

MINUTES

COMMISSION ON STATE MANDATES

State Treasurer's Office

915 Capitol Mall, Room 587

Sacramento, California

May 27, 2010

Present: Member Cynthia Bryant, 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 Cathleen Cox
Acting Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor

Absent: Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:35 a.m. Executive Director Paula Higashi called the roll.

APPROVAL OF MINUTES

Item 1 March 26, 2010

The March 26, 2010 hearing minutes were adopted by a vote of 4-0. Member Cox abstained.

Item 2 May 3, 2010

The May 3, 2010 hearing minutes were adopted by a vote of 5-0.

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

Item 3 Staff Report (if necessary)

There were no appeals to consider.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551) (action)

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 6* *Clean School Restrooms*, 04-TC-01
Education Code Sections 17070.755, 17584.3, and 35292.5
Statutes 2003, Chapter 358 (AB 1124); Statutes 2003, Chapter 909
(SB 892), Office of Public School Construction, State Allocation Board,
and State Department of General Services Forms: SAB Forms 40-21,
50-04, 892, 892R
Los Angeles Unified School District, Claimant

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

PROPOSED PARAMETERS AND GUIDELINES (GOV. CODE, § 17557)

- Item 7* *Academic Performance Index*, 01-TC-22
Education Code Sections 52056, Subdivision (c)
Statutes 1999-2000, 1st Extraordinary Session, Chapter 3; Statutes 2000,
Chapter 695 (SB 1552)
San Juan Unified School District, Claimant
- Item 8* *Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18
Penal Code Sections 13730, Subdivision (c)(3), 12028.5;
Statutes 2001, Chapter 483 (AB 469); Statutes 2002, Chapter 833 (SB 1807)
County of Los Angeles, Claimant

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE LANGUAGE (GOV. CODE, § 17557)

- Item 9* COUNTY PROGRAM
Seriously Emotionally Disturbed Students, 05-PGA-42
Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701
Statutes 1991, Chapter 999 (SB 835), Statutes 1992, Chapter 224
(SB 1960)
- Item 10* SCHOOL PROGRAMS
A. *Annual Parent Notification*, 05-PGA-45
Education Code Section 35291
Education Code Section 48980, Subdivisions (a), (b), (c) (e) (g), (h),
(i)(j), (l), and (m)
Education Code Section 48900.1
Education Code Section 49063, Subdivision (k)
Education Code Section 58501
Statutes 1975, Chapter 448 (SB 445), Statutes 1977, Chapter 36
(AB 447), Statutes 1977, Chapter 965 (AB 530), Statutes 1979, Chapter
236 (AB 52), Statutes 1980, Chapter 975 (AB 2949), Statutes 1981,
Chapter 469 (SB 222), Statutes 1985, Chapter 459 (AB 220)
Statutes 1986, Chapter 87 (AB 1649), Statutes 1986, Chapter 97
(AB 1689), Statutes 1987, Chapter 1452 (SB 998), Statutes 1988,
Chapter 65 (AB 2507), Statutes 1988, Chapter 1284 (AB 3535), Statutes
1990, Chapter 10 (AB 1941), Statutes 1990, Chapter 403 (SB 3307),

Statutes 1992, Chapter 906 (AB 2900), Statutes 1993, Chapter 1296 (AB 369), Statutes 1997, Chapter 929 (SB 85), Statutes 1998, Chapter 846, Section 19 (AB 1468), Statutes 1998, Chapter 1031, Section 1 (AB 1216), Statutes 1999, Chapter 1X, Section 3, Statutes of 2000, Chapter 73, Section 1 (SB 1689)

- B. *Notifications of Truancy*, 05-PGA-56
Statutes 2007, Chapter 69 (AB 1698)
Education Code Section 48260.5
Statutes 1983, Chapter 498 (SB 813), Statutes 1994, Chapter 1023 (SB 1728), Statutes 1995, Chapter 19 (SB 102)
- C. *Notification to Teachers: Pupils Subject to Suspension or Expulsion*, 05-PGA-57
Education Code Section 49079
Statutes 1989, Chapter 1306 (SB 142); Statutes 1993, Chapter 1257 (SB 1130)
- D. *Pupil Suspensions, Expulsions and Expulsion Appeals*, 05-PGA-65
Consolidation of:
Pupil Suspensions from School – CSM 4456
Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1980, Chapter 73 (SB 1247), Statutes 1983, Chapter 498 (SB 813), Statutes 1985, Chapter 856 (AB 1758), Statutes 1987, Chapter 134 (AB 439)
Pupil Expulsions from School -CSM-4455
Education Code Sections 48915, Subdivisions (a) and (b), 48915.1, 48915.2, 48916 and 48918
Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1982, Chapter 318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 622 (SB 1685), Statutes 1987, Chapter 942 (AB 2590), Statutes 1990, Chapter 1231 (AB 3794), Statutes 1992, Chapter 152 (AB 3362), Statutes 1993, Chapters 1255 (AB 342), 1256 (SB 1198), 1257 Statutes 1994, Chapter 146 (SB 1130),
And,
Pupil Expulsion Appeals - CSM-4463
Education Code Sections 48919, 48921-48924
Statutes 1975, Chapter 1253 (AB 1770), Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1983, Chapter 498 (SB 813)

