

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Statutes 1998, Chapter 868; Education Code Section 48200, As Amended by Statutes 1987, Chapter 1452;

Filed on August 20, 1999, and Amended on October 9, 2001;

By Palos Verdes Peninsula Unified School District, Claimant.

No. 99-TC-01/01-TC-06

Eastview Optional Attendance Area

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

(Adopted on December 19, 2002)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during regularly scheduled hearings on August 29, 2002, and November 21, 2002. Paul C. Minney and David E. Scribner represented claimant, Palos Verdes Peninsula Unified School District. Ira Tobin, Superintendent, and Bruce Auld, Deputy Superintendent Business Services, appeared on behalf of claimant, Palos Verdes Peninsula Unified School District. Susan S. Geanacou, Walt Schaff, and Dan Troy appeared on behalf of the Department of Finance. Senator Betty Karnette, sponsor of Senate Bill 1681, which enacted Statutes 1998, chapter 868, appeared at the hearing on August 29, 2002. Senator Karnette provided testimony on behalf of claimant. At the hearings testimony was given, the test claim was submitted, and the vote was taken.

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., and related case law.

The Commission denied the test claim with a 3-1 vote.

BACKGROUND

The uncodified test claim statute, Statutes 1998, chapter 868, grants those parents and legal guardians who reside in the area of Eastview the choice of sending their children to school in either the Palos Verdes Peninsula Unified School District (PVPUSD) or the Los Angeles Unified School District (LAUSD).³⁶

³⁶ Chapter 868 was amended by the Statutes 1999, chapter 153 to clarify some of the procedures and time periods in which a parent or guardian may make their school election choice. The effective and operative date was July 22, 1999, because it was an urgency statute. Additionally, on February 22, 2001, Senator Karnette introduced SB 549, a bill to further amend chapter 868, to allow parents the opportunity to make their school election choice as early as pre-school.

The test claim statute provides in relevant part the following:

(a) Commencing with the 1999-2000 school year, the area of Eastview as delineated in subdivision (c) is an **optional** attendance area. Parents and legal guardians residing in the area of Eastview **may make an election** for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999-2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview may make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000-01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by May 1 of the school year in which the pupil first enters elementary school, and shall make a second election by May 1 of the school year in which the pupil enters middle school. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. [Emphasis added.]

(b) Any school facility belonging to the Los Angeles Unified School District that is located in the area delineated in subdivision (c) shall remain the property of the Los Angeles Unified School District. The status of an employee as an employee of the Los Angeles Unified School District shall not be affected by this act.

On October 9, 2001, the claimant amended its test claim to include Education Code section 48200, as amended in 1987. That section generally provides that each person between the ages of 6 and 18 years is subject to compulsory full-time education in the school district in which the residence of either the parent or legal guardian is located.

This test claim is unusual in that the uncodified test claim statute affects only the claimant and LAUSD. Thus, section 2 of Statutes 1998, chapter 868, classifies the statute as special legislation. The legislative history of the uncodified test claim statute is provided below.

Genesis of the Uncodified Test Claim Statute (Stats. 1998, ch. 868)

In 1983, the unincorporated area of Eastview was annexed to the City of Rancho Palos Verdes. However, Eastview remained in the LAUSD while the rest of Rancho Palos Verdes was in the PVPUSD, resulting in Eastview residents having a different academic and recreational schedule than the community in which they lived. Although the entire Eastview community, including PVPUSD, wanted to be part of PVPUSD, school districts and cities are independent units of government with independently determined boundaries.³⁷

At first, it was primarily the Eastview residents who wanted the Eastview area transferred to PVPUSD and its boundaries redrawn. According to Walt Yeager, then president of the Rolling Hills Riviera Homeowners Association in Eastview, the community was not dissatisfied with the

³⁷ Education Committee, Assembly Republican Bill Analysis, Senate Bill No. 1681 (1997-1998 Regular Session), as amended June 22, 1998.

quality of education in LAUSD but wanted to complete the annexation process that began in 1983.³⁸

Nonetheless, Eastview residents recognized early on that their efforts to transfer the Eastview area or, in the alternative, to obtain an open transfer agreement with LAUSD through the Education Code³⁹ was an “uphill battle.” According to then Councilman Robert Ryan, the proposed transfer of the Eastview area from LAUSD to PVPUSD would never survive the process of petition and hearings at the local and state levels, and he urged the city to hire a lobbyist and begin seeking special legislation. Jeffery Younggren, then president of PVPUSD Board of Education, stated that although it made sense for the Eastview area to be part of PVPUSD the transfer involved a predominately Anglo student group that would run up against the ethnic balance criteria of the State Board of Education.⁴⁰

Eventually, the City of Rancho Palos Verdes and PVPUSD also became actively involved in the transfer process. The transfer process failed, in part, due to the effort of LAUSD, who adamantly opposed the transfer. Thus, the entire Eastview community, including PVPUSD, pursued special legislation to ensure that the Eastview residents had the option of sending their children to PVPUSD. A general chronology of the events that led up to the test claim statute is as follows:

- 1983 through 1989 – Eastview Residents Pursue Open Enrollment

Eastview residents pursued an open enrollment agreement between LAUSD and PVPUSD. LAUSD refused to participate in such an arrangement.⁴¹

- August of 1989 – Eastview Residents Initiate Reorganization Process

RULE (Residents for Unified Local Education), formed by the residents of Eastview with the sole purpose of facilitating the Eastview transfer, started the process of a formal transfer through the Education Code.⁴²

- January 28, 1991 - Resolution by PVPUSD

On January 28, 1991, the entire Board of Education for PVPUSD signed Resolution 16 supporting the territory transfer of the Eastview area from LAUSD to PVPUSD.⁴³ According to claimant, this resolution was sent to the County Committee on School District Reorganization in an effort to support the territory transfer through the school district reorganization process. Resolution 16 states, in part:

Now, therefore, be it resolved, that the Board of Education of the Palos Verdes Peninsula Unified School District supports the transfer of the “Eastview” territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District.

- Late 1991 - School District Reorganization Process

³⁸ Faris, *Rancho P.V. to Work with Eastview Parents in School Secession Bid*, Los Angeles Times (September 7, 1989).

