showing the school with the lowest number of minutes offered at each grade level; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; and whether the district complied with the reduced instructional minutes and days provisions. State in a note to the schedule whether the district received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives.

(9) If any schools were not in compliance with the instructional minutes requirements as calculated pursuant to subparagraph (b)(6) of this section as applicable, or the instructional days requirements pursuant to subparagraph (b) of this section as applicable, or both, prepare a separate schedule for each school showing only those grade levels that were not in compliance and calculate the penalty or penalties pursuant to Education Code Section 46200(e), 46201(d), or 46202(b). Include the schedule(s), the calculation, and the amount of the penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(c) County offices of education: For fiscal years 2003-04 through 2008-09, if the county office of education received Longer Instructional Day or Longer Year incentive funding, or

both, for the fiscal year audited for special day classes, perform the following procedures:

(1) Review the school attendance calendar and bell (class) schedules. Determine the amount of instructional time offered by each school.

(2) Determine whether the county office of education complied with the instructional time incentive funding requirements by comparing the amount of time offered for each grade level during the year being audited to the required amount of instructional time as set forth in Education Code Section 46201.5.

(3) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report showing by grade level the 1986-87 instructional time requirements specified in Education Code Section 46201.5; the instructional minutes offered during the year audited showing the school with the lowest number of minutes; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; whether the county office of education complied with the instructional minutes requirements; and, if the county office of education received an apportionment pursuant to Education Code Section 46200.5(a), whether the county office of education complied with the instructional days provisions. State in a note to the schedule whether the county office of education received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives and whether it received an apportionment pursuant to Education Code Section 46200.5(a).

(4) If any schools were not in compliance with the instructional minutes or days provisions, or both, prepare a separate schedule for each such school showing only those grade levels that were not in compliance and calculate the penalty or penalties set forth in Education Code Section 46200.5(c) or 46201.5(e). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(d) County offices of education: If the county office of education received Longer Instructional Day or Longer Year incentive funding, or both, for the fiscal year audited for special day classes, in accordance with the provisions of subdivision (a) of Education Code Section 46201.2 and consistent with subdivision (a) of Education Code Section 46201.3, for fiscal years 2009-10 and 2010-11, and fiscal years 2012-13 through 2014-15, perform the following procedures:

(1) Review the school attendance calendar and bell (class) schedules. Determine the amount of instructional time and the number of instructional days offered by each school.

(2) If the county office of education received an apportionment for the both the Longer Day incentives prescribed by the provisions of Education Code Section 46201.5 and the Longer Year incentives prescribed by the provisions of Education Code Section 46200.5:

(A) Determine the required amount of instructional time by reducing the amount of time by grade level specified in Education Code Section 46201.5 by the result of dividing the time for each grade level by 180 and multiplying by 5.

(B) Compare the amount of time offered for each grade level during the year being audited to the required amount of instructional time as determined in subparagraph (d)(2)(A) of this section.

(3) If the county office of education received an apportionment for the Longer Day but not for the Longer Year incentives:

(A) Determine the required amount of instructional time by reducing the amount of time by grade level specified in Education Code Section 46201.5 by the result of dividing the time for each grade level by 175 and multiplying by 5.

(B) Compare the amount of time offered for each grade level during the year being audited to the required amount of instructional time as determined in subparagraph (d)(3)(A) of this

section.

(4) Prepare the “Schedule of Instructional Time” that must be presented in the Supplementary Information section of the audit report showing by grade level the 1986-87 instructional time requirements specified in Education Code Section 46201.5, and the 1986-87 instructional time requirements as reduced pursuant to subparagraph (d)(2)(A) or (d)(3)(A) of this section, as applicable; the instructional minutes offered during the year audited showing the school with the lowest number of minutes; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; whether the county office of education complied with the reduced instructional minutes requirements as calculated pursuant to subparagraph (d)(2)(A) or (d)(3)(A) of this section, as applicable; and, if the county office of education received an apportionment pursuant to Education Code Section 46200.5(a), whether the county office of education complied with the instructional days provisions as reduced by the provisions of Education Code Section 46201.2. State in a note to the schedule whether the county office of education received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives and whether it received an apportionment pursuant to Education Code Section 46200.5(a).

(5) If any schools were not in compliance with the reduced instructional minutes or days provisions, or both, prepare a separate schedule for each such school showing only those grade levels that were not in compliance and the calculation and amount of the penalty or penalties set forth in Education Code Section 46200.5(c) or 46201.5(e). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19824.1. Instructional Time.

For fiscal year 2011-12 only, perform the following procedures:

(a) School districts:

(1) Select a sample of schools that is representative of the district and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the district's compliance with instructional time requirements. Review the school attendance calendar and bell (class) schedules of the sampled schools. Ascertain whether any individual days are shorter than the usual length, by grade level, in that school. Compare the instructional minutes from each school site's bell (class) schedule to total instructional minutes computed by the business office.

(2) Determine, by grade level, the total number of days in each sampled school's attendance calendar that were of at least the minimum length required, pursuant to Education Code sections 46112, 46113, 46114, 46115, 46117, and 46119, for elementary schools, or sections 46141, and 46142, for junior high schools and high schools. Compare the total qualifying days by grade level for each sampled school to the standards set forth in Education Code section 41420 or 37670, as applicable, as reduced by the provisions of Education Code sections 46201.2(a) and 46201.3(a), to 163 days for schools on a traditional calendar, or to 151 days for multitrack year-round schools.

(3) If all sampled regular day schools have fewer than the applicable minimum number of days as set forth in subparagraph (a)(2) of this section, determine whether the same is true for all the regular day schools of the district.

(4) If all regular day schools have fewer than the applicable minimum number of days, the district is subject to the penalty provided in subdivision (a) of Education Code Section 41420. Include a statement of that fact and the calculation and amount of the penalty in the Findings

and Recommendations section of the audit report.

(5) If the district is not subject to the penalty provided in subdivision (a) of Education Code Section 41420 but is subject to one or more penalties as provided in subdivision (b) of Education Code Section 41420, prepare a separate schedule for each school that was not in compliance showing the number of additional days the school would have had to maintain operations to meet the 163 day requirement, or the 151 day requirement if the school was operated on a multitrack year-round schedule. Calculate the penalty or penalties. Include the schedule(s), the calculation(s), and amount(s) of the penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

(6) Determine whether the district received an apportionment pursuant to the Longer Day incentives prescribed by the provisions of Education Code Section 46201.

(A) If the district received an apportionment for Longer Day and received an apportionment pursuant to the Longer Year incentives prescribed by the provisions of subdivision (a) of the Education Code Section 46200:

1. Determine the required amount of instructional time by reducing the amount of time by grade level that is specified in Education Code Section 46201 and the amount offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 180 and multiplying by 12.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (a)(6)(A)1. of this section.

(B) If the district received an apportionment for Longer Day but did not receive an apportionment for Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by

grade level that is specified in Education Code Section 46201 and the amount offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 175 and multiplying by 12.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (a)(6)(B)1. of this section.

(C) If the district did not receive an apportionment for the Longer Day but did receive an apportionment for Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by grade level offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 180 and multiplying by 12.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (a)(6)(C)1. of this section.

(D) If the district did not receive an apportionment for Longer Day and did not receive an apportionment for the Longer Year incentives:

1. Determine the required amount of instructional time by reducing the amount of time by grade level offered by the district during the 1982-83 school year by the result of dividing the time for each grade level by 175 and multiplying by 12.

