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GOVERNOR



# STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

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## REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

**January 1, 2012 – December 31, 2012**

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## INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.<sup>1</sup>

This report includes a summary of five test claims the Commission denied during the period from January 1, 2012 through December 31, 2012. The complete text of the Statements of Decision for the denied claims may be found at [http://www.csm.ca.gov/denied\\_mandates.shtml](http://www.csm.ca.gov/denied_mandates.shtml).

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1188.2.

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<sup>1</sup> Government Code section 17601.

## SUMMARY OF DENIED CLAIMS<sup>2</sup>

### California English Language Development Test II

03-TC-06

Education Code Sections 48985, 52164, 52164.1, 52164.2, 52164.3, 52164.5, 52164.6

Statutes 1977, Chapter 36, Statutes 1978, Chapter 848, Statutes 1980, Chapter 1339, Statutes 1981, Chapter 219, Statutes 1994, Chapter 922

California Code of Regulations, Title 5, Sections 11300, 11301, 11302, 11303, 11304, 11305, 11306, 11307, 11308, 11309, 11310, 11316, 11510, 11511, 11511.5, 11512, 11512.5, 11513, 11513.5, 11514, 11516.5, 11517

Register 1998, No. 30 (July 24, 1998) pages 75-76, Register 1998, No. 33 (Aug. 14, 1998) page 75, Register 1999, No. 1 (Jan. 1, 1999) pages 75-76, Register 2001, No. 40 (Oct. 5, 2001) pages 77-78.2, Register 2003, No. 2 (Jan. 8, 2003) pages 75-76.1, Register 2003, No. 16 (April 18, 2003) pages 77-78.2

Test Claim Filed: September 22, 2003

Statement of Decision Adopted: May 25, 2012

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This test claim addresses statutes and regulations governing the public instruction of limited English proficient (LEP) pupils in California. LEP pupils are those who do not speak English or pupils whose native language is not English and who are not currently able to perform ordinary classroom work in English.

The Commission denied this test claim, finding that the test claim statutes and regulations do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- Statutes that were adopted as part of the Chacon-Moscone Bilingual-Bicultural Education Act of 1976. This Act provided funding to train bilingual teachers to meet the needs of LEP pupils through bilingual instruction.
  - The statutes have not been operative and did not constitute a state-mandated program during the period of reimbursement for this claim.
- Regulations adopted to implement Proposition 227, which was enacted by the voters in 1998 to generally reject bilingual instruction and, instead, provide for a system of structured English immersion (English-only instruction).
  - The regulations impose activities expressly required by Proposition 227 and the federal EEOA, and additional procedural activities that are part and parcel of the ballot measure mandate.
- English Language Learner regulations adopted by the California Department of Education (CDE) in 2003 and placed with the regulations to implement Proposition 227.
  - The activities are either expressly required by prior statutes (Ed. Code, § 313, 62002.5), or the federal EEOA.

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<sup>2</sup> The Commission's complete Statements of Decision for these claims may be found at [http://www.csm.ca.gov/denied\\_mandates.shtml](http://www.csm.ca.gov/denied_mandates.shtml).

- Regulations adopted to administer the CELDT, which is used to assess the proficiency of LEP pupils upon enrollment, and annually thereafter, until the pupil is reclassified as English proficient.
  - The regulations impose the same requirements as prior law in Education Code section 313 and impose activities that are part and parcel of, and necessary to implement, the federal law requirements imposed by the EEOA.
- Statute and regulations requiring that notices to parents and guardians be provided in English and the primary language of the pupil.
  - The same activity was required by former Education Code section 10926.

## Instructional Materials Funding Requirements

03-TC-07

Education Code Sections 60000, 60002, 60045, 60048, 60119, 60200, 60242, 60242.5, 60248, 60252, 60421, 60422, 60423, 60424, 60501, 60510.5, 60521

Statutes 1976, Chapter 817; Statutes 1977, Chapter 36; Statutes 1979, Chapter 282; Statutes 1982, Chapter 1503; Statutes 1983, Chapter 498; Statutes 1985, Chapter 1440; Statutes 1985, Chapter 1470; Statutes 1985, Chapter 1546; Statutes 1985, Chapter 1597; Statutes 1986, Chapter 211; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 1181; Statutes 1991, Chapter 353; Statutes 1991, Chapter 529; Statutes 1991, Chapter 1028; Statutes 1993, Chapter 56; Statutes 1994, Chapter 927; Statutes 1995, Chapter 325; Statutes 1995, Chapter 413; Statutes 1995, Chapter 534; Statutes 1995, Chapter 764; Statutes 1996, Chapter 124; Statutes 1997, Chapter 251; Statutes 1999, Chapter 276; Statutes 1999, Chapter 646; Statutes 2000, Chapter 461; Statutes 2002, Chapter 802; and Statutes 2003, Chapter 4