³⁹ Education Code sections 35510 et seq. are the code sections that provide for school district reorganization.

⁴⁰ Faris, *Rancho P.V. to Work with Eastview Parents in School Secession Bid*, Los Angeles Times (September 7, 1989).

⁴¹ Assembly Education Committee, Bill Analysis Worksheet, Assembly Bill 401 (1997-1998 Regular Session).

⁴² Education Code sections 35510 et seq. are the code sections that provide for school district reorganization.

⁴³ Palos Verdes Peninsula Unified School District, Resolution No. 16, 1990-1991, adopted on January 28, 1991.

PVPUSD was successful in its efforts to transfer the Eastview area through the school district reorganization process when the County Committee on School District Reorganization approved the transfer. However, LAUSD appealed the decision to the State Board of Education. The Board upheld the County Committee's decision and authorized an Eastview only election to determine the percentage of Eastview residents that supported the transfer. Since the election was limited to Eastview, it did not include the LAUSD area. Eastview residents approved the transfer by an 84 percent margin. However, before the vote was certified, a Los Angeles County superior court judge ordered that the county recorder not certify the vote, because it did not include the residents of LAUSD. This issue was never resolved.⁴⁴

- March 4, 1992 - Letter from PVPUSD to the State Board of Education

The March 4, 1992 letter from the Board of Education for PVPUSD, signed by its then president, Marlys J. Kinnel, to the State Board of Education, advised the State Board of Education of its continued support of the Eastview residents in their efforts to transfer the Eastview area to PVPUSD:

At our regularly scheduled Board meeting on Monday, March 2, 1992, the members of the Board of Education reaffirmed its intent to support the Residents for the Unified Local Education (RULE) in the movement of Eastview students to the Palos Verdes Unified School District from the Los Angeles Unified School District.

It is not our intent to operate Crestwood Elementary and Dodson Intermediate schools, which are located in the Eastview area and presently owned by the Los Angeles Unified School District. We are willing to meet with officials of LA Unified to negotiate a workable solution so they could continue to utilize the two school sites with no interruption to their fine programs.⁴⁵

- November of 1995 – PVPUSD Seeks Open Transfer with LAUSD

In November of 1995, PVPUSD attempted to obtain an open transfer with LAUSD allowing pupils from LAUSD to attend Rancho Palos Verdes schools. The school board for LAUSD denied the request stating that the measure might encourage segregation.⁴⁶

- February 20, 1997 – AB 401 is Introduced by Assembly Member Kuykendall

On February 20, 1997, AB 401 was introduced in the Legislature to require the transfer of the Eastview territory from LAUSD to PVPUSD.⁴⁷ The bill stated that the Eastview area would be transferred to, and become part of, PVPUSD and would include the transfer of Crestwood Street Elementary School and Dodson Middle School to PVPUSD. It also stated that students who lived in the Eastview area could remain in LAUSD upon written request of a student's parent or guardian.

- March 17, 1997 and December 8, 1997 - Resolutions by PVPUSD

⁴⁴ Education Committee, Assembly Republican Bill Analysis, Senate Bill No. 1681 (1997-1998 Regular Session), as amended June 22, 1998. PVPUSD was listed as a supporter of the bill.

⁴⁵ Letter dated March 4, 1992 from Marlys J. Kinnel to Joseph Carrabino.

⁴⁶ Metro Desk, *South Bay; Eastview Students Denied Open Transfers*, Los Angeles Times (November 16, 1995).

⁴⁷ Assembly Bill No. 401, (1997-1998 Regular Session), as introduced on February 20, 1997.

Once AB 401 was introduced in the Legislature requesting the territory transfer of PVPUSD to LAUSD, PVPUSD adopted two more resolutions supporting the transfer of the Eastview area. The first resolution, Resolution 13, was dated March 17, 1997 and was signed by Ellen Perkins, then president of the Board of Education for PVPUSD. The second resolution, Resolution 10, was dated December 8, 1997, and was signed by Joan Davidson, then president of the Board of Education for PVPUSD.⁴⁸

In the March 17, 1997 resolution, PVPUSD acknowledged that it had issued a prior resolution, Resolution 16- 1990/91, in support of the transfer. Resolution 13 states, in part:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Palos Verdes Peninsula Unified School District reaffirms Resolution 16- 1990/91, supports the transfer of the “Eastview” territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District, and supports AB 401, provided that a fiscally neutral accommodation can be reached regarding the transfer of the facilities and other wise.

In the December 8, 1997 resolution, PVPUSD again acknowledged its support of the transfer but deleted its previous reference to AB 401.

Resolution 10 states, in part:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Palos Verdes Peninsula Unified School District reaffirms Resolution 16- 1990/91, supports the transfer of the “Eastview” territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District provided that a fiscally neutral accommodation can be reached.

- January 5, 1998 – AB 401 is Amended in Assembly

This amendment made two substantive changes to the bill. The first change affirmed that any facility belonging to LAUSD that is transferred under the bill would remain the property of LAUSD and that the status of LAUSD employees would not be affected by the bill. Second, the bill added a provision allowing Eastview residents the right to vote in any election held by PVPUSD and not LAUSD.⁴⁹

- January 15, 1998 - Letters from PVPUSD Supporting AB 401

On January 15, 1998, PVPUSD sent two letters to various members of the Legislature supporting the amended version of AB 401. These letters show that the transfer could occur without a “fiscal impact on the state.”

The first letter was sent to former Assembly Member Kuykendall, and the second letter was sent to the Assembly Appropriations Committee.⁵⁰ Both letters were signed by then president of the

⁴⁸ Palos Verdes Peninsula Unified School District, Resolution No. 13, 1996 – 1997, adopted March 17, 1997 and Palos Verdes Peninsula Unified School District, Resolution No. 13, 1996 – 1997 and Resolution No. 10 1997-1998, adopted December 8, 1997.

⁴⁹ Assembly Bill No. 401, (1997-1998 Regular Session), as amended on January 5, 1998.

⁵⁰ Letter dated January 15, 1998 from Joan Davidson and Ann Chlebicki, representing PVPUSD, to Steve Kuykendall. Letter dated January 15, 1998 from Joan Davidson and Ann Chlebicki, representing PVPUSD, to the Assembly Appropriations Committee.

