

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



January 7, 2016

Mr. Ed Hanson
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Proposed Decision

Mandate Redetermination Request, 14-MR-04

First Hearing: Adequate Showing

Immunization Records: Hepatitis B (98-TC-05)

Education Code Section 48216 et al.

As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

Dear Mr. Hanson:

The proposed decision for the above-named matter is enclosed.

Hearing

This matter is set for hearing on **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

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

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 5
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
PROPOSED DECISION

Education Code Section 48216 and Health and Safety Code Sections 120325, 120335, 120340, and 120375; as amended by Statutes 1978, Chapter 325; Statutes 1979, Chapter 435; Statutes 1982, Chapter 472; Statutes 1991, Chapter 984; Statutes 1992, Chapter 1300; Statutes 1994, Chapter 1172; Statutes 1995, Chapters 291 and 415; Statutes 1996, Chapter 1023; and Statutes 1997, Chapters 855 and 882

California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075; as amended by Register 90, No. 35; Register 80, Nos. 16, 34, and 40; Register 86, No. 6; Register 96, No. 13; and Register 97, Nos. 21, 37, and 39

As Alleged to be Modified by:

Statutes 2010, Chapters 434 (AB 354)

Immunization Records – Hepatitis B (98-TC-05)

14-MR-04

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On August 24, 2000, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Immunization Records -Hepatitis B, 98-TC-05* test claim, finding that the test claim statutes and regulations imposed a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella, and hepatitis B from each pupil seeking admission to school in the state for the first time.
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record.
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade.
- Conditionally admit any pupil who has not been fully immunized as required by law; notify the parents or guardians of the deadline to complete the required immunizations;

and review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized.

- Notify parents or guardians of the requirement to exclude a pupil from school if proof of required immunization or lawful exemption is not timely received after notification, and exclude if required; refer parents or guardians to medical professionals for provision of the immunizations, or notify them that the immunizations will be administered at a school of the district.
- Record and maintain documents of each pupil's immunization record or lawful exemption, and maintain the documents in each pupil's permanent record; collect data and prepare reports for the Department of Public Health (DPH) and county health departments.

This mandate finding was based, in part, on Health and Safety Code section 120335(c) which, as added by Statutes 1997, chapter 882 provided:

On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, . . . unless the pupil has been fully immunized against hepatitis B.

The mandate redetermination request in this matter is based upon changes in law made by Statutes 2010, chapter 434 (AB 354), amending Health and Safety Code section 120335(c) to provide as follows:

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.¹

The Department of Finance (Finance) argues that this change in law eliminates the mandated activities approved in *Immunization Records – Hepatitis B*, 98-TC-05. Based on the plain language of Statutes 1997, chapter 882, it appears that activities related to the conditional admission of seventh graders are no longer required since admission is no longer conditional. Therefore, Finance has made an adequate showing that the state's liability may have been modified based on a subsequent change in law such that Finance has a substantial possibility of prevailing at the second hearing.

Procedural History

On June 29, 2015, Finance filed a request for redetermination of the *Immunization Records – Hepatitis B* test claim, 98-TC-05.² Finance asserts the amendment of Health and Safety Code section 120335 constitutes a “subsequent change in law” and the “state's obligation to reimburse

¹ Health and Safety Code section 120335(c), (Stats 2010, ch. 434, §2). Section 3 of Statutes 2010, chapter 434 also replaced section 120335 with a new code section, effective July 1, 2012 with identical language to that in section 2.

² Exhibit A, Request for Mandate Redetermination, page 1.

affected local agencies for those related activities has ceased.”³ On August 4, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance’s request to adopt a new test claim decision.⁴ On October 19, 2015, Commission staff issued the draft proposed decision for the first hearing.⁵ On October 29, 2015, the Controller submitted comments on the draft proposed decision for the first hearing, recommending no changes to the analysis.⁶

Commission Responsibilities

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.⁷

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁸

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting

³ Based on the plain language of section 120335(c), the potential period of reimbursement affected by this redetermination begins July 1, 2011.

⁴ Exhibit D, Controller’s Comments on Request for Mandate Redetermination, page 1.