2. Compare the amount of time offered for each grade level in each sampled school during the year being audited to the required amount of instructional time as determined in subparagraph (a)(6)(D)1. of this section.

(7) Determine whether the district offered optional classes to satisfy incentive funding requirements. If enrollment in optional classes is low, review the district's documentation of

class offerings to ensure that the district has acted effectively to comply with the law. Practices that are not consistent with effectively offering additional instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period or by attending school outside the schedule of district-provided bus service.

(8) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report, showing by grade level the number(s) of instructional minutes offered by the district in the 1982-83 year, and the district's 1982-83 instructional minutes as reduced pursuant to subparagraph (a)(6) of this section as applicable; the 1986-87 instructional time requirements specified in Education Code Section 46201, and the 1986-87 instructional time requirements as reduced pursuant to subparagraph (a)(6) of this section as applicable; the instructional minutes offered during the year audited showing the school with the lowest number of minutes offered at each grade level; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; and whether the district complied with the reduced instructional minutes and days provisions. State in a note to the schedule whether the district received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives.

(9) If any schools were not in compliance with the instructional minutes requirements as calculated pursuant to subparagraph (a)(6) of this section as applicable, or the instructional days requirements pursuant to subparagraph (a) of this section as applicable, or both, prepare a separate schedule for each school showing only those grade levels that were not in compliance and calculate the penalty or penalties pursuant to Education Code Section 46200(e), 46201(d), or 46202(b). Include the schedule(s), the calculation, and the amount of the penalty or penalties

in a finding in the Findings and Recommendations section of the audit report.

(b) County offices of education: If the county office of education received Longer Instructional Day or Longer Year incentive funding, or both, for special day classes, perform the following procedures:

(1) Review the school attendance calendar and bell (class) schedules. Determine the amount of instructional time and the number of instructional days offered by each school.

(2) If the county office of education received an apportionment for both the Longer Day incentives prescribed by the provisions of Education Code Section 46201.5 and the Longer Year incentives prescribed by the provisions of Education Code Section 46200.5:

(A) Determine the required amount of instructional time by reducing the amount of time by grade level that is specified in Education Code Section 46201.5 by the result of dividing the time for each grade level by 180 and multiplying by 12.

(B) Compare the amount of time offered for each grade level during the year being audited to the required amount of instructional time as determined in subparagraph (b)(2)(A) of this section.

(3) If the county office of education received an apportionment for the Longer Day but not for the Longer Year incentives:

(A) Determine the required amount of instructional time by reducing the amount of time by grade level that is specified in Education Code Section 46201.5 by the result of dividing the time for each grade level by 175 and multiplying by 12.

(B) Compare the amount of time offered for each grade level during the year being audited to the required amount of instructional time as determined in subparagraph (b)(3)(A) of this section.

(4) Prepare the "Schedule of Instructional Time" that must be presented in the

Supplementary Information section of the audit report showing by grade level the 1986-87 instructional time requirements specified in Education Code Section 46201.5, and the 1986-87 instructional time requirements as reduced pursuant to subparagraph (b)(2)(A) or (b)(3)(A) of this section, as applicable; the instructional minutes offered during the year audited showing the school with the lowest number of minutes; the number of instructional days offered during the year audited on the traditional calendar and on any multitrack calendars; whether the county office of education complied with the reduced instructional minutes requirements as calculated pursuant to subparagraph (b)(2)(A) or (b)(3)(A) of this section, as applicable; and, if the county office of education received an apportionment pursuant to Education Code Section 46200.5(a), whether the county office of education complied with the instructional days provisions as reduced by the provisions of Education Code sections 46201.2(a) and 46201.3(a). State in a note to the schedule whether the county office of education received incentive funding for increasing instructional time pursuant to the Longer Instructional Day incentives and whether it received an apportionment pursuant to Education Code Section 46200.5(a).

(5) If any schools were not in compliance with the reduced instructional minutes or days provisions, or both, prepare a separate schedule for each such school showing only those grade levels that were not in compliance and the calculation and amount of the penalty or penalties set forth in Education Code Section 46200.5(c) or 46201.5(e). Include both the schedule(s) and the calculated penalty or penalties in a finding in the Findings and Recommendations section of the audit report.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19828.4. Instructional Materials.

(a) For fiscal year 2009-10 and each fiscal year thereafter, perform the following

procedures:

(1) Determine whether the school district governing board or county board of education, prior to making a determination through a resolution as to the sufficiency of textbooks or other instructional materials, held the public hearing or hearings required by the provisions of Education Code Section 60119 on or before the end of the eighth week from the first day pupils attended school for that year, or, in a school district or county office of education having schools that operate on a multitrack, year-round calendar, on or before the end of the eighth week from the first day pupils attended school for that year on any track that began in August or September.

(2) Determine whether the school district governing board or county board of education provided 10-day notice of the required public hearing or hearings.

(3) Determine whether each notice included the time, place, and purpose of the hearing and whether the school district or county office of education posted the notice at a minimum of three public locations in the school district or county, respectively.

(4) Determine whether the hearing was held at a time that encouraged the attendance of teachers and parents and guardians of pupils who attend the schools in the district and did not take place during or immediately following school hours.

(5) Determine whether the resolution stated that each pupil in each school had sufficient textbooks or instructional materials aligned to the content standards adopted by the State Board of Education pursuant to Education Code Section 60605 and consistent with the content and cycles of the curriculum framework adopted by the State Board of Education, or instead that there was an insufficiency of such textbooks or instructional materials, or both, in any one or more of mathematics, science, history-social science, and English/language arts including the English language development component of an adopted program, as appropriate. If the

resolution stated any insufficiency, verify that the school district governing board or county board of education provided information to classroom teachers and to the public, setting forth, in the resolution, for each school in which an insufficiency existed, the percentage of pupils who lacked sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil did not have sufficient standards-aligned textbooks or instructional materials, or both, and took action to ensure that each pupil would have sufficient textbooks or instructional materials, or both, within two months of the beginning of the school year in which the determination was made.

(6) Verify whether the governing board made a written determination as to whether each pupil enrolled in a foreign language or health course had sufficient textbooks or instructional materials that were consistent with the content and cycles of the curriculum frameworks adopted by the State Board of Education for those subjects.

(7) Verify whether the governing board determined the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive.

(b) If the school district or county office of education was not in compliance with any of the requirements set forth in audit procedures 1 through 5 of subparagraph (a) of this section, the school district or county office of education was not eligible to receive an Instructional Materials Funding Realignment Program allowance for the fiscal year audited. Include a finding in the Findings and Recommendations section of the audit report showing the full amount of Instructional Materials Funding Realignment Program allowance received as disallowed.

(c) If the school district or county office of education was not in compliance with any of the requirements set forth in audit procedures 6 or 7 of subparagraph (a) of this section, report the noncompliance in a finding in the Findings and Recommendations section of the audit

report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503, and 41020, Education Code.

§ 19829. Ratios of Administrative Employees to Teachers.

(a) For school districts, verify that the district is in compliance with the administrator-to-teacher ratio requirement for the year audited by determining that the employees were properly classified and the ratio was calculated consistent with the provisions of Education Code Section 41403.

(b) If the number of administrators per hundred teachers exceeded the allowable ratio set forth in Education Code Section 41402, indicate the number of excess administrators and the associated penalty, as set forth in Education Code Section 41404, in the Findings and Recommendations section of the audit report.