PVPUSD Board of Education, Joan Davidson, and by then superintendent of schools, Ann Chlebicki.

In the letter to Steven Kuykendall, PVPUSD restated its position that it fully supported the Eastview transfer and welcomed the “remainder of the Rancho Palos Verdes residents into the PVPUSD community.” Additionally, PVPUSD responded to a question posed by Kuykendall regarding adequate housing for the new students if the transfer occurred. In response, PVPUSD stated that it could “adequately house the Eastview students” in a “fiscally responsible manner” for the following reasons:

- PVPUSD had four closed intermediate sites that could house 4,800 students.
- PVPUSD had two undersized high schools that at the time housed two intermediate schools.
- PVPUSD was a fiscally sound district with approximately percent reserves and a balanced budget.
- PVPUSD had a strong community support as evidenced by the district’s Peninsula Education Foundation and PTA, which annually donated \$700,000 to the school district.

In PVPUSD’s letter to the Assembly Appropriations Committee, PVPUSD urged the Committee’s support of AB 401 and provided the Committee with a copy of its December 8, 1997 resolution. In addition, PVPUSD again reaffirmed that it endorsed the transfer and that the transfer would “have no fiscal impact on the state.”

- February 2, 1998 – AB 401 Dies in Committee

Even though the entire Eastview community, including PVPUSD, supported the transfer, there was also ample opposition to AB 401 from LAUSD and others who argued that the bill, among other things, circumvented the safeguards in current law regarding desegregation. Thus, AB 401 died in committee on February 2, 1998, pursuant to Article IV, section 10, subdivision (c), of the California Constitution.⁵¹

- February 27, 1998 – SB 1681 is Introduced by Senator Greene

On February 17, 1998, SB 1681 was introduced in the Legislature. The bill, however, did not apply to PVPUSD. Rather, it applied to the reorganization of Grant Joint Union High School.⁵²

- April 13, 1998 – SB 1681 Amended in Senate

This amendment changed the author of the bill to Senator Karnette and also added Assembly Member Kuykendall as a co-author. The amendment deleted the entire bill as introduced and was now identical to the January 5, 1998 amended version of AB 401.⁵³

- April 17, 1998 – Letter from PVPUSD in Support of SB 1681

In support of SB 1681, PVPUSD sent a letter dated April 17, 1998 to Senator Karnette that was signed by the then president of the PVPUSD Board of Education, Joan Davidson, and by the then superintendent of schools, Ann Chlebicki. This letter quoted nearly the same language as its January 15, 1998 letter to the Assembly Appropriations Committee. The only difference in the two letters is that the Karnette letter refers to SB 1681 while the Committee letter refers to AB

⁵¹ Assembly Bill History, Assembly Bill No. 401 (1997-1998 Regular Session).

⁵² Senate Bill 1681, (1997-1998 Regular Session), as introduced February 17, 1998.

⁵³ Senate Bill 1681, (1997-1998 Regular Session), as amended April 13, 1998.

401. Additionally, like the letter sent to the Assembly Appropriations Committee, PVPUSD provided Senator Karnette with a copy of its resolution dated December 8, 1997.⁵⁴

- April 20, 1998 – PVPUSD’s Lobbyist Sends Letter to Legislature re: SB 1681

On April 20, 1998, PVPUSD’s lobbyist, Peter Birdsall,⁵⁵ sent a letter to Senator Greene requesting his support of SB 1681, so that the students of Ranchos Palos Verdes could attend one school district, PVPUSD.⁵⁶

- April 29, 1998 – SB 1681 Amended in Senate

This amendment rewrote SB 1681. It made the Eastview area an optional attendance area and stated that parents and legal guardians residing in the area may make a one-time election to send their child/children to LAUSD or PVPUSD. In addition, it restated that any school facility belonging to LAUSD will remain the property of LAUSD and that the status of LAUSD employees will not be affected by the legislation. The amendment deleted the provision that allowed residents of Eastview the eligibility to vote in any election held by PVPUSD and not LAUSD.⁵⁷

- May 13, 1998 – PVPUSD’s Lobbyist Sends Letter to Legislature re: SB 1681

On May 13, 1998, Peter Birdsall sent another letter on behalf of PVPUSD in support of SB 1681. This letter was addressed to Senator Patrick Johnston, the then Chair of the Senate Appropriations Committee, and again requested that the students of Rancho Palos Verdes be allowed to attend school in PVPUSD.⁵⁸

- June 22, 1998 – SB 1681 Amended in Senate

This amendment changed the one-time election provision to when a student first enters elementary school and again when the student enters middle school. All other provisions remained the same.⁵⁹

- July 16, 1998 and July 21, 1998 – SB 1681 Amended in Assembly

Like the prior amendment, these amendments merely changed the time periods in which a parent or guardian may elect to send their children to PVPUSD.⁶⁰

- August 24, 1998 - SB 1681 Amended in Assembly

This amendment made no substantive changes. It merely added Assembly Member Washington as a co-author.⁶¹

Like AB 401, letters in opposition to SB 1681 were sent to the Legislature, claiming that the bill circumvented the safeguards in current law regarding desegregation. In addition, opponents of the bill noted that the current process is a local one and that there is no compelling reason for the Legislature to insert itself into such decisions just because a particular community is unhappy

⁵⁴ Letter dated April 17, 1998 from PVPUSD to Senator Betty Karnette.

⁵⁵ Excerpts from the 1997 – 1998 and 1999 – 2000, Directory of Lobbyists, Lobbying Firms and Lobbyist Employers.

⁵⁶ Letter dated April 20, 1998 from Peter Birdsall to Senator Greene.

⁵⁷ Senate Bill 1681, (1997-1998 Regular Session), as amended April 29, 1998.

⁵⁸ Letter dated May 13, 1998 from Peter Birdsall to Senator Patrick Johnston.

⁵⁹ Senate Bill 1681, (1997-1998 Regular Session), as amended June 22, 1998.

⁶⁰ Senate Bill 1681, (1997-1998 Regular Session), as amended July 16 & 21, 1998.

⁶¹ Senate Bill 1681, (1997-1998 Regular Session), as amended August 24, 1998.

with the results. Despite opposition to the bill, it was passed with an effective date of January 1, 1999, and an operative date of July 1, 1999.

