

# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 447  
Sacramento, California  
August 1, 2008

Present: Member Michael C. Genest, Chairperson  
Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro (Arrived during Closed Executive Session)  
Representative of the State Controller  
Member Cynthia Bryant  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Sarah Olsen  
Public Member  
Member Paul Glaab  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Genest called the meeting to order at 9:38 a.m. Member Chivaro was absent.

### APPROVAL OF MINUTES

Item 1 June 26, 2008

The June 26, 2008 hearing minutes were adopted by a vote of 6-0.

### PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

#### A. PARAMETERS AND GUIDELINES

- Item 8 *California Fire Incident Reporting System (CFIRS)* (CSM4419/00-TC-02)  
July 1990 California Fire Incident Reporting System Manual; Health and  
Safety Code Section 13110.5 as amended by Statutes 1987, Chapter 345  
San Ramon Valley Fire Protection District and City of Newport Beach,  
Claimants
- Item 9 *In-Home Supportive Services II* (00-TC-23)  
Statutes 2000; Chapter 445, Statutes 1999, Chapter 90; Statutes 1991,  
Chapter 91  
County of San Bernardino, Claimant

Member Olsen made a motion to adopt items 6 and 7 on the consent calendar. With a second by

Member Bryant, the motion carried by a vote of 6-0.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)**

Item 2      Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

**A. TEST CLAIMS**

Item 3      *Pupil Expulsions II*, (96-385-03, 03A, 03B 98-TC-22 and 01-TC-18)  
Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48916.2, 48917 (& former 48907.5), 48918 Statutes 1975, Chapter 1253 (AB 1770), Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191), Statutes 1979, Chapter 1014 (AB 202), Statutes 1982, Chapter 318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 23 (AB 1619), Statutes 1984, Chapter 536 (AB 3151), Statutes 1984, Chapter 622 (SB 1685), Statutes 1985, Chapter 318 (AB 343), Statutes 1986, Chapter 1136 (AB 4085), Statutes 1987, Chapter 383 (AB 56), Statutes 1987, Chapter 942 (AB 2590), Statutes 1989, Chapter 1306 (SB 142), Statutes 1990, Chapter 1231 (AB 3794), Statutes 1990, Chapter 1234 (AB 3880), Statutes 1992, Chapter 152 (AB 3362), Statutes 1992, Chapter 909 (SB 1930), Statutes 1993, Chapter 1255 (AB 342), Statutes 1993, Chapter 1256 (SB 1198), Statutes 1993, Chapter 1257 (SB 1130), Statutes 1994, Chapter 146 (AB 3601), Statutes 1994, Chapter 1017 (AB 2752), Statutes 1994, Chapter 1198 (AB 2543), Statutes 1995, Chapter 95 (AB 620), Statutes 1995, Chapter 972 (SB 966), Statutes 1996, Chapter 15 (AB 1489)  
First Amendment to add Education Code Sections 48916.1 & 48918.5, and to delete 48916.2 & 48915.7, and to add Statutes 1995, Chapter 974 (AB 922), Statutes 1996, Chapter 915 (AB 692), Statutes 1996, Chapter 937 (AB 2834), Statutes 1996, Chapter 1052 (AB 2720)  
Second Amendment to add Education Code Section 48900.7, and to add Statutes 1997, Chapter 405 (AB 307), and Statutes 1997, Chapter 637 (AB 412)  
Third Amendment to add Education Code Sections 48918 (as amended), 48919, 48919.5, and to add Statutes 1997, Chapter 417 (AB 259), Statutes 1998, Chapter 489 (SB 1427)  
Fourth Amendment to add Education Code Sections 48900, 48900.3, 48915, 48916.1, 48918, 48919, 48923, Statutes 1998, Chapter 489 (SB 1427); Statutes 1999, Chapter 332 (AB 588), Statutes 1999, Chapter 646 (AB 1600), Statutes 2000, Chapter 147 (AB 1721), Statutes 2001, Chapter 116 (SB 166), Statutes 2001, Chapter 484 (AB 653);  
*Pupil Suspensions II*, (96-358-04A, 04B, 98-TC-23 and 01-TC-17)