⁵ Exhibit E, Draft Proposed Decision, First Hearing.

⁶ Exhibit F, Controller’s Comments on Draft Proposed Decision, First Hearing.

⁷ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

⁸ Government Code section 17570, as added by Statutes 2010, chapter 719.

documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.⁹

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.¹⁰

Thus, the first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission's regulations, only whether the requester has made an adequate showing that the state's liability may be modified based on a subsequent change in law, as defined. Therefore, this analysis will be limited to whether "the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing."¹¹ If the Commission finds that there has been an adequate showing, a thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

Staff Analysis

Staff finds that Finance has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Immunization Records – Hepatitis B* mandate, may be modified based on a subsequent change in law, and that Finance has a substantial possibility of prevailing at the second hearing. Specifically, Health and Safety Code section 120335 has been amended by Statutes 2010, chapter 434 (AB 354) to remove the hepatitis B immunization as a condition by which a school district admits or advances a pupil to the seventh grade, effective July 1, 2011. This change in law appears to have removed the requirement to perform activities related to the conditional admission of seventh graders since, based on the plain language of the statute, admission is no longer conditional on proof of hepatitis B immunization.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for March 25, 2016.

⁹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁰ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

¹¹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Education Code Section 48216 and
Health and Safety Code Sections
120325, 120335, 120340, and 120375;
as amended by Statutes 1978, Chapter
325; Statutes 1979, Chapter 435;
Statutes 1982, Chapter 472; Statutes
1991, Chapter 984; Statutes 1992,
Chapter 1300; Statutes 1994, Chapter
1172; Statutes 1995, Chapters 291 and
415; Statutes 1996, Chapter 1023; and
Statutes 1997, Chapters 855 and 882

California Code of Regulations, Title
17, Sections 6020, 6035, 6040, 6055,
6065, 6070, and 6075; as amended by
Register 90, No. 35; Register 80, Nos.
16, 34, and 40; Register 86, No. 6;
Register 96, No. 13; and Register 97,
Nos. 21, 37, and 39

As Alleged to be Modified by:

Statutes 2010, Chapter 434 (AB 354)

Filed on June 29, 2015

By the Department of Finance, Requester

Case No.: 14-MR-04

*Immunization Records – Hepatitis B
(98-TC-05)*

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

(Adopted January 22, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 22, 2016. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. 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 section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of Findings

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Immunization Records – Hepatitis B*, 98-TC-05 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Health and Safety Code section 120335 has been amended by Statutes 2010, chapter 434 (AB 354) to remove the hepatitis B immunization as a condition by which a school district admits or advances a pupil to the seventh grade, effective July 1, 2011. This change in law appears to have removed the requirement to perform activities related to the conditional admission of seventh graders since, based on the plain language of the statute, admission is no longer conditional on proof of hepatitis B immunization. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

COMMISSION FINDINGS

I. Chronology

- 08/24/2000 The Commission adopted the test claim statement of decision.¹²
- 07/31/2003 The Commission adopted the parameters and guidelines.¹³
- 09/29/2010 Statutes 2010, chapter 434 was enacted and became effective January 1, 2011.

¹² Exhibit B, Test Claim Statement of Decision, 98-TC-05.

¹³ Exhibit C, Parameters and Guidelines, 98-TC-05.

- 07/01/2011 Section 2 of Statutes 2010, chapter 434, which amends Health and Safety Code section 120335 by adding subdivision (c), became operative.
- 06/29/2015 Finance filed a request for redetermination on *Immunization Records – Hepatitis B*, 98-TC-05.¹⁴
- 08/04/2015 The State Controller’s Office (Controller) submitted written comments on the redetermination request.¹⁵
- 10/19/2015 Commission staff issued the draft proposed decision for the first hearing.¹⁶
- 10/29/2015 The Controller submitted written comments on the draft proposed decision for the first hearing, recommending no changes.¹⁷

