

## Conclusion

For the reasons discussed in the analysis, staff finds that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for all of the following activities:

- Effective January 1, 1996 (the § 48911 suspension procedures<sup>1</sup> are part of these activities, as well as the § 48918 expulsion hearing procedures):
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972).
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
  - For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil’s expulsion, and for the governing board to order a pupil’s expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972).
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil’s expulsion, and for the governing board to order the pupil’s expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).

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<sup>1</sup> As discussed on pages 28-29, the suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal’s designee or the superintendent of schools between the pupil (defined to include “a pupil’s parent or guardian or legal counsel” § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal’s designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil’s parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

- Also effective January 1, 1996:
  - For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.
  - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).
  - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974).
  - For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.<sup>2</sup> This is a one-time activity (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10).

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<sup>2</sup> Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision

- Effective July 1, 1996:
  - To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
  - To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
  - For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, chs. 972 & 974.)
  - To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, chs. 972 & 974):
    - Review the pupil for readmission (§ 48916, subd. (a)).
    - Order the expelled pupil’s readmission or make a finding to deny readmission if “the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district.” (§ 48916, subd. (c).)
    - If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school (§ 48916, subd. (d)).
    - If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil’s parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e)).
  - If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan, effective July 1, 1996 (Stats. 1995, ch. 974).
  - Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district’s governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the

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thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- school district (§ 48915.2, subd. (b), Stats. 1995, ch. 974). This activity only is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
- Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
  - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
  - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
  - Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052.)
  - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
- From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):
    - Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
    - Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
    - Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
  - Effective September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended. (2) The type of referral made after the expulsion. (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

- Effective September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
  - (A) The number of pupils recommended for expulsion. (B) The grounds for each recommended expulsion. (C) Whether the pupil was subsequently expelled. (D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective January 1, 1997:
  - For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined<sup>3</sup> (§ 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 & 1052). The section 48911 suspension procedures listed on pages 28-29 are part of this activity, as well as the expulsion hearing procedures in section 48918.
  - For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
  - For the one-time activity of amending the school district’s rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
    - A complaining witness shall be given five days’ notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 916.)
    - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony (*Ibid.*).
    - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code<sup>4</sup> at the hearing (§ 48918, subd. (b), Stats. 1996, ch. 915).

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<sup>3</sup> A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code (§ 48900, subd. (n)).

<sup>4</sup> Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness’ testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by

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- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential (*Ibid.*).
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. ~~If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing (*Ibid.*).~~
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining

the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- ~~For the governing board to give the complaining witness five days notice before testifying, and admonishing the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915).~~
- ~~For the governing board to allow the complaining witness to have closed session testimony when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)~~
- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
- The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
- For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good

cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)

- For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
  - At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
  - Give the complaining witness five days' notice prior to being called to testify (§ 48918, subd. (b), Stats. 1996, ch. 915).
  - Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential (§ 48918, subd. (b), Stats. 1996, ch. 915).
  - If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television (§§ 48918, subd. (c), Stats. 1996, ch. 915).
  - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance

during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti<sup>5</sup> has been established, for the evidence to be admitted subject to the governing board or defendant’s motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony.” (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- Effective January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)) (§ 48900.8, Stats. 1997, ch. 637).
- Effective January 1, 1999, for the school district to amend its expulsion rules and regulations as follows (§ 48918, subd. (a), Stats. 1998, ch. 498). This is a one-time activity.
  - If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.

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<sup>5</sup> The corpus delicti is the basic element or fact of a crime.

- Effective January 1, 2000:
  - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney adviser (§ 48918, subd. (b)(5), Stats. 1999, ch. 332). These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.
- Effective January 1, 2001:
  - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district’s decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings (§ 48923, subdivision (b), Stats. 2000, ch. 147). This activity is reimbursable for any expulsion.
  - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil’s parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil’s expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor (§ 48918, subd. (k)). (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).
- Effective January 1, 2002, for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116). The section 48911 suspension procedures listed on pages 28-29, as well as the section 48918 expulsion hearing procedures, are part of this activity.

Staff also finds that the remaining test claim statutes over which the Commission has jurisdiction do not constitute reimbursable state-mandates within the meaning of article XIII B, section 6.