California Code of Regulations, Title 5, Sections 9505, 9530, 9531, 9532 and 9535

Register 77, No. 39 (Sept. 23, 1977); Register 83, No 25 (June 17, 1983); Register 95, No. 3, (Dec. 30, 1994); Register 97, No. 31 (July 31, 1997); and Register 2003, No. 3 (Jan. 16, 2003)

*Standards for Evaluating Instructional Materials for Social Content* (2000 ed.)

Test Claim Filed: September 22, 2003

Statement of Decision Adopted: September 28, 2012

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This test claim addresses activities performed by K-12 school districts to review, select, order, and dispose of textbooks and instructional materials, as well as activities related to the categorical funding programs for the purchase of these materials.

The test claim statutes, regulations, and alleged executive order were enacted between 1976 and 2003 and are summarized below. The Commission denied this test claim, finding that the test claim statutes, regulations, and alleged executive order do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- Legislative intent and policies and procedures (Ed Code, § 60000) states legislative intent for “a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials.”
  - The statement of legislative intent does not impose any state-mandated activities on school districts.
- State Board of Education (SBE) review of content and adoption of instructional materials for K-8 students (Ed. Code, § 60200)
  - This code section imposes requirements on the SBE, but does not impose any state-mandated activities on local school districts.
- School districts’ review and adoption of instructional materials for grades 9-12 (Ed. Code, §§ 60045 and 60048, and *Standards for Evaluation of Instructional Materials for Social Content* (2000 ed.)).
  - Publishers are required by law to ensure their materials are legally and socially compliant and are consistent with the requirements of Education Code sections 60040 et seq., and the *Standards for Evaluation of Instructional Materials for Social Content*. School districts have long been required to adopt only those

materials that comply with these requirements. If a school district wishes to review the materials before adoption, it is authorized to do so pursuant to Education Code section 60046.

- Teacher and parent involvement when selecting instructional materials (Ed. Code, §60002)
  - This requirement is not new. Therefore this code section does not impose a new program or higher level of service.
- Ordering instructional materials directly from the publisher (Cal. Code Regs., tit. 5, former § 9530)
  - The activity of ordering instructional materials is not new and ordering them from the publisher does not impose a higher level of service.
- Requesting authorization to use non-adopted instructional reading materials for grades K-3 (Cal. Code Regs., tit. 5, § 9535)
  - Because the activities required by this regulation are triggered by a district's underlying discretionary decision to seek authorization to purchase non-adopted materials, this regulation does not impose a state-mandated program.
- Disposing of instructional materials (Ed. Code, §§ 60501, 60510.5, 60521)
  - These provisions do not impose state mandates because they do not require school districts to perform any activities.
- Instructional Materials Funding Realignment Program (Ed. Code, §§ 60119, 60242, 60242.5, 60248, 60421, 60422, 60423, 60424; Cal. Code Regs., tit. 5, §§ 9505, 9531, 9532)
  - Because these requirements are triggered by a district's discretionary decision to take part in the IMFRP, these statutes and regulations do not impose a state-mandated program on school districts.
- Pupil Textbook and Instructional Materials Incentive Account (Ed. Code, § 60252)
  - Because these requirements are triggered by a district's discretionary decision to take part in the IMFRP, these statutes and regulations do not impose a state-mandated program on school districts.

## **Reserve Peace Officer Training**

03-TC-15

Penal Code Sections 830.6 and 832.6

As Added and Amended by Statutes 1977, Chapter 987; Statutes 1979, Chapter 987; Statutes 1980, Chapters 1301 and 1340; Statutes 1982, Chapter 79; Statutes 1983, Chapter 446; Statutes 1984, Chapter 761; Statutes 1986, Chapter 160; Statutes 1988, Chapter 1482; Statutes 1989, Chapters 594 and 1165; Statutes 1990, Chapter 1695; Statutes 1991, Chapter 509; Statutes 1993, Chapters 169 and 718; Statutes 1994, Chapters 117 and 676; Statutes 1993-94 Extra Session, Chapter 26; Statutes 1995, Chapter 54; Statutes 1996, Chapter 1142; Statutes 1997, Chapter 127; Statutes 1998, Chapter 190; Statutes 1999, Chapter 111; Statutes 2000, Chapter 287; and Statutes 2001, Chapter 473