(c) If the school district cannot show that it was in compliance with the ratio during the year audited, include a statement in the Findings and Recommendations section of the audit report that the ratio could not be confirmed.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19829.5. Classroom Teacher Salaries.

(a) If, during the year preceding the year audited, the district had 101 units or more of Average Daily Attendance, and, during the year audited, the district was subject to the provisions of Education Code Section 41372 pursuant to the provisions of Education Code Section 41374, determine whether, after applicable audit adjustments, the district met the current expense of education percentage requirements for expenditure for payment of salaries of classroom teachers as set forth in Education Code Section 41372.

(b) If the district did not meet the applicable minimum percentage required for payment of salaries of classroom teachers, include a statement in the Findings and Recommendations section of the audit report indicating the minimum percentage required, the district's current expense of education for the year audited after applicable audit adjustments, and the dollar amount by which the district was deficient.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020 and 41372, Education Code.

§ 19830.1. Early Retirement Incentive.

For fiscal year 2005-06 and each fiscal year thereafter, perform the following procedures:

(a) Obtain a copy of the certification required by Education Code sections 22714 and 44929 and verify that the school district received approval from the county office of education or that the county office of education received approval from the Superintendent of Public Instruction as appropriate.

(b) Verify that the reason(s) contained in the certification are consistent with the results of the early retirement incentive program.

(c) Verify the data disclosed as a result of the district's or county office's adoption of the early retirement incentive program.

(d) Include a disclosure in the Notes to the Basic Financial Statements that presents the number and type of positions vacated; the age, service credit, salary, and, separately, the benefits of the retirees receiving additional service credit; a comparison of the salary and benefits of each retiree with the salary and benefits of the replacement employee, if any; the resulting retirement cost, including interest, if any, and postretirement health benefit costs, incurred by the employer.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503

and 41020, Education Code.

§ 19831. Gann Limit Calculation.

The following audit procedures apply to the current year appropriations limit calculation for school districts and county offices of education.

(a) Verify that the data used by the district or the county office is accurate, ensuring that the prior year Gann ADA and prior year appropriations limit used by the local education agency match the data on the prior year appropriations limit calculation previously submitted to the California Department of Education. If the district or county office has made adjustments to the prior year data, verify that the adjustments are correct. If the data has been revised, verify that the district or the county office has recalculated the prior year appropriations limit and attached a copy of the recalculation to the current year appropriations limit.

(b) If the agency is found out of compliance, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Section 1.5 of Article XIII B, California Constitution.

§ 19837.3. School Accountability Report Card.

For fiscal year 2009-10 and each fiscal year thereafter, perform the following procedures:

(a) Obtain copies of the quarterly report of summarized complaint data compiled pursuant to the provisions of subdivision (d) of Education Code Section 35186. Identify any complaints related to teacher misassignment or vacancies included in the summarized data and compare each such complaint to the information on teacher misassignment or vacancies stated in the School Accountability Report Card for the school identified in the complaint, as required by the provisions of subdivision (b)(5) of Education Code Section 33126. If the information in the School Accountability Report Card is inconsistent with the information in the complaint,

interview management to determine the basis of the inconsistency. If the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

(b) For each school in the sample of schools selected pursuant to Section 19817.1(b), obtain the school district's or county office of education's copy of its most recently completed "Facility Inspection Tool (FIT), School Facility Conditions Evaluation" developed by the Office of Public School Construction and approved by the State Allocation Board and applicable to the year audited, or a local evaluation instrument that meets the same criteria, pursuant to the provisions of subdivision (d) of Education Code Section 17002. If the FIT was completed prior to the publication of the school's School Accountability Report Card, compare the information contained in the FIT to the information on safety, cleanliness, and adequacy of school facilities contained in the School Accountability Report Card for that school as required by the provisions of subdivision (b)(9) of Education Code Section 33126. If the information in the School Accountability Report Card is inconsistent with the information in the FIT, interview management to determine the basis of the inconsistency. If the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

(c) For each school in the sample of schools selected pursuant to Section 19817.1(b), compare the information on the availability of sufficient textbooks and other instructional materials included in the School Accountability Report Card pursuant to the provisions of subdivision (b)(6)(B) of Education Code Section 33126 with the information in the resolution reviewed pursuant to Section 19828.4(a)(5) and the information in the determinations reviewed pursuant to Section 19828.4(a)(6) and Section 19828.4(a)(7). If the information in the School Accountability Report Card is inconsistent with the information in the resolution or the

determinations, interview management to determine the basis of the inconsistency. If the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

§ 19839. Public Hearing Requirement – Receipt of Funds.

For fiscal years 2009-10 through 2012-13, if the school district or county office of education received any funds from the programs enumerated in subdivision (a) of Education Code Section 42605, perform the following procedures:

(a) Determine whether, with regard to the use of funds in the year audited, the governing board, (1) at a regularly scheduled open public hearing or hearings, (2) took testimony from the public, (3) discussed the proposed use of the funding, and (4) approved or disapproved the proposed use of funding from the 39 programs enumerated in subdivision (a) of Education Code Section 42605, by reviewing minutes or other records of the governing board that document that the governing board held such a public hearing or hearings before determining the use of the funds. The public hearing may have been held in the prior year.

(b) If the governing board, at a regularly scheduled open public hearing, did not take testimony from the public, or did not discuss the proposed use of the funding, or did not approve or disapprove the proposed use of the funding, the school district or county office of education did not meet the condition set forth in subdivision (c)(2) of Education Code Section 42605 for receipt of funds for any and all of the 39 programs enumerated in subdivision (a) of Education Code Section 42605 for the fiscal year audited. Include a finding in the Findings and Recommendations section of the audit report showing the full amount received by the school district or county office of education for any and all of the 39 programs as disallowed.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14501, 14502.1, 14503 and 41020, Education Code.

§ 19840. Juvenile Court Schools.

If the county office of education claimed any average daily attendance for juvenile court schools which are shown on the attendance reporting forms under juvenile halls, homes and camps, or county group home and institution pupils, then perform the following procedures:

(a) Determine whether the Annual report of attendance submitted to the California Department of Education reconciles to the supporting documents by verifying the county office of education's juvenile court schools Average Daily Attendance calculations.

(b) In accordance with Education Code Section 41601(b), verify that a divisor of 175 was used in calculating the average daily attendance reported in the Annual attendance reporting period.

(c) Trace the Average Daily Attendance numbers from the Annual report of attendance to the county office of education's summaries.

(d) Verify that the monthly site attendance summaries provide accurate information by reconciling the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the county for the Annual attendance reports.

(e) Select a test month in the Annual attendance reporting period. Verify the mathematical accuracy of the monthly report and trace the totals to the site's attendance summary.

(f) Select a representative sample of classes (teachers). Trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

(g) Verify that the minimum school day included at least 180 minutes of instruction for pupils in attendance in approved vocational education programs, work programs prescribed by

the probation department pursuant to Welfare and Institutions Code Section 883, and work experience programs, and at least 240 minutes of instruction for all other pupils by reviewing the bell schedule(s) or other appropriate documentation; and that the school's practice was to schedule all pupils, other than pupils with exceptional needs whose Individualized Education Programs specified otherwise, to attend for at least the minimum day pursuant to the provisions of Education Code Section 48645.3.