DISMISSAL OF WITHDRAWN REQUESTS TO AMEND PARAMETERS AND GUIDELINES (GOV. CODE, § 17557)

Item 11* *Interdistrict Transfer Requests: Parent's Employment*, 01-PGA-10 (CSM 4445)
Education Code Sections 48204(f) and 48980(e)
Statutes 1986, Chapter 172 (AB 2071), Statutes 1990, Chapter 10 (AB149), Statutes 1992, Chapter 507 (SB 1438)
Clovis Unified School District, Requestor

Item 12* *Caregiver Affidavits to Establish Residence for School Attendance*, 01-PGA-03 (CSM-4497)
Education Code Section 428204, Subdivision (a)
Family Code Sections 6550 and 6552
Statutes 1994, Chapter 98 (AB 1328)
Clovis Unified School District, Requestor

JOINT REQUEST TO EXTEND TERM OF REASONABLE REIMBURSEMENT METHODOLOGY (GOV. CODE § 17557.2, Subs. (f) and (g))

Item 13* *Firearm Hearings for Discharged Inpatients*, 07-RRM-01 (99-TC-11)
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
Statutes 1999, Chapter 578 (AB 1587)
County of Los Angeles and Department of Finance, Requestors

Paula Higashi, Executive Director, noted that Items 14 and 16 have been removed from the consent calendar for technical corrections.

Member Worthley made a motion to adopt items 6, 7, 8, 9, 10A-D, 11, 12 and 13 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 5-0.

HEARING AND DECISION ON INCORRECT REDUCTION CLAIM, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, § 17551) (action)

Ms. Higashi swore in parties and witnesses participating in the hearing.

Item 4 *Investment Reports*, 01-9635802-I-01
Government Code Section 53646, Subdivisions (a), (b) and (e)
Statutes of 1995, Chapter 783
As Amended by Statutes of 1996, Chapters 156 and 749
County of Los Angeles, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton stated that this incorrect reduction claim was filed by the County of Los Angeles on reimbursement claims for costs incurred in fiscal years 1996-97 and 1997-98 on the *Investment Reports* program.

The issues in dispute involved the State Controller's reduction of costs claimed following a desk audit of the salaries and benefits of county employees accumulating and compiling data necessary to render the quarterly report of investments and the costs claimed for investment software.

For the reasons stated in the analysis, staff concluded that the State Controller's office incorrectly reduced the costs claimed by the County of Los Angeles. However, the reimbursement claims filed by the County for salaries and benefits include daily investment activities and costs that are not reimbursable.

Staff recommended that the Commission adopt the analysis and remand the reimbursement claims back to the State Controller's office for further review and reinstatement of those costs that are eligible for reimbursement in accordance with the Commission's decision on this incorrect reduction claim.

Parties were represented as follows: Hasmik Yaghobyan, County of Los Angeles; Jill Kanemasu, State Controller's Office; and Lorena Romero, Department of Finance.

Hasmik Yaghobyan, County of Los Angeles, thanked the Commission staff for its analysis and concurred with its recommendations. The Department of Finance and the State Controller's Office concurred.

With a motion by Member Lujano and a second by Member Chivaro, the staff recommendation was adopted by a vote of 5-0.

Item 5 Proposed Statement of Decision: *Investment Reports*, 01-9635802-I-01
[See Item 4 above.]

Ms. Shelton presented this item and stated that staff recommends that the Commission adopt the proposed Statement of Decision.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 5-0.

Item 14 General Cleanup Provisions
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Articles 1 through 3 and Articles 5 through 8, Sections
1181 – 1183.32, and 1185 – 1189.5

Nancy Patton, Assistant Executive Director presented this item. Ms. Patton stated that Section 1189.2 of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. The purpose of the proposed regulations is to encourage the use of electronic filing, move all subvention claim matters to Article 7, and make the Commission's procedures more efficient.

Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

Staff removed this item from the consent calendar to revise the deadline for public comment from July 26, 2010 to July 30, 2010, so that it coincides with the proposed date for public hearing.

Staff recommended that the Commission adopt the order to initiate rulemaking as revised.

Ms. Higashi clarified that two dates, July 29, 2010 and July 30, 2010, are noted on this item's timetable. Later in this agenda, the Commission will vote and decide on which date will be the next hearing date.

With a motion by Member Chivaro and a second by Member Bryant, the staff recommendation was adopted by a vote of 5-0.

Item 16 Adoption of Strategic Plan

Ms. Patton presented this item. Ms. Patton stated that the Commission adopted an interim strategic plan on March 26, 2010. Staff posted the interim plan on the Commission's web site, issued it for public comment, and solicited comments from Commission staff. On May 10, 2010 and May 20, 2010, the Department of Finance and Commission staff submitted comments. No other comments were received. Staff made the changes proposed by the Department of Finance and Commission staff.

Upon request of the Commission Chair, staff has removed the proposed final strategic plan from the consent calendar to revise the language on the last goal regarding promotion of sustainability in the Commission's policies and procedures.

The following language is suggested:

“Actively promote sustainability in the Commission’s policies and procedures to ensure that our practices are protective of the environment and human health and are energy and resource efficient.”

This is a broader statement than previously included, which was about recycling and reduction of paper for the Commission by putting items on the Commission's Web site.

Staff recommends that the Commission adopt the final strategic plan with the revised language.

With a motion by Member Chivaro and a second by Member Cox, the staff recommendation was adopted by a vote of 5-0.

Item 17 Update on Implementation of Recommendations from Bureau of State Audits October 15, 2009 Report 2009-501
State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities

Ms. Patton reported that, with the adoption of this consent calendar, the last of the State Controller's Office proposed parameters and guidelines amendments to the boilerplate were adopted as recommended by the Bureau of State Audits.

Item 18 Legislative Update

Ms. Patton reported on three bills that are being tracked. The Commission has a “support” position on SB 894 and an “oppose unless amended” position on AB 2082.

Ms. Patton described AB 349. If the Governor's budget proposes to suspend state mandates, AB 349 would require the Department of Finance to provide to the Legislature all proposed statutory changes necessary to repeal the mandates proposed for suspension and, to the extent practicable, identify each affected section of law.

Staff recommends taking no position on AB 349 since it does not affect the Commission's responsibilities.

Chairperson Bryant asked if the Commission needs to formally take “no position”.

Ms. Higashi stated that by taking no action, the Commission would be taking no position.

Member Worthley asked whether or not this issue was considered in terms of costs and expenses related to creating or ceasing to operate a program. He added that when a financial piece of a program is suspended, it puts local governments in a bind. Oftentimes, local government must

consider whether or not to keep the program going because of the expenses incurred in creating the program while anticipating that the following year, the Legislature is going to come back and fund it. Member Worthley reiterated that the whole system is problematic for local government.

Allan Burdick, California State Association of Counties (CSAC), stated that the points brought up by Member Worthley are very critical. If the mandates are not repealed, there are additional costs and legal issues raised for both state and local government as to whether these programs should be carried out.

Mr. Burdick stated that it makes no sense to continue to have mandate programs on the books that are suspended on a budget-by-budget year basis. Some of these mandates have been suspended for 18 and 19 years, since the original statute that allowed for suspension was put in place in 1991.

Currently, if a mandate is suspended, the language in the statute that governs that program does not change. Somewhere buried in that 800 page budget is a little line that has a zero after it saying that this is a reimbursable mandate and it has been suspended.

Mr. Burdick suggested that the Commission review the overall program as well as the responsibility for the program and question the entire practice as to how it is being carried out and whether it is being done.

This particular amendment is very consistent with trying to have a manageable program by not having things that could incur costs on both state and locals or raise legal questions as to whether or not mandates are suspended.

Mr. Burdick encouraged the Commission to support this particular bill.

Appreciating Mr. Burdick's comments, Member Worthley stated that local governments are impacted by this type of rule. Member Worthley reminded the Commission that this is problematic for local government.

Item 19 Working Group Proposal: Mandate Redetermination Process

Ms. Higashi reported that Commission staff continues to work on with the Legislature, state agencies and local governments on the proposed Mandate Redetermination Process. She noted that this was also a recommendation of the Bureau of State Audits.