Claimant's Position

Claimant contends that before the test claim statutes all persons subject to compulsory full-time education were required to attend the school in which the residence of the parent or legal guardian was located, subject to specific exceptions. Thus, all students in the Eastview area of Los Angeles County could only attend schools maintained by LAUSD, and PVPUSD had no duty to house and educate these students. Now, because of the test claim statutes, parents and legal guardians who reside in the Eastview area may make an election for their children to attend either PVPUSD or LAUSD when the child enters elementary and middle school. The claimant states that the test claim legislation did not transfer any property or other resources to the claimant district to house or educate the additional pupils, as originally proposed in AB 401. In this regard, the claimant states the following:

If the territory transfer (i.e., the creation of an optional attendance area) had gone through the normal territory transfer procedures [pursuant to Education Code section 35700 and following] then claimant district would not have received the over 430 pupils (a 4.9% increase in enrollment in the 99/2000 school year) with an “equitable division of property and facilities” or some other capital or resources to mitigate the fiscal impact of having to house the Eastview pupils. Had the territory transfer occurred through the normal mechanism, and not by legislative fiat, the claimant district would have had the ability to challenge the transfer as not complying with Section 35753 (facilities and resources equitable division) and mitigate the cost of the additional student population.⁶²

Accordingly, the claimant contends that “the test claim legislation is either a new program (in that claimant has the new duty to house and educate students that elect to attend its schools under the ‘optional attendance area’) or a higher level of service within an existing program (in that the claimant has significant increased costs within an existing program – educating California school children – to house and educate students that elect to attend its schools under the ‘optional attendance area’).” Claimant is seeking reimbursement for the following activities:

1. Review chaptered legislation for impact on PVPUSD and seek legal advice.
2. Send out surveys to parents residing in the Eastview area notifying them that they must make an election of either PVPUSD or LAUSD prior to March 1, 1999 for the 1999/2000 school year.
3. Based on the number of new students entering PVPUSD from the Eastview attendance area, determine whether existing district facilities will accommodate the new students and if not determine the most cost effective method of housing these students.
4. Determine whether newly enrolled students reside in the area of Eastview.
5. Hold and prepare for administrative meetings, community meetings and board meetings to discuss and plan for the impact of between 200 to 300 new students in PVPUSD.
6. Renovation costs necessary to re-open Dapplegray (K-5) for the 1999/2000 school year and Ridgecrest Intermediate School (6-9) for the 2000/2001 school year in order to

⁶² Claimant's Response to Department of Finance comments dated September 6, 2000.

accommodate the Eastview residents transferring to PVPUSD due to the test claim statute.

7. Lost rental income from the Dapplegray and Ridgecrest sites.
8. Ongoing costs to staff, supply and operate Dapplegray and Ridgecrest Schools.
9. Ongoing costs to compile and record initial elections of school attendance for each elementary and middle school student.
10. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.⁶³

On October 23, 2002, the claimant filed comments on the revised draft staff analysis. The claimant now contends that the activities of housing and educating students that elect to attend its schools is not a “new program,” but a “higher level of service.”

Claimant further contends that it did not request the legislative authority to implement the uncodified test claim statute, as alleged by the Department of Finance, for the following reasons:

1. The resolutions of support from PVPUSD Board of Education were sent to the County Committee on School District Reorganization, not the Legislature.
2. The resolutions requested something other than what was imposed upon claimant. PVPUSD wanted the Eastview students to attend their schools but only if the transfer did not “cause a fiscal drain on the district.”
3. If the alleged claimant-supported territory transfer had occurred, then claimant would be able to tax the residents of Eastview.

The claimant states that “the acts by the claimant were *in response to* the Legislature’s actions and initial drafting of the test claim legislation.” (Emphasis in original.)⁶⁴

Finally, claimant argues that although the operative date of the uncodified test claim statute was July 1, 1999, the claimant was forced to incur costs from its effective date of January 1, 1999, because the express terms of the statute required the Eastview parents to make their first election by March 1, 1999.

Senator Betty Karnette’s Position

Senator Betty Karnette filed comments to the draft staff analysis issued in June 2001. Senator Karnette states the following:

When enacting SB 1681, it was clear to the Legislature, and me, that once an election was made, PVPUSD would be required to house and educate new pupils entering the district from the Eastview area. The Legislature understood that the full force and effect of the Education Code would come to bear upon Palos Verdes for those pupils entering the district under an Eastview parent election. SB 1681 expressly allows a parent or legal guardian of pupils residing in the Eastview area to elect to place their child in PVPUSD. Thus, the legislation imposes costs upon the District to, among other things, review parent elections, receive and enroll Eastview pupils, and house the Eastview pupils.

⁶³ Amended test claim filed by claimant on May 18, 2001.

⁶⁴ Claimant’s comments dated October 23, 2002.

As such, I respectfully request that Commission staff review its current position on this issue in light of the intent behind my sponsorship of SB 1681 and the Legislature’s general understanding of the impact of SB 1681 on the PVPUSD⁶⁵

Department of Finance’s Position

Department of Finance contends that PVPUSD requested the legislative authority to implement the uncodified test claim statute based on the resolutions described above.⁶⁶ The Department of Finance claims that these resolutions provide an exception to “costs mandated by the state” under Government Code section 17556, subdivision (a).

In addition, Department of Finance responded to each of the claimed activities as follows:

Claimed Activity	Department of Finance’s Comments
Review chartered legislation for impact on PVPUSD and seek legal advice.	There is no new program or higher level of service. The Legislature passes a large volume of legislation each year that affects various entities. There is no expectation or requirement for impacted individuals, businesses or entities to hire legal counsel to interpret the laws.
Send out surveys to parents residing in the Eastview area notifying them that they must make an election of either PVPUSD or LAUSD prior to March 1, 1999 for the 1999/2000 school year.	There is no new program or higher level of service. The test claim statute does not require the district to send out surveys but rather requires the parents to elect their district of choice. Claimant’s participation in this claimed activity is voluntary.
Based on the number of new students entering PVPUSD from the Eastview attendance area, determine whether existing district facilities will accommodate these new students and if not determine the most cost effective method of housing these students.	There is no new program or higher level of service. Determining facility needs is part of a district’s normal planning process. If not, it is a one-time activity.
Determine whether newly enrolled students reside in the area of Eastview.	There is no new program or higher level of service. Title V, section 432, of the California Code of Regulations already requires that districts annually verify pupils’ residency. PVPUSD receives funding for the basic function of enrolling new pupils through appropriations associated with the attendance of new enrollments
Hold and prepare for administrative meetings, community meetings and board meetings to discuss and plan for the impact	There is no new program or higher level of service. The test claim statute does not require

⁶⁵Senator Karnette’s July 27, 2001 letter.