(h) Select a representative sample of pupils and verify, by reviewing class assignments, that the pupils were scheduled to attend school at least a minimum day pursuant to the provisions of Education Code Section 48645.3.

(i) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code; Statutes of 2010, c. 724 (A.B. 1610, eff. Oct. 19, 2010), § 41.

§ 19841. Exclusion of Pupils – Pertussis Immunization.

For fiscal year 2011-12; from the attendance records, select a representative sample of pupils enrolled in grades 7 through 12, inclusive, for whom Average Daily Attendance generated through regular classroom or independent study was claimed, and perform the following procedures:

(a) As provided in Health and Safety Code Section 120335.1(a), for each pupil in the sample who was under age 18 who was enrolled in the county office of education or school

district in the prior year, and whose first day of attendance occurred on or before the sixth Friday following the first day on which classes were offered at the school in which the pupil was enrolled, verify that evidence was on file by the 30th *calendar* day after the pupil's first day of attendance in school year 2011-12 of

- (1) a pertussis booster vaccine given on or after the pupil's 7th birthday, or
- (2) a pertussis booster immunization exemption statement.

(A) If the exemption from the new pertussis booster requirement was a temporary medical exemption that terminated any time during the 2011-12 school year, verify that evidence is on file that the pupil obtained the required pertussis booster vaccine when the temporary exemption terminated, or filed a permanent medical or personal beliefs exemption by that date.

(B) If the exemption is based on personal beliefs, the statement must be specific to the new pertussis booster immunization requirement as specified by Title 17, Section 6051.

(b) For each pupil in the sample who was under age 18 who transferred into the county office of education or school district, and whose immunization record was not received at the time of entry to the new school, verify that evidence was on file, as provided in Title 17, Section 6070(d), by the 30th *school* day after the pupil's first day of attendance in school year 2011-12 of compliance with the requirements set forth in (1) or (2) of subparagraph (a) of this section.

(c) If, pursuant to the foregoing audit procedures, any pupils are found who did not have evidence of a pertussis booster vaccine or exemption, verify that attendance was not claimed for pupils continuing in the same county office of education or school district on or after the pupil's 31st *calendar* day of school, or on or after a transfer pupil's 31st *school* day. Once evidence is provided of the pertussis vaccination or a pertussis booster immunization exemption statement is received, the pupil is no longer excluded from school.

(d) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

Article 3.1. State Compliance Procedures: School Districts and Charter Schools

§ 19845.2. Class Size Reduction.

For fiscal year 2008–09 through 2011–12 only, perform the following audit steps:

If the school district or charter school received Class Size Reduction Program funding for the year audited, perform the following procedures, using daily averaging in all instances in which averaging is required.

(a) Verify the mathematical accuracy of the Class Size Reduction Program claim form submitted to the California Department of Education.

(b) Option One Classes

(1) Select a sample of classes from those that were certified as eligible for Option One Class Size Reduction Program funding, using the following procedures:

(A) The number of classes to be reviewed shall be based on auditor judgment, but the selection of classes shall be made randomly.

(B) For each class selected, the sample shall include at least 15 days randomly selected from all instructional days that occurred between the first day of instruction and April 15, inclusive, of the year audited.

(C) If class size for the sampled classes was more than 20.4 when averaged over a period from the first day of instruction to April 15, inclusive, the auditor shall conduct a more in-depth review. The in-depth review shall be either of the following:

1. A review of all instructional days for all classes for which a district or charter school has requested funding pursuant to the provisions of Education Code Section 52126.

2. A randomly selected sample of all classes and instructional days, of sufficient size and designed in such a manner that the auditor can conclude, with a 95 percent degree of confidence, that the average daily class size for each class, when averaged over the period from the first day of instruction to April 15, did not exceed 20.4.

(D) The district or charter school shall make the determination as to which of the two in-depth review methods set forth in the immediately preceding subparagraph shall be used.

(2) For sampled classes, review the data used to prepare the list of Option One classes reported to the California Department of Education, to verify that the report is supported by contemporaneous records.

(3) For sampled classes, review teacher assignments and other available pupil and teacher assignment data to verify that the number of students reported as being under the immediate supervision of each assigned teacher for each class reported was the actual class size for a substantial majority of the full regular school day.

(c) Option Two Classes

(1) Select a sample of classes from those that were certified as eligible for Option Two Class Size Reduction Program funding, using the following procedures:

(A) The number of classes to be reviewed shall be based on auditor judgment, but the selection of classes shall be made randomly.

(B) For each class selected, the sample shall include at least 15 days randomly selected

from all instructional days that occurred between the first day of instruction and April 15, inclusive, of the year audited.

(C) If class size for the sampled classes was more than 20.4 when averaged over a period from the first day of instruction to April 15, inclusive, the auditor shall conduct a more in-depth review. The in-depth review shall be either of the following:

1. A review of all instructional days for all classes for which a district or charter school has requested funding pursuant to the provisions of Education Code Section 52126.

2. A randomly selected sample of all classes and instructional days, of sufficient size and designed in such a manner that the auditor can conclude, with a 95 percent degree of confidence, that the average daily class size for each class, when averaged over the period from the first day of instruction to April 15, did not exceed 20.4.

(D) The district or charter school shall make the determination as to which of the two in-depth review methods set forth in the immediately preceding subparagraph shall be used.

(2) For sampled classes, review the data used to prepare the list of Option Two classes reported to the California Department of Education, to verify that the report is supported by contemporaneous records.

(3) For sampled classes, review teacher assignments and other available data to ensure that the class size reported was the maximum actual class size for at least one-half of the instructional minutes offered per day in each grade for which Option Two Class Size Reduction funding was claimed.

(4) Review class schedules to ensure that the time that pupils spent in Option Two classes was primarily devoted to instruction in reading or mathematics.

(d) Class Size Reduction option for districts or charter schools with only one school serving K-3:

For school districts or charter schools that participate in Class Size Reduction pursuant to the provisions of subdivision (h) of Education Code Section 52122, verify that:

(1) The school had no more than two classes per participating grade level,

(2) The governing board made a public declaration as set forth in subdivision (h)(2) of Education Code Section 52122,

(3) The average class size of all classes participating in Class Size Reduction, combined, did not exceed 20.4, and

(4) The pupil-to-teacher ratio did not exceed 22.4 to 1 in any class.

(e) General requirements:

(1) For all sampled classes, and for classes claimed for Class Size Reduction funding in districts or charter schools with only one school serving kindergarten and grades 1 through 3, review the school level information used to complete the California Department of Education's reporting form. Verify that:

(A) classes claimed for funding were for pupils in kindergarten, or grades 1 to 3, inclusive;

(B) if only one grade level was reduced, it was grade 1;

(C) if two grade levels were reduced, they were grades 1 and 2; and

(D) priority was given to the reduction of classes in grades 1 and 2 before classes in kindergarten or grade 3 were reduced.

(2) For the sampled classes, verify that the district or charter school did not report to the California Department of Education on the Class Size Reduction reporting form:

(A) any classes consisting of special education pupils enrolled in special day classes on a full-time basis,

(B) any pupil who was enrolled in independent study or home study for the full regular school day,

(C) any pupil who was enrolled in independent study or home study for any portion of the full regular school day, for that portion of each day that the pupil was on independent study or home study, or

(D) any pupil enrolled in a Class Size Reduction combination class who was at a grade level ineligible for Class Size Reduction funding.