II. Background

On August 24, 2000, the Commission adopted the Statement of Decision for the *Immunization Records - Hepatitis B* test claim, finding that the test claim statutes and regulations imposed a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The test claim statutes and regulations added mumps, rubella, and hepatitis B to the list of diseases an entering pupil must be immunized against, or show proof of a lawful exemption, prior to the pupil’s first admission into a school. Hepatitis B immunizations, or proof of a lawful exemption, were also required by the test claim statute for students entering the seventh grade on or after July 1, 1999. Section IV of the parameters and guidelines identifies the following reimbursable activities:

- A. Proof of Immunizations for New Entrants: Kindergarteners and/or Out-of-State Transfers (*Reimbursement period begins: July 1, 1997.*)
 1. Request and review lawful exemption from, or proof of, immunization against mumps and rubella from each pupil seeking admission to school in the state for the first time. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
 2. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil entering specified institutions in the state for the first time at the kindergarten level after August 1, 1997. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
- B. Proof of Hepatitis B Immunizations for Students Entering Seventh Grade on or after July 1, 1999 (*Reimbursement Period begins: July 1, 1999.*)

¹⁴ Exhibit A, Request for Mandate Redetermination.

¹⁵ Exhibit D, Controller’s Comments on Request for Mandate Redetermination.

¹⁶ Exhibit E, Draft Proposed Decision, First Hearing.

¹⁷ Exhibit F, Controller’s Comments on Draft Proposed Decision, First Hearing.

1. Request and review lawful exemption from, or proof of, immunization against hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)

C. Conditional Admission of Pupils and Parent Notification Requirements

(Reimbursement Period begins: July 1, 1997.)

1. Conditionally admit any pupil who has not been fully immunized for mumps, rubella, and hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
2. Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)

D. Mandatory Pupil Exclusion and Parent Notification Requirements

(Reimbursement Period begins: July 1, 1998.)

1. Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
2. Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
3. Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)

E. Documentation and Reporting Requirements for Immunizations

(Reimbursement Period begins: July 1, 1997.)

1. Record each pupil's immunization for, or exemption from mumps, rubella, and hepatitis B on an immunization record and maintain the document in each pupil's permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
2. Document additional vaccine doses on the pupil's immunization record as they are administered.¹⁸ (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)
3. Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

¹⁸ This activity is only for *documenting* additional vaccine doses on the pupil's immunization record. The test claim legislation does not mandate school districts to administer vaccines.

4. Prepare follow-up or additional reports upon request by county health departments and the state. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

In lieu of claiming reimbursement based on actual costs incurred, Section V of the parameters and guidelines contains a base uniform cost allowance to reimburse school districts for all reimbursable activities required for new pupil entrants at \$2.12 per pupil, and a separate base uniform cost allowance to reimburse school districts for all reimbursable activities related to the hepatitis B immunization for 7th grade pupils at \$3.23 per pupil, adjusted for inflation. Section V(B) of the parameters and guidelines further states that the “[a]ctivities that are reimbursable under the uniform cost allowance for ‘Seventh Grade Pupils’ are as follows: Section IV. B, C, D, and E – new activities for the hepatitis B immunization.” The uniform cost allowance for the hepatitis B immunization for 7th grade pupils therefore pays for the following activities:

- Section IV. B - Request and review lawful exemption from, or proof of, immunization against . . . hepatitis B from each pupil advancing to the seventh grade on or after July 1, 1999. (Health & Saf. Code, §§ 120325, 120335(c); Cal. Code Regs., tit. 17, §§ 6020, 6065(b).)
- Section IV. C -Conditionally admit any pupil who has not been fully immunized for hepatitis B by notifying parents or guardians of the date by which the pupil must complete the required immunizations. (Health & Saf. Code, §§ 120325, 120340; Cal. Code Regs., tit. 17, § 6035.)
- Section IV. C - Review the immunization record of each pupil admitted conditionally every thirty days until the pupil has been fully immunized. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070(e).)
- Section IV. D - Notify parents or guardians of the requirement to exclude the pupil from school if written evidence either that the pupil has been properly immunized or qualified for an exemption is not presented within 10 school days after notification. (Ed. Code, § 48216(b); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6040.)
- Section IV. D - Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations, or notify them that the immunizations will be administered at a school of the district. (Ed. Code, § 48216(c); Health & Saf. Code, § 120325; Cal. Code Regs., tit. 17, § 6065(c).)
- Section IV. D - Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification. (Ed. Code, § 48216(a); Health & Saf. Code, §§ 120325, 120375(b); Cal. Code Regs., tit. 17, § 6055.)
- Section IV. E - Record each pupil’s immunization for, or exemption from . . . hepatitis B on an immunization record and maintain the document in each pupil’s permanent record. (Health & Saf. Code, §§ 120325, 120335(b), 120375(a); Cal. Code Regs., tit. 17, § 6070.)
- Section IV. E - Document additional vaccine doses on the pupil’s immunization record as they are administered. (Health & Saf. Code, §§ 120325, 120375(a); Cal. Code Regs., tit. 17, § 6070.)