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5, 48911 Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1980, Chapter 73 (SB 1247), Statutes 1982, Chapter 318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1983, Chapter 1302 (AB 70), Statutes 1984, Chapter 536 (AB 3151), Statutes 1985, Chapter 318 (AB 343), Statutes 1985, Chapter 856 (AB 1758), Statutes 1985, Chapter 907 (SB 1260), Statutes 1986, Chapter 1136 (AB 4085), Statutes 1987, Chapter 134 (AB 439), Statutes 1987, Chapter 383 (AB 56), Statutes 1989, Chapter 1306 (SB 142), Statutes 1990, Chapter 1234 (AB 3880), Statutes 1992, Chapter 909 (SB 1930), Statutes 1992, Chapter 1360 (AB 2773), Statutes 1994, Chapter 146 (AB 3601), Statutes 1994, Chapter 1017 (AB 2752), Statutes 1994, Chapter 1198 (AB 2543), Statutes 1995, Chapter 972 (SB 966)  
First Amendment to add Statutes 1996, Chapter 915 (AB 692) amending Education Code Section 48900  
Second Amendment to add Statutes 1997, Chapters 405 (AB 307) and 637 (AB 412), adding or amending Education Code Sections 48900.7 and 48900  
Third Amendment to add Statutes 1997, Chapter 637 (AB 412) adding Education Code Section 48900.8  
Fourth Amendment to add Statutes 1999, Chapter 646 (AB 1600) and Statutes 2001, Chapter 484 (AB 653), amending Education Code Sections 48900 and 48900.3  
*Educational Services Plan for Expelled Pupils, (97-TC-09)*  
Education Code Sections 48915, 48916, 48916.1, 48926 Statutes 1995, Chapter 972 (SB 966), Statutes 1995, Chapter 974 (AB 922), Statutes 1996, Chapter 937 (AB 2834), Statutes 1996, Chapter 1052 (AB 2720)  
First Amendment filed on December 3, 2001 to substitute Claimant San Juan Unified School District, Claimant

Ms. Higashi clarified that this item is the consolidation of nine test claims.

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller explained that these test claims and amendments were filed between 1996 and 2002 on Education Code statutes that involve expelling and suspending pupils for various offenses and related activities. Staff found that based on *San Diego Unified School District* and other cases, that portions of these test claims and amendments are reimbursable state mandates.

Mr. Feller stated that the claimant and the San Diego Unified School District have two issues in dispute. First, that expulsion for possession of an explosive is a federal mandate. Second, issuing subpoenas for expulsion hearings is not a reimbursable state mandate.

Parties were represented as follows: Keith Petersen representing the test claimant, Art Palkowitz for the San Diego Unified School District, Nick Schweizer and Susan Geanacou for the Department of Finance.

Mr. Petersen explained that these nine test claims were filed subsequent to the original four test claims filed in 1994 for *Pupil Expulsions, Suspensions and Appeals*, and resulted in Supreme Court findings. Mr. Petersen stated that, although he had a dispute on two legal issues, staff's

findings are consistent with the Supreme Court rulings. Therefore, he stands on the written submissions.

Mr. Palkowitz concurred with Mr. Petersen that the conclusions by staff are consistent with the court ruling. He also requested an opportunity to respond to any objections that Finance has to the staff analysis.

Mr. Schweizer stated that Finance does not have significant objections to the staff analysis. He continued that there are minor issues that may not meet the cost threshold for reimbursement, but Finance is in agreement with the staff analysis.

Member Worthley commented that he struggled with the staff findings on the subpoena language. As an attorney, without issuing a subpoena for a witness to testify, he would be subject to malpractice. He disagrees with the justices who decided the case.

Member Worthley moved to adopt the staff recommendations.

Susan Geanacou clarified that Finance agrees that the staff analysis is correct.

With a second by Member Glaab, the staff recommendation to approve the test claim was adopted by a vote of 6-0.

- Item 4 Proposed Statement of Decision: *Pupil Expulsions II*, (96-385-03, 03A, 03B 98-TC-22 and 01-TC-18); *Pupil Suspensions II*, (96-358-04A, 04B, 98-TC-23 and 01-TC-17); *Educational Services Plan for Expelled Pupils*, (97-TC-09)

[See description of statutes and executive orders in Item 3 above.]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Pupil Expulsions II*, *Pupil Suspensions II* and *Educational Services Plan for Expelled Pupils* test claims. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes.

Member Bryant made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the Statement of Decision was adopted by a vote of 7-0.

Member Bryant complimented everyone involved acknowledging the massive amount of hard work that went into such a complete record enabling the expedient vote.

Ms. Higashi added that staff will be preparing and issuing the proposed Statement of Decision into final form along with the proposed parameters and guidelines and the proposed amendments to the parameters and guidelines to help expedite the proceedings.

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)**

**PARAMETERS AND GUIDELINES**

- Item 7      *Pupil Discipline Records, (00-TC-10) and Notification to Teachers: Pupils Subject to Suspension or Expulsions II, (00-TC-11)*  
Education Code Sections 48201 and 49079  
Statutes 2000, Chapter 345 (AB 29)  
Carpinteria Unified School District, Sweetwater Union High School District, and Grant Joint Union High School District, Claimants

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton explained that these proposed parameters and guidelines address two Education Code statutes dealing with pupil discipline records and notification to teachers about students who have been suspended or expelled.

