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RECEIVED
August 04, 2017
**Commission on
State Mandates**

August 4, 2017

Heather Halsey
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Re: Case Name: Certificated School Employees: Parental Leave (16-TC-01)
Comments to Draft Proposed Decision
Claimant: Fresno Unified School District

Dear Ms. Halsey:

Fresno Unified School District (“Claimant”) files the following comments in response to the Draft Proposed Decision. (“DPD”)

A. Introduction

The claimant timely filed the test claim on December 21, 2016. The test claim alleges reimbursable costs mandated by the state for school districts to provide differential pay benefits of up to 12 weeks, if the employee is absent on account of maternity or paternity leave, pursuant to the requirements in Statutes of 2015, Chapter 400, A.B. No 375. On January 17, 2017, the Commission found the filing to be complete.

The DPD concludes:

“Although the test claim statute applies uniquely to local school districts and provides a new benefit to certificated employees, the differential pay does not increase the level of service provided to the public and thus, does not constitute a new program or higher level of service, and does not impose increased costs mandated by the state.” (DPD; p.1.)

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B. Argument

Test claim statute applies uniquely to local school districts and imposes increased costs.

Procedures governing the constitutional requirement of reimbursement under Article XIII B, section 6, are set forth in Government Code (“Gov. Code”) section 17500, et seq. The Commission on State Mandates (“Commission”) (Gov. Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. (Gov. Code, § 17551.) Government Code section 17561, subdivision (a), provides that “The state shall reimburse each ... school district for all ‘costs mandated by the state,’ as defined in section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” to mean, in relevant part,

“any increased costs which a ... school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program, within the meaning of Section 6 of Article XIII B of the California Constitution.” (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 872 (2004).)

The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state, since administrative activities and the payment for differential pay for public school teachers, due to maternity or paternity leaves, would constitute a “program.”

“...when the voters adopted Article XIII B, § 6, their intent was to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.” (*City of Los Angeles v. State of California*, 43 Cal. 3d 46 (1987).

The drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state (*Id.*)

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Test Claim Statute, Statutes of 2015, Chapter 400, added section 44977.5 to the Education Code, effective January 1, 2016, to require school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave), which may be taken for up to 12 school weeks, due to the birth of the employee's child, or the placement of a child with the employee as a result of adoption or foster care.

Differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute employee, or if no substitute was employed, the amount that would have been subtracted if one had been employed. The Test Claim alleges reimbursable costs for differential pay provided to certificated school district employees, and one-time costs for developing and implementing internal policies, training, procedures, and forms relating to the administration of the program.

Test Claim Statute increases the level of service to the public in providing higher student test scores, reduces gap in education, avoids costly turnover, and retains the valued expertise, skills, and perspective of teachers who are mothers.

General Public

Children receiving the benefits of a parent receiving paternal leave are impacted by the strength of the relationship with the primary caretaker. Less parental leave has been positively correlated with *lower cognitive test scores* and higher rates of behavioral problems. (Senate Floor Analysis 8-31-15; http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375) A study indicates *higher education, IQ*, and income levels in adulthood for children of mothers who used maternity leave — the biggest effect comes for children from lower-educated households. The researchers cited this as a significant discussion for policymakers to have, as it could reduce the *existing gap in education* and income in the US. (<http://ftp.iza.org/dp5793.pdf>)

The California Teachers Association in support of the legislation stated,

“Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship impacts a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy. Overall, paid

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family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they're more likely to choose to remain in the labor market, and paid parental leave is associated with higher employment in economies around the world. With today's modern and creative family structures, paternity leave after the birth of a child means both caregivers will more involved in a child's direct care nine months later – changing diapers, feeding, bathing – than a parent who doesn't take leave. Also, paternity leave results in more competent and committed parents later in their children's lives, shared responsibilities with long term societal benefits."

(Senate Floor Analysis: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375; September 3, 2015.)

The legislation author's office asserts that six or eight weeks is insufficient time for a new parent to care for and bond with their child. Prior to the test claim statute, if a certificated employee desired to take off more time to spend with their newborn, they were obligated to take unpaid leave.

Protected Leave

The Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provide certain employees up to 12 weeks of unpaid, job-protected leave for a year for the purpose of bonding with a child, care for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave, as if employees continued to work instead of taking leave. However, there is no pay associated with the FMLA and CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are the only employment protected leaves.