Post Administrative Manual, Section B (January 2003 Version)

Test Claim Filed: September 26, 2003

Statement of Decision Adopted: September 28, 2012

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This test claim addresses the basic and continuing professional training requirements for reserve peace officers appointed by local law enforcement agencies of cities, counties, special districts, and school districts. According to the Commission on Peace Officer Standards and Training (POST), reserve peace officers are members of society that choose to dedicate a portion of their time to community service by working part-time or as volunteers with law enforcement agencies.

The Commission denied this test claim, finding that Penal Code sections 830.6 and 832.6, as added and amended by the test claim statutes, and the alleged executive order in PAM do not constitute a state-mandated program on local law enforcement agencies and, thus, reimbursement is not required pursuant to article XIII B, section 6 of the California Constitution for the following reasons:

- Local law enforcement agencies, including cities and counties, are not mandated by the state to appoint or designate reserve peace officers or to provide the required training to reserve peace officers.
- School districts, community college districts, and special districts are not mandated by the state to maintain a police department and appoint reserve peace officers.

# Juvenile Offender Treatment Program Court Proceedings

04-TC-02

Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720

Statutes 2003, Chapter 4

Test Claim Filed: December 22, 2004

Statement of Decision Adopted: May 25, 2012

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This test claim alleges duties of public defenders in the juvenile justice system as a result of a test claim statute that realigned the duties of the former Youthful Offender Parole Board (YOPB) and the California Youth Authority (CYA).

The purpose of the test claim statute was to “consolidate the operations of the YOPB under the Department of the Youth Authority and make related changes to the juvenile law.” The test claim statute abolished YOPB and created the Youth Authority Board (YAB) within the Department of the Youth Authority. The statute allocates the duties relating to juvenile discharge and parole, parole revocations, and disciplinary appeals to the YAB. The remaining duties of YOPB were shifted to CYA.

Although the test claim statutes added, repealed or amended 48 code sections, only four were pled by the claimant: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these code sections: (1) clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment; (2) shifted the duty to set parole consideration dates from YOPB to CYA; (3) transferred the duties regarding the annual review of the ward from YOPB to CYA; and (4) specified that CYA shall provide copies of the ward’s reviews to the court and the county probation department.

The Commission denied this test claim, finding that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- The amendment of Welfare and Institutions Code sections 779 is merely a clarification of existing law.
- The amendments to sections 1731.8 and 1719 simply transfer the duties imposed on YOPB to CYA relating to the ward’s PCD, and direct CYA to comply with the existing regulations when modifying or deviating from the PCD. Nothing on the face of these statutes imposes a new duty on local government.
- The amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service on county public defenders. The plain language of this code section imposes duties on CYA, but does not impose any requirements on local government. In addition, under prior law, CYA was required to prepare treatment reports and reviews and provide copies of those reports to the ward. The ward could provide those reports to his or her attorney. Moreover, before the test claim statute, a ward had an existing due process right under the Constitution to receive copies of the reviews, have counsel review and evaluate the material in the review, and represent the ward as necessary in a petition for modification of the prior order of commitment to CYA pursuant to Welfare and Institutions Code sections 778 and 779.

## **Pupil Health: Oral Health Assessment**

07-TC-03

Education Code Section 49452.8  
Statutes 2006, Chapter 413 (AB 1433)

Test Claim Filed: September 25, 2007

Statement of Decision Adopted: September 28, 2012

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This test claim addresses activities performed by school districts and county offices of education resulting from a 2006 test claim statute that added section 49452.8 to the Education Code to address the oral health assessment of first-year public school children.

The Commission denied this test claim, finding that Education Code section 49452.8, as added by Statutes 2006, chapter 413, does not impose a reimbursable state-mandated program upon school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution.

In order for the test claim statute to impose a reimbursable state-mandated program, the statutory language must mandate school districts to perform a new program or higher level of service, resulting in districts incurring increased costs mandated by the state. Here, the test claim statute imposes mandated activities, but those activities are funded by a specific appropriation, in an amount sufficient to cover the costs of the mandated activities, pursuant to Government Code section 17556(e). There is no evidence of increased costs mandated by the state and, thus, reimbursement is not required.