The only issue in dispute is Education Code section 48201 that requires school districts, when receiving a pupil transferring from another district, to request the pupil's records from the transferring school district or law enforcement agency regarding acts committed by the student that resulted in suspension or expulsion from school. The Statement of Decision finds that the activity of requesting the records is reimbursable. The activity of the transferring school district providing those records, however, is not mandated by the statute but would be addressed by the Commission in the parameters and guidelines phase.

Ms. Shelton stated that Finance opposes reimbursement for the activity of the transferring school district to provide the suspension and expulsion records upon request of the receiving school district.

Ms. Shelton reported that staff recommends that the Commission approve reimbursement to provide suspension records upon request. Ms. Shelton noted that the Commission does have the authority under its regulations to approve reimbursement for activities found to constitute the most reasonable method of complying with the mandate which is defined as those methods not specified in statute that are necessary to carry out the mandated program.

Staff also recommends that the Commission deny the claimant's request for reimbursement for providing expulsion records, however, since that activity is required by other statutes in the Education Code. Therefore staff recommends that the Commission adopt the staff analysis and the parameters and guidelines as presented to the Commission.

Parties were represented as follows: Keith Petersen for the test claimants, Donna Ferebee and Nick Schweizer for the Department of Finance.

Mr. Petersen stated that this item was on consent until a few days ago and he agrees with it moving forward on consent.

Mr. Schweizer explained that Finance's reading of the legislation is that it clearly required schools to request the records, but it did not require the school receiving the request to acquire the records. Therefore, Finance does not support reimbursing local agencies for activities that are not clearly required by state law.

Member Worthley responded that there is a need for common sense to fit in and moved adoption of the staff recommendation.

Ms. Ferebee remarked that there are at least two other examples in law where Legislature saw fit to expressly require the provision of the records. She continued that it would not be appropriate to add reimbursement at the parameters and guidelines phase because only the mandated activity of requesting the records should be reimbursable.

Member Olsen remarked that a common sense test should prevail to avoid getting caught in legalese and not thinking about how things work in the real world. Member Olsen then seconded the motion to adopt the staff recommendation.

Chairperson Genest inquired if there was any legislative history that would suggest why the Legislature did not require the district to provide the record. Ms. Ferebee reported that none was found. Ms. Shelton noted that while the test claim statute does not say "you shall provide" the records, it does absolve school districts from criminal liability for providing the records. So, the statute does discuss the activity of providing the records.

Chairperson Genest agreed with Finance's position. Ms. Shelton clarified that the Commission on parameters and guideline has the authority to include activities not mandated by statute, but are reasonably necessary to carry out the mandate.

Chairperson Genest and Member Bryant stated that the Legislature knows what it is doing and the intent of requiring only the request of records is clear. Member Olsen added that failing to provide the records could be considered negligence on the part of the transferring school district. Member Glaab agreed that if both activities are not completed, you almost set up the very thing the statute is trying to avoid. Member Glaab also moved the staff recommendation.

The staff recommendation to approve the parameters and guidelines was adopted by a vote of 5-1 with Chairperson Genest voting no.

Item 10 *Fifteen Day Close of Voter Registration, (01-TC-15)*  
Elections Code Section 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094,  
13300,13303 and 13306;Statutes 2000, Chapter 899 (AB 1094)  
County of Orange, Claimant

Assistant Executive Director Nancy Patton presented this item. Ms. Patton explained that this program provided voters with additional days to register to vote prior to an election. Originally, staff recommended that the one-time activity of modifying the county web site to reflect the test-claim statute be included as a reimbursable activity. After comments by and discussion with the claimant and Finance, staff recommends that the proposed parameters and guidelines be revised to delete this activity.

Parties were represented as follows: Juliana Gmur for the County of Orange, Carla Castañeda and Donna Ferebee for the Department of Finance.

Ms. Castañeda reported that Finance supports the staff recommendation.

Member Olsen moved to adopt the staff recommendation. With a second by Member Bryant, the motion carried with a vote of 6-0.

## MEETING AND HEARING CALENDARS

### Item 11 Adoption of Revised Meeting and Hearing Calendars

This item was also presented by Ms. Patton who offered the revised meeting and hearing calendar for 2008 as well as the proposed meeting and hearing calendar for 2009.

Member Olsen made a motion to accept the revised meeting and hearing calendars. With a second by Member Glaab, the motion carried with a vote of 6-0.

## STAFF REPORTS

### Item 12 Chief Legal Counsel's Report (info)

Ms. Shelton reported receiving a ruling from the San Diego Superior Court on the *Emergency Procedures Act* program that upheld the Commission's decision to end reimbursement on December 31, 2004 based on the statutory changes.

Ms. Shelton introduced the Commission's new attorney, Adeniyi Adewale Ayoade, who the Commission hired before the budget hiring freeze.