- Section IV. E - Collect data and prepare reports annually on immunization status for the Department of Health Services. (Health & Saf. Code, §§ 120325, 120375(c); Cal. Code Regs., tit. 17, § 6075.)

The Alleged Subsequent Change in Law

Statutes 2010, chapter 434, amended Health and Safety Code section 120335(c), operative July 1, 2011 and inoperative July 1, 2012, to read:

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.¹⁹

Section 3 of Statutes 2010, chapter 434 then added a new section 120335(c), operative July 1, 2012. Section 120335(c) again stated:

Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.²⁰

Finance alleges that Statutes 2010, chapter 434, is a subsequent change in law that modifies the state's liability by eliminating the condition that schools require proof of immunization against hepatitis B as a condition of a pupil advancing or being admitted to the seventh grade.

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for a two hearing process. At the first hearing, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution."²¹ A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change

¹⁹ Health and Safety Code section 120335(c), Statutes 2010, chapter 434 (AB 354), section 2.

²⁰ Health and Safety Code section 120335(c), Statutes. 2010, chapter 434 (AB 354, §§ 2 and 3).

²¹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²²

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.²³

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.²⁴

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that the enactment of Health and Safety Code section 120335(c), as amended, is a subsequent change in law that eliminates the condition that schools require proof of immunization against hepatitis B as a condition of a student advancing or being admitted to the seventh grade. Finance states that “since the statute has been amended, no reimbursement for the specified activity is required pursuant to Article XIII B, section 6 of the California Constitution and Government Code section 17514 as of July 1, 2013.”²⁵

B. State Controller

The Controller states that it “concur[s] with the Department of Finance's request to adopt a new test claim decision and to amend the parameters and guidelines for the Immunization Records: Hepatitis B program.”²⁶ The Controller filed comments on the Draft Proposed Decision for the first hearing, recommending no changes.²⁷

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

²² Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

²³ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁴ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

²⁵ Exhibit A, Request for Mandate Redetermination, page 5.

²⁶ Exhibit D, Controller’s Comments on Request for Mandate Redetermination, page 1.

²⁷ Exhibit F, Controller’s Comments on Draft Proposed Decision, First Hearing.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission's regulations, only whether the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether the request, when considered in light of all of the written comments and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.²⁸ A thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

Finance Has Made an Adequate Showing That Statutes 2010, Chapter 434, Which Amended Health and Safety Code Section 120335(c), Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570 That May Modify the State's Liability For the *Immunization Records – Hepatitis B Program*.

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that, pursuant to article XIII B section 6, the state's liability has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁹

The test claim statement of decision and parameters and guidelines for *Immunization Records – Hepatitis B*, 98-TC-05, found reimbursable activities resulting from "amendments to Health and Safety Code section 120335 which establishes a list of diseases which an entering student must

²⁸ California Code of Regulations, Title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

²⁹ Government Code section 17570(a)(2).

be immunized against prior to the first admission into the school.”³⁰ More specifically, Statutes 1997, chapter 882 required that “on and after July 1, 1999, the governing authority [of a school district] shall not unconditionally admit any pupil to the seventh grade level, nor unconditionally advance any pupil to the seventh grade level, ...unless the pupil has been fully immunized against hepatitis B.”