⁶⁶ Claimant and the Department of Finance do not specifically refer to Resolution 13 adopted on March 17, 1997. Rather, they refer to Resolution 10, which references Resolution 13.

of between 200 to 300 new students in PVPUSD.	this activity. If so, it would be a one-time activity.
Renovation costs necessary to re-open Dapplegray(K-5) for the 1999/2000 school year and Ridgecrest Intermediate School (6-9) for the 2000/2001 school year in order to accommodate the Eastview residents transferring to PVPUSD due to the test claim statute.	There is no new program or higher level of service. There is no evidence that the district could not absorb the extra students within existing facilities. Also, funding for facilities growth is based on average daily attendance growth and excess capacity. There is a specific program for this with 80% state and 20% local cost sharing. School facility siting and boundary determination is a local choice. However, if the Commission determines this to be an activity, an offset by state funding would apply and it would be limited to a one-time activity only.
Lost rental income from the Dapplegray and Ridgecrest sites.	There is no new program or higher level of service. Schools are for housing pupils and not profit.
Ongoing costs to staff, supply and operate Dapplegray and Ridgecrest Schools.	Any additional instructional and administrative workloads associated with enrollments in the Eastview area would be fully funded through claiming additional average daily attendance from the state's general apportionment program.
Ongoing costs to compile and record initial elections of school attendance for each elementary and middle school student.	The test claim statute does not require any such action on the part of claimant.

The Department of Finance did not file comments on the claimant's amended test claim.

COMMISSION FINDINGS

Generally, a test claim statute or executive order may impose a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task. In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service. The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁶⁷ To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation.

⁶⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁶⁸

Issue: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

As fully described below, the Commission finds that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution for the following reasons:

- The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities on claimant, or any other school district;
- The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district; and
- A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

Discussion of these issues is provided below.

I. The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities on claimant, or any other school district.

The uncodified test claim statute (Stats. 1998, ch. 868) grants those parents and legal guardians who reside in the Eastview area the choice of sending their children to school in either the PVPUSD or the LAUSD. The initial election by the Eastview parent or guardian must be made when the child first enters elementary school. The parent or guardian shall make a second election when the child enters middle school. The express language of the statute does not impose any requirements on school districts. The statute, in relevant part, states the following:

(a) Commencing with the 1999-2000 school year, the area of Eastview as delineated in subdivision (c) is an **optional attendance area**. **Parents and legal guardians** residing in the area of **Eastview may make an election** for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999-2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview **may** make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000-01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by May 1 of the school year in which the pupil first enters elementary school, and shall make a second election by May 1 of the school year in which the pupil enters middle school. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. [Emphasis added.]

⁶⁸ Government Code section 17514.

The claimant agrees that this statute does not expressly impose any requirements on PVPUSD. However, the claimant contends that the Legislature intended to require PVPUSD to house and educate the “new” pupils. In this respect, the claimant cites the following statement of Legislative intent:

The residents of the area of Eastview in Los Angeles County are part of the community of the City of Rancho Palos Verdes, as that area was annexed to that city in 1983. Thus, the residents of that area should be allowed to participate in the events and activities that surround that community, including those that are sponsored by the Palos Verdes Peninsula Unified School District. The school district boundaries were not changed in 1983 when the city boundaries were changed which resulted in leaving the residents of the area of Eastview within the boundaries of the Los Angeles Unified School District and thereby with a different academic and recreational schedule than the community in which they actually reside. *Therefore, it is the intent of the Legislature to grant residents of the area of Eastview the right to enroll their children in the school district of the community that they belong to and identify with.* (Emphasis in claimant’s comments dated July 30, 2001.)⁶⁹

The claimant also argues that the Commission should look beyond the plain language of the test claim statute. The claimant states that “[f]or the Commission to find that the test claim legislation does not require Palos Verdes to do anything after a parent elects to have their children attend a school of the District is to exalt form over substance.”

The claimant further argues that the statute is vague and ambiguous because the claimant, the Department of Finance, and Commission staff, disagree as to the effect of the statute’s language.⁷⁰ The claimant asserts that “a court should never exclude relevant and probative evidence from consideration,” even if the plain meaning of a statute is clear on its face. Thus, the claimant contends that the Commission should not simply look at the literal words when deciding a district’s right to reimbursement. Rather, “[a]ll evidence must be included when making mandate determinations,” including the legislative history and other “probative evidence.”⁷¹

Finally, the claimant contends that the Commission is not bound by the express language of a test claim statute because of the Commission’s authority to include “downstream activities stemming from the test claim legislation” in parameters and guidelines.⁷²

The Commission also received separate comments from the author of the uncodified test claim statute, Senator Betty Karnette. Senator Karnette contends that it was clear to her and to the Legislature that once the parent made the election to send their children to PVPUSD, the district would be required to house and educate the new pupils under the Education Code.

The Commission disagrees with these arguments. Based on the legal authorities described below, the Commission finds that the uncodified test claim statute is not subject to article XIII B, section 6 of the California Constitution.

⁶⁹ Claimant’s Comments to Draft Staff Analysis (July 30, 2001).

⁷⁰ To support these arguments, claimant relies collectively on Alaska law, unpublished California law and Lord Coke. (*U.S. v. Atlantic Richfield Co.* (9th Cir. 1980) 612 F.2d 1132, 1138, 1139; *Ford & Valahos v. ITT Commercial Finance Corp* (1993) 23 Cal.Rptr.2d 175; and *Heydon’s Case* (1584) 3 Co Rep 72.)

⁷¹ Claimant’s comments to Draft Staff Analysis (July 30, 2001).