Chairperson Genest noted that the court reporter is present due to an exemption from the budget contract freeze.

### Item 13 Executive Director's Report (info)

Ms. Higashi reported the status of the pending workload on test claims, new filings, amendments, reasonable reimbursement methodology and statewide estimate of costs as well as incorrect reduction claims. Most of this documentation will be reported in the Commission's September 15<sup>th</sup> annual report to the Department of Finance.

At the last meeting, Member Bryant asked, based on previous Commission regulations, how many test claims could be amended immediately before the hearing. Ms. Higashi responded 47 pending test claims.

Ms. Higashi noted a change for the November 6<sup>th</sup> agenda with the hearing of the parameters and guidelines amendments on the *Integrated Waste Management Board*, as directed by the Court.

## PUBLIC COMMENT

Allan Burdick representing the CSAC and League of California Cities Advisory Committee on State Mandates asked to speak during Public Comment. Mr. Burdick introduced Glen Everroad, City of Newport Beach and Co-chair of the League's Committee.

Mr. Everroad introduced Leonard Kaye and acknowledged his upcoming retirement. Mr. Kaye has represented the County of Los Angeles for over 21 years on mandate related issues.

Mr. Everroad recognized Mr. Kaye's proven successful track record and presented him with a plaque.

Mr. Kaye stated that it was an honor and a privilege to have appeared before the Commission and to argue the various cases. He also expressed appreciation for the Commission recognizing his retirement.

On behalf of the Commission, Chairperson Genest presented Mr. Kaye with a Resolution recognizing his retirement and many accomplishments.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)**

**A. PENDING LITIGATION**

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District*, Sacramento County Superior Court, Case No. 07CS00355, [Integrated Waste Management]
5. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
6. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

**B. PERSONNEL**

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Genest adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda. (Member Chivaro arrived during the Closed Executive Session)



## REPORT FROM CLOSED EXECUTIVE SESSION

At 10:35 a.m., Chairperson Genest reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Item 14 Proposed Revisions to Executive Director Duty Statement and Adjustment to Salary/Classification pursuant to Government Code Section 17530

Member Lujano stated that the Personnel Subcommittee met and discussed the Executive Director's salary. Member Olsen moved to approve the proposed revisions to the Executive Director's duty statement and to request that the position be set at Level D on the exempt-salary chart. This justification was due to the more complex and difficult work performed by the Executive Director. The motion also moved to authorize submission of the request to the Governor's Office and the Department of Personnel Admission subsequent to adoption of the budget.

With a second by Member Glaab, the motion was carried by a vote of 7-0.