The Commission found activities related to this requirement, as well as numerous other requirements as specified in the Background, above, to be reimbursable and included those activities in the parameters and guidelines adopted July 31, 2003.

Finance alleges that Health and Safety Code section 120335(c) as amended by Statutes 2010, chapter 434, requires a new finding that the costs relating to the hepatitis B immunization for seventh graders are not costs mandated by the state. Health and Safety Code section 120335(c) as amended in Section 2 of the bill provides:

Commencing July 1, 2011, notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority admits or advances any pupil to the 7th grade level of any private or public elementary or secondary school.³¹

Section 120335(c) is “a change in mandates law,” as defined in Government Code section 17570, since it amends section 120335(c) to remove the requirement for immunization prior to admitting or advancing a student to the seventh grade level. This appears to make the activities related to the conditional admission pending hepatitis B immunization no longer required. Therefore, the state’s liability for some of the activities approved in the test claim may be modified.

At this hearing the Commission is required only to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”³² Based upon the amendment to section 120335(c) which is a subsequent change in law, the Commission finds that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *Immunization Records – Hepatitis B*, 98-TC-05, mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the

³⁰ Exhibit B, Test Claim Statement of Decision 98-TC-05, page 3.

³¹ Section 3 of Statutes 2010, chapter 434, then, repeals and replaces section 120335(c), operative July 1, 2012, to delete the July 1, 2011 operative date language. Section 120335(c) now states:

Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

³² California Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

second hearing to determine whether to adopt a new test claim decision to supersede the Commission's previously adopted test claim decision on *Immunization Records – Hepatitis B*, 98-TC-05.

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 January 7, 2016, I served the:

Proposed Decision

Mandate Redetermination Request, 14-MR-04

First Hearing: Adequate Showing

Immunization Records: Hepatitis B (98-TC-05)

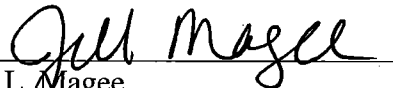
Education Code Section 48216 et al.

As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

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 January 7, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/6/16

Claim Number: 14-MR-04

Matter: Immunization Records: Hepatitis B (98-TC-05)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Amber Alexander, *Department of Finance*

915 L Street, Sacramento, Ca

Phone: (916) 445-0328

Amber.Alexander@dof.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Mike Brown, *School Innovations & Advocacy*

5200 Golden Foothill Parkway, El Dorado Hills, CA 95762

Phone: (916) 669-5116

mikeb@sia-us.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916) 595-2646

Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

David Cichella, *California School Management Group*

3130-C Inland Empire Blvd., Ontario, CA 91764

Phone: (209) 834-0556

dcichella@csmcentral.com

Joshua Daniels, *Attorney, California School Boards Association*

3251 Beacon Blvd, West Sacramento, CA 95691

Phone: (916) 669-3266

jdaniels@csba.org

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Andra Donovan, *San Diego Unified School District*

Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103

Phone: (619) 725-5630

adonovan@sandi.net

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Ferguson@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Paul Golaszewski, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8341

Paul.Golaszewski@lao.ca.gov

Rebecca Hamilton, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

Rebecca.Hamilton@dof.ca.gov

Ed Hanson, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Dan Kaplan, Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8353
Dan.Kaplan@lao.ca.gov

Jennifer Kuhn, Deputy, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

George Landon, Deputy Superintendent, Admin. Fiscal Support, *Lake Elsinore Unified School District*
545 Chaney Street, Lake Elsinore, CA 92530
Phone: (951) 253-7095
George.Landon@leusd.k12.ca.us

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Keith Nezaam, *Department of Finance*

915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Artiano Shinoff & Holtz, APC*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Camille Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Steve Shields, *Shields Consulting Group, Inc.*
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Meg Svoboda, *Senate Office of Research*
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Amy Tang-Paterno, Educational Fiscal Services Consultant, *California Department of Education*
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Thomas Todd, Assistant Program Budget Manager, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
Thomas.Todd@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

Brian Uhler, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

Marichi Valle, *San Jose Unified School District*
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6141
mvalle@sjusd.org