⁷² *Id.*

Article XIII B, section 6 of the California Constitution provides that “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.” The Legislature implemented article XIII B, section 6 by enacting Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or 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.” (Emphasis added.)

The courts have explained that article XIII B, section 6 was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.⁷³ In this respect, the California Supreme Court and the Courts of Appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs “mandated” by a new program or higher level of service imposed upon them by the state.⁷⁴

Thus, even though a school district may incur increased costs as a result of a statute, as alleged by the claimant here, increased costs alone are not determinative of the issue whether the statute imposes a reimbursable state mandated program. Rather, the statute must satisfy all of the elements required by the Constitution and the Government Code. The first element is whether the statute “mandates” local agencies and school districts to do something. The Second District Court of Appeal, in *Long Beach Unified School District v. State*, has interpreted the word “mandates” as it is used in article XIII B, section 6 to mean “orders” or “commands.”⁷⁵

The question whether a test claim statute is a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is purely a question of law.⁷⁶ Thus, based on the principles outlined below, when making the determination on this issue, the Commission, like the court, is bound by the rules of statutory construction.

The Legislature created the Commission as a quasi-judicial agency to hear and decide claims that a local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution.⁷⁷ The courts have also recognized that the interpretation of the statutory language of a test claim statute is solely a judicial function.⁷⁸ If a local governmental entity or state agency believes the Commission’s decision is wrong, they may commence a proceeding in the courts under Government Code section 17559 to set aside the Commission’s decision. The court then independently reviews the Commission’s legal conclusions about the meaning and effect of constitutional and statutory provisions.⁷⁹ The final responsibility for the interpretation of a test

⁷³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

⁷⁴ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 834; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

⁷⁵ *Long Beach Unified School District v. State* (1990) 225 Cal.App.3d 155, 174.

⁷⁶ *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802, 1810.

⁷⁷ Government Code sections 17500 and 17551, subdivision (a).

⁷⁸ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 543, fn. 14.

⁷⁹ *City of San Jose, supra*, 45 Cal.App.4th at 1810.

claim statute rests with the court.⁸⁰ Accordingly, under these principles, the Commission is bound by the rules of statutory construction.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted]⁸¹

In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.⁸² This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:

A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power “are to be construed strictly, and are not to be extended to include matters not covered by the language used.” [Citations omitted.][“Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation.”] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies.”⁸³

In the present case, the claimant reads requirements into the uncodified statute (Stats. 1998, ch. 868), which, by the plain language of the statute, are not there. As indicated above, this violates the rules of statutory construction.

Furthermore, when the statutory language is plain, the courts have consistently held that a statement of a legislator that only reveals the author’s personal opinion and understanding of a statute is not a proper subject for consideration when determining legislative intent.⁸⁴ Thus, with all due respect, Senator Karnette’s comments fall outside of the Commission’s determination in this case. Rather, the Commission is required to follow the rules of statutory construction, as described above.

⁸⁰ *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8.

⁸¹ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

⁸² *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁸³ *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816-1817.

⁸⁴ *California Teachers Association v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699-700.

Moreover, since 1973, article IX, section 14 of the California Constitution has provided that “[t]he Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.” The Legislature implemented article IX, section 14 in 1976 by enacting Education Code section 35160, which also provides that “[t]he governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.” Legislative intent of Education Code section 35160 was clarified by the Legislature in 1987, when the Legislature enacted Education Code section 35160.1. Section 35160.1 clarifies that school districts are given broad authority to carry on activities necessary or desirable in meeting their needs. Section 35160.1 states, in relevant part, the following:

In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

Under these constitutional and statutory authorities, unless the Legislature expressly imposes statutory requirements on local school districts, school districts have substantial discretionary control.⁸⁵

Thus, in the present case, while the claimant believes it is necessary to send out surveys to parents, determine if the existing facilities will accommodate new students, determine whether the newly enrolled students reside in Eastview, renovate and reopen two schools, and generally plan for the effects of the test claim statute, the Legislature has not forced or mandated the claimant to do so. Rather, the Legislature has left the decision-making up to the claimant.

Finally, the claimant’s argument that the Commission has the authority at the test claim phase to determine that implied “downstream activities stemming from the test claim legislation” are state mandated is misplaced. To support this argument, the claimant relies on the Commission’s authority to adopt parameters and guidelines. Under the Commission’s regulations, the Commission has the authority to include in the parameters and guidelines a description of the most reasonable methods of complying with the mandate.⁸⁶

While it is true that the Commission may exercise discretion when adopting parameters and guidelines, the determination here, of whether a statute imposes a reimbursable state mandated program under the Constitution, is purely a question of law. As indicated in the analysis above, the Commission’s power to make that finding is limited by the rules of statutory interpretation. It is not until the Commission determines that there is a reimbursable state mandated program can the Commission proceed and adopt the parameters and guidelines.⁸⁷

⁸⁵ *Dawson v. East Side Union High School District* (1994) 28 Cal.App.4th 998, 1017-1018.

⁸⁶ California Code of Regulations, title 2, section 1183.1.

⁸⁷ Government Code section 17555 states the Commission shall determine if there are any costs “mandated” by the state, as defined in section 17514, at the test claim hearing. Under Government Code section 17557, if the

This is further explained by the Commission's regulations. Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the activities found to be *required* under the statutes or executive orders that contain the mandate or increased level of service. At that point, the Commission can use its discretion and *may* also include in the parameters and guidelines a description of the most reasonable methods of complying with the mandate.⁸⁸ Here, however, the uncodified test claim statute does not contain a mandate on any local agency or school district.

Accordingly, the Commission finds that the uncodified test claim statute (Stats. 1998, ch. 868) is not subject to article XIII B, section 6 of the California Constitution because the state has not imposed any mandated activities on the claimant, or any other school district.

II. The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district.

On October 9, 2001, the claimant amended the test claim to include Education Code section 48200, as amended by Statutes 1987, chapter 1452. As amended, Education Code section 48200 states the following:

Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.

Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.

The claimant alleges that Education Code section 48200, coupled with the uncodified test claim statute, requires claimant to house and educate all pupils that establish residency within the district once the district election is made by the parent or legal guardian. The claimant also contends that the duty to house and educate these students is new. The claimant states the following:

...Education Code section 48200 requires that all children between the ages of 6 and 18 years receive a compulsory full-time education in the school district their

Commission determines there are costs mandated by the state, it shall determine the amount to be subvned to local agencies and school districts.