(3) For the sampled classes, verify that counts began on the first teaching day each class existed.

(4) If a district elected to reduce class size through the use of an early-late instructional program and claimed Class Size Reduction funding for Option One classes, verify that it did not follow the provisions of Education Code Section 46205 when calculating instructional time used to qualify for Longer Instructional Day and Year incentive funding unless the district operated an early-late instructional program pursuant to the provisions of Education Code Section 46205 prior to July 1, 1996.

(5) If a district elected to reduce class size through the use of an early-late instructional program and claimed Class Size Reduction funding for Option Two classes, verify that it did not follow the provisions of Education Code Section 46205 when calculating instructional time used to qualify for Longer Instructional Day and Year incentive funding.

(f) If any of the classes reported for Class Size Reduction funding is found to be ineligible for such funding pursuant to any of the foregoing audit procedures, or if any individual pupils in eligible classes are found to have been ineligible because of their grade level(s) but to have been included in the number of eligible pupils reported, or both, prepare, and include in the Findings and Recommendations section of the audit report, a schedule summarizing the results of all procedures and displaying the numbers of noncompliant classes by grade level, number of pupils incorrectly reported as eligible, and Class Size Reduction funding claimed on the

basis of those classes and pupils. Include the data for each ineligible class only once, even if found to have been ineligible for Class Size Reduction funding in more than one of the steps in the audit procedures. Display information separately for classes with annual average enrollments determined, pursuant to the provisions of Education Code Section 52124.5, to be

(1) equal to or greater than 20.5 but less than 21.5, with a 5 percent reduction of the amount to which the district would otherwise be eligible for each such class;

(2) equal to or greater than 21.5 but less than 22.5, with a 10 percent reduction of the amount to which the district would otherwise be eligible for each such class;

(3) equal to or greater than 22.5 but less than 23, with a 15 percent reduction of the amount to which the district would otherwise be eligible for each such class; and

(4) equal to or greater than 23 but less than 25, with a 20 percent reduction of the amount to which the district would otherwise be eligible for each such class; and

(5) equal to or greater than 25, with a 30 percent reduction of the amount to which the district would otherwise be eligible for each such class.

(g) Interview management regarding the district's staff development program.

(1) Verify that the staff development program required, as set forth in Education Code Section 52127, that any certificated teacher providing direct instruction to a class in the Class Size Reduction Program receive the appropriate training necessary to maximize the educational advantages of Class Size Reduction, including but not limited to methods for providing individualized instruction; effective teaching, including classroom management, in smaller classes; identifying and responding to student needs; and opportunities to build on the individual strengths of students.

(2) If the district did not have a staff development program as set forth in Education Code Section 52127, include a finding in the Findings and Recommendations section of the audit

report showing the full amount of Class Size Reduction funding received as disallowed.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503 and 41020, Education Code.

§ 19846.1. After School Education and Safety Program.

For fiscal years 2011-12 and following, if the local education agency received After School Education and Safety funds, perform the following audit steps:

(a) If the local education agency operated an after school program component:

(1) Determine whether the local education agency established a policy regarding reasonable early daily release of pupils from the program.

(2) Select a representative sample of schools for each program type, as that term is used in the attendance report, for which data was reported to the California Department of Education for the after school base grant program. Determine whether the reported number of students served, as that term is used in the report, for each selected school is supported by written records that document pupil participation, by tracing the reported numbers through any documentation used to summarize the numbers of students served, to written data origination documentation.

(3) For each school selected pursuant to subparagraph (a)(2) of this section, determine whether the after school program commenced every day immediately upon the conclusion of the regular schoolday, operated a minimum of 15 hours per week, and operated until at least 6:00 p.m. every regular schoolday as specified in Education Code Section 8483(a)(1), by reviewing, for example, local policies and procedures, program staffing schedules, sign in/out sheets, program brochures, and other relevant documentation.

(4) For each school selected pursuant to subparagraph (a)(2) of this section, determine whether pupils reported on the report of students served attended a full day of the after school

program; or if any pupil attended less than the full day, the attendance was consistent with the established early release policy.

(5) For each middle or junior high school selected pursuant to subparagraph (a)(2) of this section, determine whether the local education agency has a process or procedure that gives priority for enrollment to pupils who attend daily.

(6) If any noncompliance is found through the foregoing procedures, include a statement in the Findings and Recommendations section of the audit report, stating

(A) that the local education agency did not have a policy on reasonable early daily release from the after school program, if that is the case;

(B) discrepancies, if any, between the reported numbers of students served and the totals arising from the supporting documentation;

(C) failure to operate consistent with the days/hours requirements set forth in subparagraph (a)(3) of this section, if any;

(D) the portion of reported students served that resulted from attendance of less than a full day that was inconsistent with the established early release policy, if any; and

(E) that the local education agency did not have a process or procedure in place that gives enrollment priority to pupils in middle school or junior high school who attend daily, if that is the case.

(b) If the local education agency operated a before school program component:

(1) Determine whether the local education agency established a policy regarding reasonable late daily arrival of pupils to the program.

(2) Select a representative sample of schools for each program type, as that term is used in the attendance report, for which data was reported to the California Department of Education for the before school base grant program. Determine whether the reported number of students

served, as that term is used in the report, for each selected school is supported by written records that document pupil participation, by tracing the reported numbers through any documentation used to summarize the numbers of students served, to written data origination documentation.

(3) For each school selected pursuant to subparagraph (b)(2) of this section,

(A) Determine whether the local education agency operated the before school program for not less than one and one-half hours per regular schoolday as specified in Education Code Section 8483.1(a)(1), by reviewing, for example, local policies and procedures, program staffing schedules, sign in/out sheets, program brochures, and other relevant documentation.

(B) Determine whether attendance by pupils for less than one-half of the daily before school program hours was included in the report of students served.

(C) Determine for any pupils reported on the report of students served who attended for one-half day or more but less than the full day, whether the attendance was consistent with the established late arrival policy.

(4) For each middle or junior high school selected pursuant to subparagraph (b)(2) of this section, determine whether the local education agency has a process or procedure that gives priority for enrollment for pupils who attend daily.

(5) If any noncompliance is identified through the foregoing procedures, include a statement in the Findings and Recommendations section of the audit report, stating

(A) that the local education agency did not have a policy on reasonable late daily arrival of pupils to the before school program, if that is the case;

(B) discrepancies, if any, between the reported numbers of students served and the totals arising from the supporting documentation;

(C) failure to operate for the required hours each schoolday as set forth in subparagraph

(b)(3)(A) of this section, if any;

(D) the portion of reported students served that resulted from attendance, by pupils attending less than one-half of the daily program hours, if any;

(E) the portion of reported students served that resulted from attendance by pupils who attended for one-half day or more but less than the full day and did not attend consistent with the established late arrival policy;

(F) that the local education agency did not have a process or procedure in place that gives enrollment priority to pupils in middle school or junior high school who attend daily.

(c) General requirements:

(1) Verify that the local education agency contributed cash or in-kind local funds, equal to not less than one-third of the total state grant, which may have originated from the school district, other governmental agencies, community organizations, or the private sector. Facilities or space usage may fulfill not more than 25 percent of the required local contribution.

(2) Review program expenditures by performing the following procedures:

(A) Verify that expenditures of state funds for indirect costs were the lesser of the local education agency's indirect cost rate as approved by the California Department of Education for the year audited, or 5 percent of the state funding received.