On May 12, 2010, the expanded working group met with other legislative staff, representatives from the League of Cities, CSAC and the CSAC SB-90 group. Although school district representatives were invited, none were able to attend.

Ms. Higashi reviewed the following additions to the draft language:

1. Requires the Commission to notify the Department of Finance, LAO, the State Controller and interested parties upon receipt of a complete request.
2. Requires the State Controller to notify eligible claimants that a complete request for mandate redetermination has been filed. This notification may be included in the next claiming instructions issued by the State Controller.

Ms. Higashi stated that the draft was submitted to Legislative Counsel and that a draft has been returned for review by the working group. Staff is in the process of reviewing it and continuing to receive comment on it. There are some technical drafting issues that staff needs to address.

References to Government Code 17514 were dropped off and only references were made to 17556. It appears as if a request for redetermination could only be filed to find “no costs mandated by the state”. Ms. Higashi noted that was not the intention in the working group draft provided to Legislative Counsel.

Another question, for all parties, is what happens if this is enacted as a trailer bill. It has been approved as placeholder trailer bill language by both houses.

There is a serious possibility that this will be enacted. Staff is still in the process of vetting it with all the parties and no mention has been made of how the Commission is expected to really carry out this new responsibility, which is additional workload.

Ms. Higashi stated that no timeline priorities are set in the proposed statutes or any other changes to the Commission’s program that would give any clue as to where these would land in the queue because there is still pending workload.

Member Cox asked, in recognition of the Commission receiving no direction as to the priority list for the redeterminations, if the Commission is taking proactive steps in setting a priority schedule.

Ms. Higashi stated that the Commission has statutory mandates for test claims but none for IRCs or this redetermination process. Therefore, test claims continue to be the Commission’s top priority. However, staff is beginning to work on IRCs.

The Legislature is taking actions in budget subcommittees that rely on this process. The analyses are already reading that a statute can be amended; then after it is amended, a budget trailer bill can ask for a redetermination.

A sentence has been added so the Legislature, through statute, may ask the Department of Finance to take advantage of this process and request redetermination of a particular mandate.

Member Worthley questioned that under the definition of “subsequent change to the law”, there was no term of materiality. He stated that a minor change with little or no financial merit should not trigger this process.

Ms. Higashi stated that the issue of a threshold was raised in the Assembly Budget Subcommittee by the CSBA representative and echoed by CSAC and League of Cities. She explained that for both a test claim and reimbursement claim filing, the threshold is \$1,000 per claimant. To be consistent, one might say that the threshold should be \$1,000 for this process too. However, staff believes that is a low figure.

The next draft may identify what that threshold should be. At one point, staff thought perhaps it should be \$1,000 per county plus \$1,000 per city or \$1,000 per school district. Staff would not want to go through this process if the threshold was only \$1,000.

Member Worthley expressed the desire to put more of the burden to get to the point of materiality on the applicants and the responding parties and less of the burden on the Commission. If the applicants have to spend a lot of time and energy, they may take a closer look at the bottom line and ask if it is really worth the effort.

Ms. Higashi noted that the specificity for the Commission’s filing requirements is included in subdivision (d) on page two of the draft legislation. The burden is on the requestor, whether it is the Department of Finance or a claimant, and not on Commission staff to go on a fact-finding expedition at the State Library.

Member Worthley agreed by stating that it would be helpful from a workload standpoint to make the job less difficult for Commission staff.

Ms. Higashi added that if it is enacted, staff would begin a rulemaking package in September or October to meet the effective date.

Allan Burdick urged the Commission to continue to request that this matter be heard through the regular process and not as a trailer bill. Mr. Burdick recalled when former Commission Chairperson Sheehy believed that this was an important item and something to be done in a public hearing as a policy matter and not be done through the budget process.

Mr. Burdick reiterated that the locals appreciate being able to participate. However, currently, neither school boards, CSAC nor the League feel as true partners in this process yet.

Ms. Higashi stated that this item is in conference right now because both subcommittees approved the placeholder language.

Member Worthley asked if there will be more public process.

Chairperson Bryant stated that if both houses adopted the language, it is out of conference and the language is identical.

Ms. Higashi stated that she was told that placeholder language could change in conference.

Jeff Carosone, Department of Finance, stated that both houses did adopt placeholder trailer bill language to be worked out, but has not yet heard that it is going to be discussed in a specific conference committee hearing. Both houses did take the same action, which would keep it out of conference. However, they did leave open the possibility of continuing to tweak the language.