⁸⁸ The California Supreme Court has held that "a regulation adopted by a state administrative agency pursuant to a delegation of rulemaking authority by the Legislature has the force and effect of a statute." *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401.

parent or legal guardian establishes residency. The test claim legislation creates a new way for Eastview residents to establish residency within Palos Verdes. Under the test claim legislation, parents with pupils residing in the Eastview area can establish residency in one of two districts – Palos Verdes or LAUSD. To establish residency, the parent needs to make a district election by the timeframes outlined [in Statutes 1998, chapter 868]. If a parent residing in Eastview wants to send their child to Palos Verdes, the child can attend Palos Verdes district once a district election is made.

Under section 48200, once a parent residing in the Eastview area elects to send their pupil to Palos Verdes, the District must house and educate the pupil based on the requirements outlined in the Education Code. Palos Verdes has no choice but to house and educate this pupil. Therefore, section 48200, coupled with Statutes of 1998, Chapter 868, requires Palos Verdes to house and educate *all pupils that establish residency within the district by making a district election*. According to the test claim legislation, parents can establish residency within Palos Verdes by exercising their right to make a district election to send their children to Palos Verdes rather than LAUSD. (Emphasis in original.)⁸⁹

On October 23, 2002, the claimant filed comments contending that the activities of housing and educating students that elect to attend its schools constitutes a “higher level of service,” rather than a “new program.”

For the reasons described below, the Commission disagrees that the requirement to house and educate pupils who establish residency within its district pursuant to Education Code section 48200 and the uncodified test claim statute constitutes a reimbursable state mandated program. The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district.

The courts have consistently held that local agencies and school districts are not entitled to reimbursement for all increased costs mandated by the state, but only those costs resulting from a new program or higher level of service.⁹⁰ 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.⁹¹

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.⁹² The court determined that the executive orders did not constitute a “new program” since schools had an existing constitutional obligation to alleviate racial segregation.⁹³ However, the court found that the executive orders constituted a “higher level of service” because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

⁸⁹ Claimant’s Amended Test Claim (October 9, 2001).

⁹⁰ *County of Los Angeles, supra*, 43 Cal.3d at 54-56; *Lucia Mar, supra*, 44 Cal.3d at 835.

⁹¹ *County of Los Angeles, supra*, 43 Cal.3d at 56.

⁹² *Long Beach Unified School District, supra*, 225 Cal.App.4th 155.

⁹³ *Id.* at page 173.

The phrase “higher level of service” is not defined in article XIII B or in the ballot materials. [Citation omitted.] 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. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the “reasonably feasible” description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are *required acts*. *These requirements constitute a higher level of service*. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: “Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable.”⁹⁴

In the present case the uncodified test claim statute authorizes parents and legal guardians to elect to send their children to the claimant’s district instead of LAUSD. This results in increased costs to the claimant for having to house and educate new and additional students. However, that increase in population does not constitute a new program or higher level of service because the state is not imposing any new required acts or activities on the claimant beyond those already required by law.

The requirement to house and educate pupils who establish residency in a district was imposed on school districts long before the enactment of either the 1998 uncodified test claim statute or the 1987 amendment to Education Code section 48200.

Education Code section 48200 derives from section 12101 of the 1959 Education Code. Like section 48200, section 12101 required school districts to house and educate pupils that live within the district’s boundaries. Former Education Code section 12101 stated in relevant part the following:

Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 7 (commencing with Section 12551) shall attend public full-time day school or continuation school or classes for the full time for which the public schools of the city, city and county, or school district in which the pupil lives are in session. . . .

Education Code section 12101 was renumbered as section 48200 in 1976. Education Code section 48200 was amended in 1987, as pled by the claimant, and changed the requirement for compulsory full-time education for students between 6 and 16 years of age, to students between 6 and 18 years of age. As a result, districts are now required to house and educate students between the ages of 6 and 18 years. The claimant, however, has not made a claim that this change in the age requirement constitutes a reimbursable state mandated program. Thus, that issue is not before the Commission.

⁹⁴ *Ibid.*, emphasis added.

Rather, the claimant contends that Education Code section 48200, as amended in 1987, coupled with the uncodified test claim statute, requires claimant to house and educate additional students as a result of the parents' ability to choose to send their children to the claimant's district. As indicated above, however, the requirement to perform the activities of housing and educating students is not new.

Thus, the Commission finds that the test claim legislation has not imposed any new activities, and has not mandated a higher level of service, on claimant to house and educate students that elect to attend its schools under the test claim legislation.

The court, however, has allowed reimbursement under article XIII B, section 6, in situations where the state has shifted financial responsibility to local entities for programs funded and administered entirely by the state before the advent of article XIII B. In 1988, the California Supreme Court decided the *Lucia Mar* case. *Lucia Mar* involved Education Code section 59300, which required school districts to contribute part of the cost of educating district students at state schools for the severely handicapped. The Supreme Court determined that even though school districts were not required to perform any new activities as a result of the test claim statute, the test claim statute still imposed a new program on school districts because it shifted the financial responsibility from the state to the school districts. The court stated that "whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article."⁹⁵

As indicated by the Supreme Court in *Lucia Mar*, two factors must be present before a new program exists under the "financial shift" theory. These factors are as follows: (1) before the measure, the state had borne the entire cost of the governmental activity, and (2) before and after the measure, the state retained administrative control over the governmental activity.⁹⁶

The Courts of Appeal in the First, Second, Third, and Sixth Districts agree that reimbursement under the *Lucia Mar* case hinges on the two factors discussed above and have found that the *Lucia Mar* factors were not present in the cases they reviewed. In *County of Sonoma v. Commission on State Mandates* and *City of El Monte v. Commission on State Mandates*, the First and Third District Courts of Appeal determined that the *Lucia Mar* case was not applicable to the ERAF legislation because the state has never entirely funded public education.⁹⁷ In *County of Los Angeles v. Commission on State Mandates*, the Second District Court of Appeal held that the *Lucia Mar* decision was not applicable to the state's elimination of a state appropriation to counties to pay for investigators and experts for indigent defendants in capital cases since the legal and financial responsibility for implementing the program historically belonged to counties, not the state.⁹⁸ The court in *City of San Jose v. State of California*, a case that is discussed below, also found that the *Lucia Mar* decision was not applicable based on the facts of that case.⁹⁹

⁹⁵ *Lucia Mar*, *supra*, 44 Cal.3d at 836.