(B) Verify that not more than 15 percent of the state funding was expended for administrative costs, including indirect costs charged to the program.

(C) Verify that not less than 85 percent of the state funding was allocated to schoolsites for direct services to pupils.

(3) If the local education agency did not meet the minimum cash or in-kind local contribution requirement, spent state program funding on excess indirect costs or on excess administrative costs, provided an insufficient allocation to schoolsites, or any combination of

the foregoing, include a finding in the Findings and Recommendations section of the audit report stating, correspondingly, the amount of the local match requirement, the amount by which the local education agency failed to meet the match requirement, the excess amount of the local match requirement fulfilled through facilities or space usage, the amount(s) inappropriately spent, and the amount of the insufficiency in schoolsite allocations.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 8482.3, 14502.1, 14503 and 41020, Education Code.

Article 4. State Compliance Procedures: Charter Schools

§ 19850. Contemporaneous Records of Attendance.

(a) Determine whether the Second Principal report of attendance submitted to the California Department of Education is supported by written contemporaneous records that document all pupil attendance included in the charter school's Average Daily Attendance calculations, by tracing the Average Daily Attendance numbers from the Second Principal report of attendance through any documentation used by the charter school to summarize attendance, to written contemporaneous data origination documents.

(b) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedure, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(c) For fiscal year 2011-12 only, from the attendance records, select a representative sample of pupils enrolled in any of grades 7 through 12, inclusive, for whom Average Daily Attendance generated through classroom based or nonclassroom-based instruction

(independent study) was claimed, and verify for each pupil in the sample who was under age 18 that evidence was on file by the 30th *calendar* day after the pupil's first day of attendance in school year 2011-12 of

(1) a pertussis booster vaccine given on or after the pupil's 7th birthday, or

(2) a pertussis booster immunization exemption statement.

(A) If the exemption from the new pertussis booster requirement was a temporary medical exemption that terminated any time during the 2011-12 school year, verify that evidence is on file that the pupil obtained the required pertussis booster vaccine when the temporary exemption terminated, or filed a permanent medical or personal beliefs exemption by that date.

(B) If the exemption is based on personal beliefs, the statement must be specific to the new pertussis booster immunization requirement as specified by Title 17, Section 6051.

(d) For each pupil in the sample who was under age 18 who transferred into the charter, school, and whose immunization record was not received at the time of entry to the new school, verify that evidence was on file, as provided in Title 17, Section 6070(d), by the 30th *school* day after the pupil's first day of attendance in school year 2011-12 of compliance with the requirements set forth in (1) or (2) of subparagraph (c) of this section.

(e) If, pursuant to the foregoing audit procedures, any pupils are found who did not have evidence of a pertussis booster vaccine or exemption, verify that attendance was not claimed for pupils on or after the pupil's 31st *calendar* day of school, or on or after a transfer pupil's 31st *school* day. Once evidence is provided of the pertussis vaccination or a pertussis booster immunization exemption statement is received, the pupil is no longer excluded from school.

(f) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement

in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2, Education Code.

§ 19851. Mode of Instruction.

For fiscal year 2011-12 only, do not perform the procedures set forth in this section. Perform the procedures set forth in Section 19851.1 instead.

(a) If Average Daily Attendance was reported to the California Department of Education by the charter school as generated through classroom-based instruction, determine whether that attendance was generated in compliance with all of the following conditions:

(1) The charter school's pupils were engaged in educational activities required of those pupils, and the pupils were under the immediate supervision and control of an employee of the charter school who possessed a valid teaching certification in accordance with the provisions of subdivision (l) of Education Code Section 47605.

(2) At least 80 percent of the instructional time offered at the charter school was at the schoolsite. The requirement to be "at the schoolsite" is satisfied if either of the conditions set forth in subdivision (b) of Section 11963 is met.

(3) The charter school's schoolsite was a facility that was used principally for classroom instruction as that term is defined in subdivision (b)(1) of Section 11963.

(4) The charter school required its pupils to be in attendance at the schoolsite at least 80 percent of the minimum instructional time required pursuant to the provisions of subdivision (a)(1) of Education Code Section 47612.5, as set forth below for fiscal years 2005-06 through 2008-09:

Kindergarten	36,000 minutes
Grades 1 through 3	50,400 minutes
Grades 4 through 8	54,000 minutes
Grades 9 through 12	64,800 minutes

For fiscal years 2009-10 and 2010-11, and fiscal years 2012-13 through 2014-15, the minimum instructional time is reduced pursuant to the provisions of Education Code Section 46201.2 and consistent with subdivision (a) of Education Code Section 46201.3, as set forth below:

Kindergarten	34,971 minutes
Grades 1 through 3	48,960 minutes
Grades 4 through 8	52,457 minutes
Grades 9 through 12	62,949 minutes

(b) If any Average Daily Attendance reported to the California Department of Education as classroom-based instruction was not generated in compliance with all of the preceding conditions, it is not eligible for apportionments unless it was generated in full compliance with the requirements set forth in Section 19852. If it was not generated in full compliance with the requirements set forth in Section 19852, include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2, Education Code.

§ 19851.1. Mode of Instruction.

For fiscal year 2011-12 only, perform the following procedures:

(a) If Average Daily Attendance was reported to the California Department of Education by the charter school as generated through classroom-based instruction, determine whether that attendance was generated in compliance with all of the following conditions:

(1) The charter school's pupils were engaged in educational activities required of those pupils, and the pupils were under the immediate supervision and control of an employee of the charter school who possessed a valid teaching certification in accordance with the provisions of subdivision (l) of Education Code Section 47605.

(2) At least 80 percent of the instructional time offered at the charter school was at the schoolsite. The requirement to be "at the schoolsite" is satisfied if either of the conditions set forth in subdivision (b) of Section 11963 is met.

(3) The charter school's schoolsite was a facility that was used principally for classroom instruction as that term is defined in subdivision (b)(1) of Section 11963.

(4) The charter school required its pupils to be in attendance at the schoolsite at least 80 percent of the minimum instructional time required pursuant to the provisions of subdivision (a)(1) of Education Code Section 47612.5, reduced pursuant to the provisions of Education Code sections 46201.2, and 46201.3, as set forth below:

Kindergarten	33,531 minutes
Grades 1 through 3	46,944 minutes
Grades 4 through 8	50,297 minutes
Grades 9 through 12	60,357 minutes

(b) If any Average Daily Attendance reported to the California Department of Education as classroom-based instruction was not generated in compliance with all of the preceding

conditions, it is not eligible for apportionments unless it was generated in full compliance with the requirements set forth in Section 19852. If it was not generated in full compliance with the requirements set forth in Section 19852, include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2, Education Code.

§ 19852. Nonclassroom-Based Instruction/Independent Study.

If Average Daily Attendance was reported by the charter school to the California Department of Education as generated through nonclassroom-based instruction (independent study), or was reported as generated through classroom-based instruction but was not generated in compliance with all of the conditions set forth in subdivision (a) of Section 19851, perform the following procedures:

(a) Determine whether the governing body of the charter school had adopted written policies for independent study as required by the provisions of Education Code Section 51747. If it had not, any reported Average Daily Attendance generated through independent study is not eligible for apportionment. If the required policies were in place, determine whether any reported Average Daily Attendance was generated before the written policies were adopted. Any reported Average Daily Attendance generated through independent study before the written policies were adopted is not eligible for apportionment.