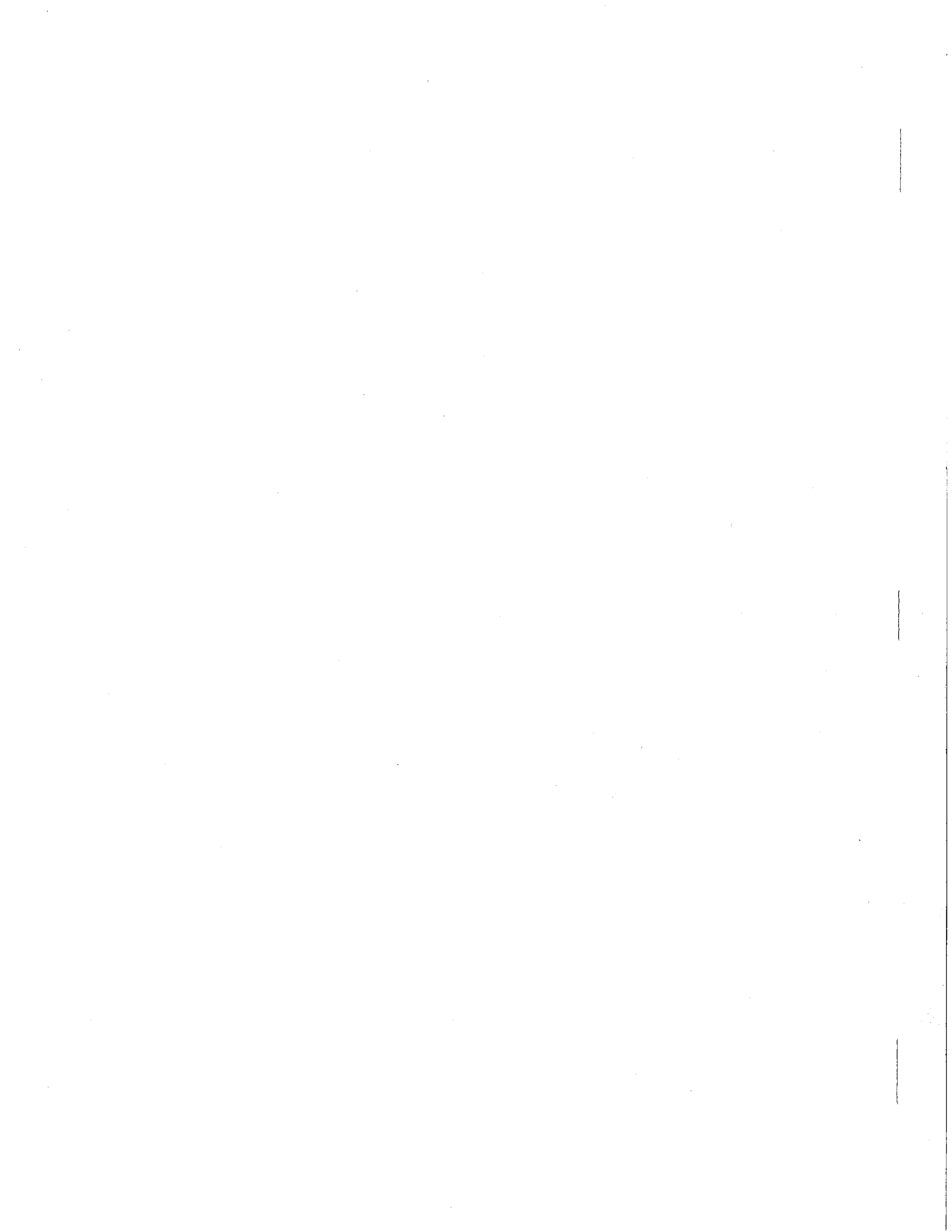
### PUBLIC COMMENT

The Commission and staff discussed how hearing information will be made available and presented to the Commission members in the future. In an effort to cut costs and preserve resources, suggestions were made to implement the use of laptop computers, CD-ROMs and flash drives instead of the paper binders.

### ADJOURNMENT

Hearing no further business, Chairperson Genest adjourned the meeting at 10:45 a.m.

  
PAULA HIGASHI  
Executive Director



# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 447  
Sacramento, California  
September 26, 2008

Present: Member Tom Sheehy, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Anne Schmidt  
Representative of the Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Sarah Olsen  
Public Member

Absent: Member Paul Glaab  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 9:38 a.m.

### APPROVAL OF MINUTES

Item 1 August 1, 2008

The August 1, 2008 hearing minutes were adopted by a vote of 5-0. Ms. Schmidt abstained.

### PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

#### A. PROPOSED PARAMETERS AND GUIDELINES

Item 7 *Reporting Improper Governmental Activities*, 02-TC-24  
Education Code Section 87164  
Statutes 2001, Chapter 416, Statutes 2002, Chapter 81  
Santa Monica Community College District, Claimant

## B. STATEWIDE COST ESTIMATES

- Item 9     *Missing Children Reports, (01-TC-09)*  
Education Code Sections 38139, Subdivisions (a) and (b) and 49068.6, Subdivisions (b) and (d), Statutes of 1986, Chapter 249, Statutes of 1999, Chapter 832  
San Jose Unified School District, Claimant
- Item 10    *Charter Schools III, (99-TC-14)*  
Education Code Sections 47605, subdivision (b), and 47635, Statutes 1998, Chapter 34, Statutes 1999, Chapter 78, California Department of Education Memo (May 22, 2000)  
Western Placer Unified School District and Fenton Ave. Charter School, Claimants
- Item 11    *Pupil Safety Notices, (02-TC-13)*  
Education Code Sections 32242, 32243, 32245, 46010.1, 48904, 48904.3, 48987, Welfare and Institutions Code Section 18285, Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 482 (AB 3757), Statutes 1984, Chapter 948, (AB 2549), Statutes 1986, Chapter 196 (AB 1541), Statutes 1986, Chapter 332 (AB 2824), Statutes 1992, Chapter 445 (AB 3257), Statutes 1992, Chapter 1317 AB 1659), Statutes 1993, Chapter 589 (AB 2211), Statutes 1994, Chapter 1172 (AB 2971), Statutes 1996, Chapter 1023 (SB 1497), Statutes 2002, Chapter 492 (AB 1859), California Code of Regulations, Title 5, Section 11523  
San Jose Unified School District, Claimant

Member Worthley made a motion to adopt items 7, 9, 10 and 11 on the consent calendar. With a second by Member Olsen, the motion carried by a vote of 6-0.

### **APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)**

- Item 2     Staff Report (if necessary)

There were no appeals to consider.