Chairperson Bryant stated that it is not the Commission's role to tell the Legislature how to conduct its business. She did not want to take an action and did not think that the Commission should make that plea at the Legislature.

Member Worthley understood Chairperson Bryant's response but stated that he is in favor of being able to lead the Legislature so it works better for the Commission. Member Worthley stated that a more public approach that gives the stakeholders greater input in the final outcome would benefit everybody.

Allan Burdick presented the likelihood of litigation if this matter passes in a trailer bill. He pointed out the substantial amount of time and resources that Commission staff would have to spend and stated that CSAC, the League and CSBA are trying to avoid litigation.

Mr. Burdick restated the urgency of this issue and pointed out that this is not the kind of thing that should be done behind closed doors.

Ms. Higashi asked if the school district, city or county representatives have a suggestion as to what the minimal dollar threshold should be for triggering a redetermination.

Mr. Burdick stated that CSAC, the League and the school boards have not discussed the issue of a threshold but are concerned about having a clear and convincing standard.

Ms. Higashi stated that she will prepare a memo for the working group identifying the appropriate changes as well as an insertion point in the proposed language for a dollar amount.

STAFF REPORTS

Item 20 Chief Legal Counsel's Report (info)

Ms. Shelton reported that there are two lawsuits pending against the Commission. The first one is a recent filing by the Department of Finance challenging the *Graduation Requirements* parameters and guidelines amendment. The second is *BIPS* with a pending hearing date of December 10, 2010.

The other two cases are listed for information only. They are still in the process of being briefed and hearing dates are not yet set.

Item 21 Executive Director's Report (info)

Pending Workload

Ms. Higashi reviewed the pending caseload.

Having completed the first incorrect reduction claim on *Investment Reports*, staff is hopeful that it will help in reviewing the other claims that are pending which are batched according to claimant representatives and jurisdictions. As appropriate and as requested, staff will schedule prehearing conferences or informal conferences to meet with the State Controller's Office to expedite the process of completing the remaining seventy-two claims without requiring a separate staff analysis and Statement of Decision for each.

Budget

Ms. Higashi reported that the budget subcommittee hearing process has been completed with Assembly Subcommittee actions on the following programs:

- The \$475,000 *In-Home Support Services* mandate was approved in both houses. It is an appropriation to cover the statewide cost estimate adopted by the Commission.
- The *Mandated Reimbursement Process I and II* program was suspended.
- *Open Meetings Act* and *Brown Act Reform* will end up in conference.
- *Handicapped and Disabled Students I, II and Seriously Emotionally Disturbed Pupils* is also a conference item. There are a number of subcommittees in both houses acting on it. One action taken required the Department of Finance to actually prepare a report to propose alternative, more cost effective methods of delivering the services.

Meeting Dates

After discussion, the Commission agreed on the following 2010 meeting/hearing dates: June 24 (tentative), July 29, September 30, October 28 (tentative), and December 2.

Future Agenda Items

Ms. Higashi identified test claims, incorrect reduction claims, parameters and guidelines and statewide cost estimates that staff is currently working on that will be scheduled for the July and September hearings.

Camille Shelton pointed out that one test claim analysis is over 200 pages with hundreds of regulations pled. Ms. Higashi described the size and depth of *Employment of College Faculty and Instructors* as not huge because it is limited in scope; *CEQA* as moderate; and *School Bus Safety* as unknown as of yet.

PUBLIC COMMENT

Nancy Patton stated that Ginny Brummels from the State Controller's Office recently retired. Ms. Brummels and the Commission staff have been working together specifically on mandate issues for the last ten years.

Ms. Patton declared that Ms. Brummels has been an invaluable help to the Commission in the mandates process. She was especially busy at work putting together the AB 3000 and the hideous deficiency report. However, Ms. Brummels decided she still did not have enough to do, so she changed her whole life and became a marathon runner in her spare time.

Ms. Patton asked Ms. Brummels to come forward and read a resolution from the Commission to honor her.

Ms. Brummels said it has truly been an honor and a privilege to work with the Commission and the Commission staff is a great resource for the Controller's office.

Ms. Brummels commented that while listening to the topics of the mandates on the current agenda, many of them, such as *Open Meetings Act*, are coming back again for yet another round and she realized it was time to get out before the next round. Ms. Brummels reiterated that it was a pleasure working with all those involved in the mandate process.

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 10:05 a.m.


PAULA HIGASHI
Executive Director