(b) Verify the charter school's calculation, made pursuant to Section 11704, of ineligible Average Daily Attendance, if any, generated through full-time independent study.

(c) Verify that the documentation used by the charter school to summarize monthly

attendance provides accurate information. If the charter school had multiple sites through which it provided independent study, select a sample of school sites that is representative of the charter school's grade spans (elementary, middle, and high schools) and sufficient in size to allow the auditor to draw a reasonable conclusion with respect to the charter school's compliance with independent study requirements. Perform the following procedures:

(1) Determine the total number of days of attendance reported for each sampled site that resulted from attendance by pupils while engaged in independent study. Reconcile the monthly totals (days of apportionment attendance) on the site's attendance summary to the summary maintained by the charter school for the Second Principal attendance report.

(2) Select a test month in the Second Principal attendance reporting period. Verify the mathematical accuracy of the monthly report, or its equivalent if no monthly report is prepared, and trace totals to the site's attendance summary.

(3) Verify that a certificated employee of the charter school, as defined by Section 11700.1, coordinated, evaluated, and provided general supervision, as that term is defined in Section 11700(b), of each pupil's independent study, as required by the provisions of subdivision (a) of Education Code Section 51747.5.

(4) Select a representative sample of teachers. Verify the mathematical accuracy of the teachers' attendance records of pupil attendance. Trace the monthly totals from the monthly report to the attendance records.

(d) From the attendance records, select a representative sample of pupils for whom Average Daily Attendance generated through independent study was claimed, including pupils on intermittent ("short term") independent study, if the charter school offered that option, and perform the following procedures:

(1) Determine each pupil's county of residence at the time of commencing independent

study and verify that it is the county in which the apportionment claim is reported or a contiguous county within California.

(2) Determine whether mailing addresses or other evidence of residency changed during the time the pupils were in independent study and, if so, whether each pupil remained a resident of the same or a contiguous county within California.

(3) Verify that, on each day for which a pupil's attendance was reported, the pupil engaged in an educational activity or activities required of him or her by the charter school.

(4) Verify that each day of each pupil's attendance included in calculations of Average Daily Attendance took place on one of the charter school's schooldays.

(5) Verify that a total of not more than one day of attendance was recorded for each pupil for any calendar day on which school was in session.

(6) Verify that a written agreement exists for each pupil.

(7) Verify that every written agreement contained all the elements required by the provisions of Education Code Section 51747(c):

(A) The manner, time, frequency, and place for submitting a pupil's assignments and for reporting his or her progress.

(B) The objectives and methods of study (pupil activities selected by the supervising teacher as the means to reach the educational objectives set forth in the written agreement) for the pupil's work.

(C) The methods utilized to evaluate that work (any specified procedure through which a certificated teacher personally assesses the extent to which achievement of the pupils meets the objectives set forth in the written assignment).

(D) The specific resources, including materials and personnel, to be made available to the pupils (resources reasonably necessary to the achievement of the objectives in the written

agreement, not to exclude resources normally available to all pupils on the same terms as the terms on which they are normally available to all pupils).

(E) A statement of the policies adopted pursuant to the provisions of subdivisions (a) and (b) of Education Code Section 51747 regarding the maximum length of time allowed between the assignment and the completion of a pupil's assigned work, and the number of assignments a pupil may miss before there must be an evaluation of whether it is in the pupil's best interests to continue in independent study.

(F) The duration of the independent study agreement, including the beginning and ending dates for the pupil's participation in independent study under the agreement, with no agreement being for a period longer than one semester, or one-half year for a school on a year-round calendar.

(G) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.

(H) A statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate.

(I) Signatures, affixed prior to the commencement of independent study, by

1. the pupil;
2. the pupil's parent, legal guardian, or caregiver as that term is used in Family Code Section 6550 and following, if the pupil was less than 18 years of age;
3. the certificated employee who was designated as having responsibility for the general supervision of the pupil's independent study; and
4. all other persons, if any, who had direct responsibility for providing assistance to the pupil.

(8) Verify that no days of attendance were reported for dates prior to the signing of the agreement by all parties.

(9) Verify that evaluated pupil work samples, bearing signed or initialed and dated notations by the supervising teacher indicating that he or she personally evaluated the work, or that he or she personally reviewed the evaluations made by another certificated teacher, have been retained in the file.

(e) If any inappropriately reported units of Average Daily Attendance are identified through the foregoing audit procedures, recalculate, consistent with the provisions of Education Code Section 46303, the correct number of units of Average Daily Attendance. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2.

§ 19853. Determination of Funding for Nonclassroom-Based Instruction.

If more than 20 percent of the charter school's total Average Daily Attendance was generated through nonclassroom-based instruction (independent study) as set forth in Section 19852, perform the following procedures:

(a) Determine whether the charter school has

(1) a multi-year funding determination, made pursuant to the provisions of subdivision (d) of Education Code Section 47612.5 and of Section 47634.2, that applies to the year being audited and that was granted in a year prior to the year being audited, or

(2) a funding determination otherwise applicable to the year audited.

(b) If the charter school does not have either type of funding determination specified in

subdivision (a) of this section, the charter school was not eligible for funding for any Average Daily Attendance generated through nonclassroom-based instruction. Include a statement in the Findings and Recommendations section of the audit report of the number of units of Average Daily Attendance that were inappropriately reported for apportionment and an estimate of their dollar value.

(c) If the charter school has a funding determination as specified in subdivision (a)(2) of this section, and the charter school was in operation in the fiscal year prior to the year being audited, verify the accuracy of the following data submitted by the charter school to the California Department of Education on the nonclassroom-based funding determination form applicable to the year being audited:

(1) The charter school's federal revenues, including start-up, implementation, and dissemination grant(s); state revenues; local revenues, including in lieu of property taxes; and other financing sources.

(2) The charter school's total expenditures for instruction and related services.

(3) The charter school's total expenditures for salaries and benefits for all certificated employees as defined in subdivision (c)(1) of Section 11963.3.

(4) The charter school's pupil-teacher ratio calculated pursuant to Section 11704, and, if submitted, the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates.

(5) The listing of entities that received, in the previous fiscal year, \$50,000 or more or ten (10) percent or more of the charter school's total expenditures identified pursuant to subparagraphs (B), (C), (D), and (E) of subdivision (a)(5) of Section 11963.3; the amount received by each entity; whether each of any such contract payments was based upon specific services rendered or upon an amount per unit of Average Daily Attendance or some other

percentage; and an identification of which entities, if any, had contracts that included provision for payments based on a per unit of Average Daily Attendance amount or some other percentage.

(d) If any inaccurate data is identified through the immediately foregoing audit procedures, prepare a schedule displaying the inaccurate data and the corresponding correct data. Include the schedule in the Findings and Recommendations section of the audit report.

(e) If a funding determination applicable to the year audited was made for the charter school by the State Board of Education, pursuant to the provisions of Education Code Section 47634.2, confirm that the governing board of the charter school has adopted and implemented conflict of interest policies as required by subdivision (b)(1)(C) of Section 11963.3. If the governing board of the charter school has not adopted, or has adopted but has not implemented, conflict of interest policies as required, include a statement in the Findings and Recommendations section of the audit report that states the policies were not adopted, if that is the case; or that the policies were not implemented, if that is the case, and describes the relevant facts.

NOTE: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020 and 47634.2, Education Code.

§ 19854. Annual Instructional Minutes - Classroom Based.