### **HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

#### A. TEST CLAIMS

- Item 3     *Disabled Student Programs and Services, (02-TC-22)*  
Education Code Sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850, Statutes 1977, Chapter 36 (AB 447), Statutes 1978, Chapter 1403 (AB 2670), Statutes 1979, Chapters 282 (AB 8) and 1035 (SB 186), Statutes 1981, Chapter 796 (SB 1053), Statutes 1982, Chapter 251 (AB 1729), Statutes 1983, Chapter 323 (AB 223), Statutes 1985, Chapter

903 (SB 1160), Statutes 1986, Chapter 248 (SB 2451), Statutes 1987, Chapters 829 (AB 746) and 998 (SB 252), Statutes 1990, Chapters 1066 (AB 2625) and 1206 (AB 3929), Statutes 1991, Chapter 626 (AB 1021) Statutes 1992, Chapter 1243 (AB 3090), Statutes 1995, Chapter 758 (AB 446), Statutes 1999, Chapter 379 (AB 422), Statutes 2001, Chapter 745 (SB 1191), and California Code of Regulations, Title 5, Sections 54100, 56000, 56002, 56004, 56005, 56006, 56008, 56010, 56020, 56022, 56026, 56027, 56028, 56029, 56030, 56032, 56034, 56036, 56038, 56040, 56042, 56044, 56046, 56048, 56050, 56052, 56054, 56060, 56062, 56064, 56066, 56068, 56070, 56072, 56074, 56076 (As Added or Amended by Register 76, No. 51, Register 77, Nos. 12 & 45, Register 79, No. 46, Register 83, No. 18, Register 88, No. 16, Register 91, No. 31, Register 92, No. 12, and Register 93, No. 6), Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*, Issued by the Chancellor's Office, California Community Colleges, January 2, 1997 San Juan Unified School District, Claimant

Chief Legal Counsel Camille Shelton presented this item. She stated that this the Disabled Student Programs and Services (DSPS) test claim addresses the provisions of services which include academic adjustments and auxiliary aids, instructional materials in electronic format and accessible parking to disabled students within the California community colleges system.

Staff recommended that the Commission deny this test claim because community colleges are mandated by federal law, through the Rehabilitation Act of 1973 and the Americans with Disabilities Act, to perform these activities. Although some activities go beyond the requirements of federal law, they are not mandated by the state pursuant to the California Supreme Court's decision in *Kern High School District*, because community colleges perform those activities as a condition of receiving state funding.

Parties were represented as follows: Keith Petersen representing the claimant and Susan Geanacou representing the Department of Finance.

Mr. Petersen indicated that the test claim was filed to obtain reimbursement for the portion of activities that are not federally mandated. He requested the Commission to deny staff's position that because the DSPS program is voluntary it is not reimbursable. The issue is whether the colleges are practically compelled to take that money and to implement the program. He stated that the state currently provides approximately \$115 million in DSPS funding to colleges that provide both federally and state-mandated special education services. Mr. Petersen stated that staff is contending that the colleges can willingly give up that money if they do not want to participate in DSPS. He argues however, that to receive any of their money, colleges must implement the entire DSPS program. Mr. Petersen explained the history of how community colleges received DSPS funding and, and stated that they do not receive adequate money to implement the program. If they do not take the money and do not perform the state portion of the DSPS program, they are still compelled to perform the federal mandate, which was historically supported by state funding prior to the DSPS program.

Ms. Geanacou stated that Finance supports the final staff analysis. She also responded to Mr. Petersen's comments, stating that the only consequence of not complying with these requirements that are in excess of the federal mandate is that they will not receive the funding, and this is not practical compulsion under the *Kern High School District* case.

Mr. Petersen responded that the Commission has the authority to decide what is and is not practical compulsion.

Member Worthley asked Mr. Petersen to cite, in the record, the difference between the amount of money paid to the colleges and the actual cost.

Mr. Petersen responded that claims for the actual costs have not yet been filed. Staff would determine at the parameters and guidelines phase which activities are federally driven and subtract those costs. The balance would be the cost. He added that staff has listed those services that appear to be state-driven.

Chairperson Sheehy asked Mr. Petersen if the claimant had figured those costs. Mr. Petersen stated that the claimant must only allege a threshold amount of \$200 in costs in order to file a test claim.

Ms. Shelton clarified that although parties are discussing practical compulsion, it is still a question of law and not a question of equity. She noted that under the *Kern* case, the program was voluntary and there was \$394 million at stake. And, the court ruled that in order for practical compulsion to be found, there must be certain and severe penalties for not complying, independent of the funding. In the matter before you today, if you take away the funding, colleges must still comply with federal law. The intent of the DSPS legislation is to pay for actual costs. The money can be used for salaries, benefits and professional development costs of DSPS certificated and classified personnel and for supplies and materials necessary for the operation of the DSPS program. It cannot be used for indirect costs for the building, lighting heating or legal or audit matters. It does however pay for one-time costs and ongoing costs to provide services to the student.