⁹⁶ *Ibid.*

⁹⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1285-1289; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 277-278. In *City of El Monte*, the court analyzed *Lucia Mar* in terms of a "new program or increased level of service." (*Ibid.*)

⁹⁸ *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at 817.

⁹⁹ *City of San Jose v. State of California*, *supra*, 54 Cal.App.4th at 1815.

Similarly, neither of the factors the Supreme Court relied upon in *Lucia Mar* is applicable here. There has not been a shift of administrative and financial responsibility from the state to the PVPUSD as a result of the test claim legislation. As described above, the long-standing task of educating students remains with the school districts and has not shifted to PVPUSD by the test claim legislation. Additionally, public education has never been funded entirely by the state, but has historically been dependent on local tax revenues.¹⁰⁰ Thus, the Commission finds that claimant is not entitled to reimbursement pursuant to the court's ruling in *Lucia Mar*.

Rather, contrary to the claimant's assertions¹⁰¹, the facts of this case are similar to those in *City of San Jose*. In *City of San Jose*, the test claim statute authorized counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by the cities and other local entities. Like the claimant here, the cities in the *City of San Jose* case made the argument that the state shifted to local entities the financial responsibility for providing public services and, thus, urged the court to require reimbursement pursuant to the *Lucia Mar* case.¹⁰² The court rejected the cities' argument and held that the shift in funding was not from the state to the local entity, but from county to city. The court held that nothing in article XIII B, section 6 prohibits the state from shifting costs between two local governmental entities.¹⁰³ The court based its conclusion on the fact that local agencies, rather than the state, were traditionally required to bear the expenses to capture, detain, and prosecute persons charged with a crime.¹⁰⁴

The rule of the *City of San Jose* case applies in this case. Here, the parent, and not the state, triggers the applicability of the uncodified test claim legislation. Once the parent exercises the option under the test claim legislation, a shift of population of students occurs from LAUSD to the claimant district. As analyzed above, local school districts, and not the state, have traditionally been responsible for housing and educating students. Citing Education Code section 48200, the California Supreme Court has found that the primary duty of local school officials and teachers is the education and training of young people.¹⁰⁵ Thus, in the present case, the shift in costs from one district to another as a result of a parent election does not require reimbursement under article XIII B, section 6.

Accordingly, the Commission finds that the uncodified test claim statute (Stats. 1998, ch. 868) and Education Code section 48200, as amended in 1987, do not impose a new program or higher level of service to house and educate Eastview students, and do not result in a shift of financial responsibility for housing and educating these students from the state to the claimant district. Therefore, the test claim legislation is not subject to article XIII B, section 6, of the California Constitution.

III. A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

¹⁰⁰ *County of Sonoma v. State of California*, *supra*, 84 Cal.App.4th at 1285-1289; *City of El Monte v. Commission on State Mandates*, *supra*, 83 Cal.App.4th at 277-280.

¹⁰¹ The claimant contends that *City of San Jose* is not applicable because, in *City of San Jose*, the counties imposed the costs on the cities, and not the state. The claimant argues that here, on the other hand, the state imposed the costs on the claimant. (Claimant's Comments on Revised Draft Staff Analysis, dated October 23, 2002.)

¹⁰² *City of San Jose*, *supra*, 45 Cal.App.4th at 1812.

¹⁰³ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1815; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817.

¹⁰⁴ *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1812-1815;

¹⁰⁵ *In re Randy G.* (2001) 26 Cal.4th 556, 562, where the court stated the following: "To begin, minor students are required to be in school. (Ed. Code, § 48200.) While they are there, the 'primary duty of school officials and teachers . . . is the education and training of young people.'"

As a result of the uncodified test claim statute, the claimant opened two closed school facilities, Dapplegray and Ridgecrest, that were generating over \$350,000 a year in rental income, to accommodate the increased enrollment. The claimant is requesting reimbursement under article XIII B, section 6 for this lost income, contending that it constitutes a “cost” under the Constitution and under generally accepted accounting principles.¹⁰⁶

The Commission disagrees with the claimant’s argument since it contradicts the court’s holding in the *County of Sonoma* case. In *County of Sonoma*, the court concluded that lost revenue is not reimbursable under article XIII B, section 6 of the California Constitution.¹⁰⁷

The *County of Sonoma* case dealt with the ERAF legislation, which reduced property taxes previously allocated to local governments and placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) for distribution to schools. The counties contended that the reduced allocation of tax revenues was a cost under article XIII B, section 6. The court disagreed. After analyzing Supreme Court cases on mandates, reviewing Government Code section 17500 et seq., and other Constitutional provisions differentiating “costs” from “lost revenue,” the court came to the following conclusions:

- “[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6 (*County of Fresno v. State of California* [citation omitted]) [stating that section 6 was ‘designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.’]”¹⁰⁸
- “No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes.”¹⁰⁹
- “The obvious view of the Legislature is that reimbursement is intended to replace actual costs incurred, not as compensation for revenue that was never received.”¹¹⁰
- “The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word ‘cost’ in section 6 the voters meant the common meaning of cost as an expenditure or expense actually incurred.”¹¹¹

And finally, the court held that “we cannot extend the provisions of section 6 to include concepts such as lost revenue.”¹¹²

Accordingly, the Commission finds that the claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

CONCLUSION

The Commission concludes that the test claim legislation (Stats. 1998, ch. 868, and Ed. Code, § 48200 as amended by Stats. 1987, ch. 1452) is not subject to article XIII B, section 6 of the California Constitution for the following reasons:

- The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities claimant, or any other school district;

¹⁰⁶ Claimant’s comments dated September 6, 2000.

¹⁰⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1285.

¹⁰⁸ *Id.* at 1283.

¹⁰⁹ *Id.* at 1284.

¹¹⁰ *Ibid.*

¹¹¹ *Id.* at 1285.

¹¹² *Ibid.*

- The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district; and
- A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

Accordingly, the test claim is denied.