For fiscal year 2011-12 only, do not perform the procedures set forth in this section. Perform the procedures set forth in Section 19854.1 instead.

(a) Review the charter school's attendance calendar and bell (class) schedules or other available comparable documentation. If the charter school has multiple sites, select a sample of school sites that is representative of the charter school's grade spans (elementary, middle, and high schools).

(b) For each sampled site, compare the amount of instructional minutes offered for each grade level during the year being audited to the amount of instructional minutes required pursuant to the provisions of subdivision (a)(1) of Education Code Section 47612.5 as set forth below for fiscal years 2005-06 through 2008-09:

Kindergarten	36,000 minutes
Grades 1 through 3	50,400 minutes
Grades 4 through 8	54,000 minutes
Grades 9 through 12	64,800 minutes

For fiscal years 2009-10 and 2010-11, and fiscal years 2012-13 through 2014-15, the minimum instructional time is reduced pursuant to the provisions of Education Code Section 46201.2 and consistent with subdivision (a) of Education Code Section 46201.3, as set forth below:

Kindergarten	34,971 minutes
Grades 1 through 3	48,960 minutes
Grades 4 through 8	52,457 minutes
Grades 9 through 12	62,949 minutes

(c) Determine whether the charter school offered optional classes to satisfy instructional minutes requirements. If enrollment in optional classes was low, review the charter school's documentation of class offerings to ensure that the charter school acted effectively to comply with the law. Practices that are not consistent with effectively offering instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period.

(d) Prepare the "Schedule of Instructional Time" that must be presented in the

Supplementary Information section of the audit report, showing by grade span the minimum instructional minutes requirements specified in subdivision (a)(1) of Education Code Section 47612.5 for fiscal years 2005-06 through 2008-09, or for fiscal years 2009-10 and 2010-11, and fiscal years 2012-13 through 2014-15, the minimum instructional time as reduced pursuant to the provisions of Education Code Section 46201.2 as set forth in subparagraph (b) of this section, the instructional minutes offered during the year being audited showing the sampled site with the lowest number of minutes offered at each grade span; and whether the charter school complied with the instructional minutes provisions.

(e) If the charter school did not offer the required number(s) of instructional minutes, prepare a separate schedule for each site, showing only the grade level(s) that were not in compliance, and calculate a proportional reduction in apportionment consistent with the provisions of subdivision (c) of Education Code Section 47612.5. Include both the schedule(s) and the calculated reduction in apportionment, in a finding in the Findings and Recommendations section of the audit report.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2. Education Code.

§ 19854.1. Annual Instructional Minutes - Classroom Based.

For fiscal year 2011-12 only, perform the following procedures:

(a) Review the charter school's attendance calendar and bell (class) schedules or other available comparable documentation. If the charter school has multiple sites, select a sample of school sites that is representative of the charter school's grade spans (elementary, middle, and high schools).

(b) For each sampled site, compare the amount of instructional minutes offered for each grade level during the year being audited to the amount of instructional minutes required

pursuant to the provisions of subdivision (a)(1) of Education Code Section 47612.5, reduced pursuant to the provisions of Education Code sections 46201.2 and 46201.3, as set forth below:

Kindergarten	33,531 minutes
Grades 1 through 3	46,944 minutes
Grades 4 through 8	50,297 minutes
Grades 9 through 12	60,357 minutes

(c) Determine whether the charter school offered optional classes to satisfy instructional minutes requirements. If enrollment in optional classes was low, review the charter school's documentation of class offerings to ensure that the charter school acted effectively to comply with the law. Practices that are not consistent with effectively offering instructional time may include, but are not limited to, offering only a small number of courses that in addition are appropriate only for limited numbers of pupils, and courses scheduled such that pupils may take them only by giving up their lunch period.

(d) Prepare the "Schedule of Instructional Time" that must be presented in the Supplementary Information section of the audit report, showing by grade span the minimum instructional minutes requirements specified in subdivision (a)(1) of Education Code Section 47612.5 as reduced pursuant to the provisions of Education Code sections 46201.2 and 46201.3 as set forth in subparagraph (b) of this section, the instructional minutes offered during the year being audited showing the sampled site with the lowest number of minutes offered at each grade span; and whether the charter school complied with the instructional minutes provisions.

(e) If the charter school did not offer the required number(s) of instructional minutes, prepare a separate schedule for each site, showing only the grade level(s) that were not in compliance, and calculate a proportional reduction in apportionment consistent with the

provisions of subdivision (c) of Education Code Section 47612.5. Include both the schedule(s) and the calculated reduction in apportionment, in a finding in the Findings and Recommendations section of the audit report.

Note: Authority cited: Section 14502.1, Education Code. Reference: Sections 14502.1, 14503, 41020, 47612.5 and 47634.2. Education Code.

Appendix A

Federal Compliance Requirements

Office of Management and Budget Circular A-133 (revised June 2003), titled *Audits of States, Local Governments, and Non-Profit Organizations*, was issued pursuant to the Single Audit Act of 1984 (Public Law 98-502) and the Single Audit Act Amendments of 1996 (P.L. 104-156). It sets forth standards intended to bring about consistency and uniformity in the auditing of entities expending federally granted funds, and is available through this website:

http://www.whitehouse.gov/omb/circulars_default

The compliance requirements for testing federal program expenditures are set forth in the OMB Circular A-133 Compliance Supplement. The 2011 Compliance Supplement is effective for audits of fiscal years beginning after June 30, 2010, and supersedes the OMB Circular A-133 Compliance Supplement issued in March 2010. The 2011 Supplement is available at the following website:

http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2011

The Compliance Supplement sets forth program requirements accompanied by suggested audit procedures for testing compliance. The State Controller's Office advises that these procedures are not the only ones that can be utilized by the auditor, nor are they mandatory procedures. Auditors should apply professional judgment to choose procedures and determine the extent of tests performed, and the audit procedures should be tailored to individual programs and circumstances. The auditor is also responsible for ensuring that specific requirements that are modified by a change in a law or regulation are included in the audit procedures.

The Compliance Supplement may not include all the federal programs and procedures required to be audited for compliance; therefore, independent auditors may have to contact funding agencies for compliance requirements and applicable procedures. Program regulations and guidelines are also referenced in the Catalog of Federal Domestic Assistance (CFDA), which can be accessed online through this website:

<https://www.cfda.gov/>

The California Department of Education provides a listing of the federal programs under which local education agencies generally receive awards, along with the corresponding CFDA numbers, on the following web page:

<http://www.cde.ca.gov/fg/au/ag/fedprogcfda.asp>

The Federal Audit Clearinghouse, which operates on behalf of OMB, provides links to the required forms for submission of federally-required audit reports and other information at its home page:

<http://harvester.census.gov/sac/>

Appendix B

Agency Addresses and Contacts

Mailing Address

State Controller's Office
Division of Audits
School District Audits
Post Office Box 942850
Sacramento, California 94250-5874

Telephone: (916) 324-6442

Email: leaaudits@sco.ca.gov

California Department of Education
School Fiscal Services Division
Audit Resolution Staff
1430 N Street, Suite 3800
Sacramento, California 95814

Telephone: (916) 323-8068

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Telephone: (800) 253-0696 (toll free)

Private Carrier Delivery

State Controller's Office
Division of Audits
Financial Audits Bureau – Education
Oversight Unit
3301 C Street, Suite 700
Sacramento, California 95816