Mr. Petersen discerned the difference between the issues in the *Kern* case and the matter here, stating that in *Kern*, if the money goes away, the program also goes away. In contrast, under DSPS, the program does not go away. He also responded to Ms. Shelton's comment that certain indirect costs are not covered, stating that because they are not funded, colleges are losing 35 percent of their indirect cost rates because DSPS won't fund the costs.

Member Worthley asked Mr. Petersen if he was saying that because historically the state has reimbursed the districts for some of the federal requirement, that the state is mandated to continue doing that. In other words, if they just pulled all the money away for the federal portion, there would be no compensable claim against the state because the colleges are federally required to perform the services.

Mr. Petersen responded that it's possible. The state could withdraw its funding and local districts would be compelled to continue the federal activities.

Ms. Shelton also stated that under federal law, the state is not required to reimburse any of the community colleges for complying with the federal mandate.

Mr. Petersen responded by saying that, because of the funding structure by the state, the only way to get any significant funds to do any federal or state mandated services is to take on DSPS.

Member Olsen asked Mr. Petersen if he was contending that it's coercion because even if a college district decided to terminate the DSPS program, they would be compelled to do it because parents of the served students would go to court.

Mr. Petersen responded that they would not be compelled to do the state portion if they were not in the DSPS program. Ms. Olsen then asked where is the practical compulsion. Mr. Petersen responded that they still have to continue performing the federal mandate which has always been funded by the state.

Ms. Shelton added that it was funded by the state under the state's vocational rehabilitation program, and before enactment of DSPS, students were receiving overlapping services. Therefore, the Department of Rehabilitation and the Chancellor's Office s came to agreement that the colleges would perform the services and vocational rehabilitation would not. There was no funding in that agreement.

Member Olsen stated that she was trying to clarify the practical compulsion allegation and whether it was based on the parents of DSPS students going to court if a district did not comply with DSPS. Mr. Petersen clarified that the practical compulsion is that school districts still have to continue the federal mandate, which was previously funded by the state. If a district stops participating in the state DSPS program, there would be no funding for providing any service.

Chairperson Sheehy asked Mr. Petersen if he wished to discuss the next issue on instructional materials. Mr. Petersen stated that he would not, because the Commission must decide the threshold issue first.

Member Chivaro moved to adopt the staff recommendations. With a second by Member Lujano, the Commission adopted the staff recommendation to deny the test claim by a vote of 6-0.

#### B. PROPOSED STATEMENT OF DECISION

Item 4     *Disabled Student Programs and Services, (02-TC-22)*  
          See Item 3

Ms. Shelton also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Disabled Student Programs and Services* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes.

Member Chivaro made a motion to adopt the proposed Statement of Decision. With a second by Member Lujano, the Statement of Decision was adopted by a vote of 6-0.

Ms. Higashi noted that Items 5 and 6 were postponed at the request of the claimant.

#### **INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)**

##### PROPOSED PARAMENTERS AND GUIDELINES

Item 8     *Integrated Waste Management Board, (00-TC-07)*  
          Public Resources Code Sections 40148, 40196.3, 42920-42928, Public  
          Contract Code Sections 12167 and 12167.1, Statutes 1999, Chapter 764,  
          Statutes 1992, Chapter 1116, Manuals of the California Integrated Waste  
          Management Board  
          Santa Monica and South Lake Tahoe Community College Districts,  
          Co-Claimants

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton explained that this item is on remand from the Sacramento County Superior Court on a judgment and writ. The *Integrated Waste Management Board* program requires community college districts to develop and adopt waste management plans to divert solid waste from landfills and to submit annual

reports to the Integrated Waste Management Board. The writ issued by the court requires the Commission to amend the parameters and guidelines for this program in two respects: It requires the Commission to amend the offsetting revenue section to require claimants to identify and offset from their reimbursement claims, all revenue generated as a result of implementing their waste plans, without regard to the limitations described in the Public Contract Code.

The second amendment requires that the Commission add an offsetting cost savings section to the parameters and guidelines to require claimants to identify and offset from their reimbursement claims cost savings realized as a result of implementing their plans, consistent with the limitations provided in the Public Contract Code.

Ms. Shelton continued that under the Public Contract Code provisions, community colleges are required to deposit all cost savings that result from implementing their waste plans in the Integrated Waste Management account. Upon appropriation by the Legislature, the funds may be expended by the Integrated Waste Management Board for the purpose of offsetting plan costs. Subject to Board approval, cost savings by a community college that do not exceed \$2,000 annually, are appropriated for expenditure by the community college for the purpose of offsetting their costs. Cost savings exceeding \$2,000 annually may be available for expenditure by the community college only when appropriated by the Legislature. The proposed amendments contain these changes required by the court.