A study of European leave policies by the University of North Carolina found that paid-leave programs can substantially reduce infant mortality rates and better a child's overall health. (<http://www.sciencedirect.com/science/article/pii/S0167629600000473>)

Employees

Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee. School teachers, after taking parental leave, are more likely to return to the classroom providing experienced level of service to the general public. Absent the parental leave, a substitute teacher, often without teaching credentials or with less experience, would teach students for longer periods. As such, school districts are providing, and the public is receiving, an increase in the quality of public education, a higher level of service, with the return of the teacher to the classroom.

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Increase costs

Prior to the Test Claim Statute, school districts were not required to provide differential pay after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave). With the new legislation, school districts will incur increased costs, salary for three months, when the employee is receiving the parental leave.

The legislation requires after a certificated employee's sick leave and accumulated sick leave have been exhausted, the employee receives differential pay, the difference between the certificated employee's salary and the salary paid to a substitute teacher. (DPD, p. 6)

The decisive factor is not a District's budget but rather actual costs. Though the estimated annual costs for employees may be included in the local agency's annual budget, the DPD is misguided to conclude that a School District is not incurring increased costs when the employee receives paternal leave differential pay. The shift in funding of a new program from the state to a local entity violates the intent of Section 6 of Article XIII B of the California Constitution to preclude the state from shifting to local agencies costs for new legislation. (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 876 (2004).

In *Carmel Valley Fire Protection Dist. v. State of California*, 190 Cal. App. 3d 521, 537–538, (1987); an executive order required that county firefighters be provided with protective clothing and safety equipment, to provide a higher level of service to the public. In this test claim before the Commission, the additional employee paid leave also provides a higher level of service to the public. Previous mandates that denied reimbursement did not exclusively apply to public education or provide a higher level of service. (unemployment insurance, workers' compensation, pensions, and death benefits.)

PERS Test Claim Decision Not Applicable

In *City of Anaheim v. State of California*, the court affirmed a denial of a test claim based on costs incurred, as a result of reserve transfers in the Public Employees' Retirement System (PERS). The transfers reduced credits, which the city received for interest earned on deposits, resulting in a higher employer contribution rate. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478 (1987)). The Second District Court of Appeal, held that: (1) statute requiring PERS to increase pension payments to retired employees and funding the additional payments from excess amounts held in reserve deficiencies account did not compel city to do anything and any increase in costs, due to city's loss of interest on the excess funds, was only incidental to the statute, so that city was not entitled to reimbursement, and (2) pension payments to retired employees do not constitute a "program" or "service" for purposes of state constitutional

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provision requiring reimbursement to cities for costs of programs and services mandated by legislature. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478, 1482 (1987).

DOF reliance on *County of Los Angeles* is misguided as the test claim was based on amended Labor Code provisions related to workers' compensation, a law that affects public and private employers alike. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.) The court concluded, "when the voters adopted Article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies." (*Id.*)

C. Previous Differential Pay Test Claims failed to provide an increased level of service.

The *Differential Pay and Reemployment Test Claim* approved by the Commission on July 31, 2003, involved the amendment to the differential pay statute specifying that the five-month period run *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave. The Commission determined there was no new program or higher level of service, within the meaning of Article XIII B, section 6, for any increased costs for the amount of differential pay compensation, when it is calculated consecutively, rather than concurrently, with accumulated sick leave, and that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child's educational performance, future mental, physical, social, and emotional health in life, impacted by the strength of the relationship with both of the child's parents. The test claim does not involve concurrent and consecutive sick leave that is limited to a change in calculating differential pay.

Conclusion

This test claim requires increased costs on school districts, and the payments constitute a "program" or "service" for purposes of state constitutional provision, requiring reimbursement to school districts for costs of providing maternity and paternity leave to public employees.

The Assembly and Senate floor analysis foresaw the likelihood of this test claim statute being approved as a reimbursable mandate. (Senate Floor Analysis 8-31-15: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375.)

Artiano Shinoff

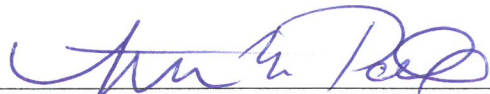
Heather Halsey
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CERTIFICATION

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



Arthur M. Palkowitz,
Attorney for the Claimant, Fresno Unified
School District

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

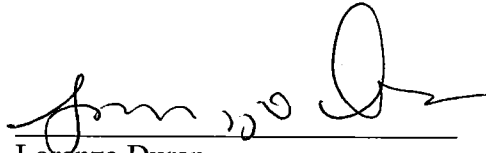
On August 4, 2017, I served the:

- **Claimant Comments on the Draft Proposed Decision filed August 4, 2017**

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Education Code Section 44977.5;
Statutes 2015, Chapter 400 (AB 375)
Fresno Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 4, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/20/17

Claim Number: 16-TC-01

Matter: Certificated School Employees: Parental Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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