### **Recommendation**

Therefore, staff recommends that the Commission adopt this analysis and partially approve the test claim for the activities listed above.

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## CONCLUSION

For the reasons discussed above, staff finds that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for all of the following activities:

- Effective January 1, 1996 (the § 48911 suspension procedures<sup>279</sup> are part of these activities, as well as the § 48918 expulsion hearing procedures):
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972).
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
  - For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil's expulsion, and for the governing board to order a pupil's expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972).
  - For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil's expulsion, and for the governing board to order the pupil's expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).

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<sup>279</sup> As discussed on pages 28-29, the suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil (defined to include "a pupil's parent or guardian or legal counsel" § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

- Also effective January 1, 1996:
  - For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.
  - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).
  - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974).
  - For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.<sup>280</sup> This is a one-time activity (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10).

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<sup>280</sup> Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision

- Effective July 1, 1996:
  - To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
  - To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
  - For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, chs. 972 & 974.)
  - To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, chs. 972 & 974):
    - Review the pupil for readmission (§ 48916, subd. (a)).
    - Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
    - If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school (§ 48916, subd. (d)).
    - If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e)).
  - If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan, effective July 1, 1996 (Stats. 1995, ch. 974).
  - Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the

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thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- school district (§ 48915.2, subd. (b), Stats. 1995, ch. 974). This activity only is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
- Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
  - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
  - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
  - Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052.)
  - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
- From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):
    - Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
    - Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
    - Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
  - Effective September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended. (2) The type of referral made after the expulsion. (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

- Effective September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
  - (A) The number of pupils recommended for expulsion. (B) The grounds for each recommended expulsion. (C) Whether the pupil was subsequently expelled. (D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective January 1, 1997:
  - For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined<sup>281</sup> (§ 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 & 1052). The section 48911 suspension procedures listed on pages 28-29 are part of this activity, as well as the expulsion hearing procedures in section 48918.
  - For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
  - For the one-time activity of amending the school district's rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
    - A complaining witness shall be given five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 916.)
    - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony (*Ibid.*).
    - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code<sup>282</sup> at the hearing (§ 48918, subd. (b), Stats. 1996, ch. 915).

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<sup>281</sup> A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code (§ 48900, subd. (n)).

<sup>282</sup> Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by

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- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential (*Ibid.*).
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. ~~If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing (*Ibid.*).~~
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining

the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- ~~For the governing board to give the complaining witness five days notice before testifying, and admonishing the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915).~~
- ~~For the governing board to allow the complaining witness to have closed session testimony when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)~~
- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
- The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
- For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good

cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)

- For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
  - At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
  - Give the complaining witness five days' notice prior to being called to testify (§ 48918, subd. (b), Stats. 1996, ch. 915).
  - Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential (§ 48918, subd. (b), Stats. 1996, ch. 915).
  - If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television (§§ 48918, subd. (c), Stats. 1996, ch. 915).
  - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance

during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti<sup>283</sup> has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony.” (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- Effective January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)) (§ 48900.8, Stats. 1997, ch. 637).
- Effective January 1, 1999, for the school district to amend its expulsion rules and regulations as follows (§ 48918, subd. (a), Stats. 1998, ch. 498). This is a one-time activity.
  - If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.

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<sup>283</sup> The corpus delicti is the basic element or fact of a crime.

- Effective January 1, 2000:
  - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney adviser (§ 48918, subd. (b)(5), Stats. 1999, ch. 332). These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.
- Effective January 1, 2001:
  - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings (§ 48923, subdivision (b), Stats. 2000, ch. 147). This activity is reimbursable for any expulsion.
  - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor (§ 48918, subd. (k)). (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).
- Effective January 1, 2002, for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116). The section 48911 suspension procedures listed on pages 28-29, as well as the section 48918 expulsion hearing procedures, are part of this activity.

Staff also finds that the remaining test claim statutes over which the Commission has jurisdiction do not constitute reimbursable state-mandates within the meaning of article XIII B, section 6.

### **Recommendation**

Therefore, staff recommends that the Commission adopt this analysis and partially approve the test claim for the activities specified above.