Ms. Shelton added that the Integrated Waste Management Board is requesting that the Commission add more language to the offsetting cost-savings section to require community college districts to: (1) provide information with their reimbursement claims identifying all cost savings resulting from the plans, including costs savings that exceed \$2,000; and (2) to analyze categories of potential cost savings to determine what to include in their claims.

Staff finds that the Board's request for additional language goes beyond the scope of the court's judgment and writ. Therefore, staff recommends that the Commission deny the Board's request and adopt the proposed amendments to the parameters and guidelines as recommended by staff.

Parties were represented as follows: Keith Petersen, an interested party having represented the claimant many years ago; Elliot Block representing the California Integrated Waste Management Board, and Susan Geanacou representing the Department of Finance.

Mr. Block stated that he disagreed with the staff analysis. The Board argues that staff is viewing the court's decision more narrowly than is necessary. The reimbursement claims are difficult to review. The Board is requesting the language to provide additional guidance to help the claims be formulated in a way that they are actually reviewable and usable. He noted that the Board has a pending request to amend the parameters and guidelines to add these additional reporting requirements, and that the staff analysis suggests that the additional reporting requirements could be added prospectively, but not retroactively. He stated that if the parameters and guidelines could have been originally drafted to include this requirement, why can't the parameters and guidelines be amended now to include this guidance.

Chairperson Sheehy asked Mr. Block to clarify the comment that the claims that are being submitted are difficult to review.

Mr. Block reiterated that the claims were incomplete and difficult to review, and pointed out that even Commission staff sought help from the Board when they initially reviewed the claims because there were portions of the claims filed that did not make sense and did not seem to align with the original parameter and guidelines.



Ms. Higashi noted that when the Commission adopted the statewide cost estimate, it requested a summary compilation of the amounts claimed by the community college districts filing timely reimbursement claims with the State Controller's Office. The State Controller's Office report identified the claimant by name, amount claimed and amounts offset and was the basis for the Commission's preparation of the statewide cost estimate.

Ms. Geanacou stated that the Department of Finance, as a co-petitioner before the court, has followed this matter closely. She observed that the cost savings information required in the claims will clearly appear as an offset for reimbursement and is already available in two sources of information if the test claim statutes are complied with.

Ms. Shelton stated that the Commission's jurisdiction in this matter is really limited to the court's writ and the writ directed two specific changes to the parameters and guidelines. She noted that the court found that the information to support cost savings was already provided to the Board in their existing annual report. The court did not indicate that the Board needed additional information. She added that every year, the Board receives a report that describes the calculations of annual disposal reduction and information on changes in waste generated or disposed. Also, this issue can be addressed in the Board's pending request to amend the parameters and guidelines.

Member Worthley moved to adopt the staff recommendations. With a second by member Olsen, the staff recommendation to approve the proposed amendments to the parameters and guidelines was adopted by a vote of 6-0.

#### **STAFF REPORTS**

Item 12 Chief Legal Counsel's Report (info)

No report was made.

Item 13 Executive Director's Report (info)

Ms. Higashi introduced our newest analyst Heidi Palchik.

Ms. Higashi also recognized staff member Lorenzo Duran who recently participated in a state agency sponsored fundraiser for the California State Employees Charitable Campaign. He successfully dunked our Commission Chair, Mr. Genest, in the dunk tank.

Ms. Higashi reported the adopted State Budget did not make any new changes to the Commission's budget. Also, the Commission filed the annual workload report with the Director of Finance.

Ms. Higashi proposed changing the November 6th hearing to an alternate date in December. It was decided to find an agreeable date and report it back to the Commission. She also noted that work is continuing on the proposal for delivery of agenda materials.

Ms. Higashi reported that Anne Sheehan, Chief Deputy Director of the Department of Finance, was appointed Director of Corporate Governance, CALSTRS.

Ms. Higashi also noted that the Commission will probably be exploring a hiring freeze exemption.

#### **PUBLIC COMMENT**

Chairperson Sheehy introduced Deborah Borzelleri and acknowledged her upcoming retirement. On behalf of the Commission, Chairperson Sheehy presented Ms. Borzelleri with a Resolution recognizing her retirement as a state employee for 35 years and her many accomplishments.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)**

**A. PENDING LITIGATION**

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
5. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

**B. PERSONNEL**

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

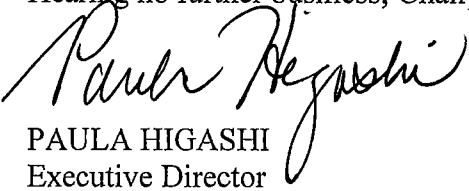
Hearing no further comments, Chairperson Sheehy adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:48 a.m., Chairperson Sheehy reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

**ADJOURNMENT**

Hearing no further business, Chairperson Sheehy adjourned the meeting at 10:50a.m.



PAULA HIGASHI  
Executive Director

