

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Health and Safety Code Section 120335, as amended and replaced by Statutes 2010, Chapter 434 (AB 354)

Filed April 15, 2015, by

Desert Sands Unified School District,
Requester

Case No.: 14-PGA-01 (11-TC-02)

Immunization Records - Pertussis

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

(Adopted September 25, 2015)

(Served September 30, 2015)

DECISION

The Commission on State Mandates (Commission) adopted this decision during a regularly scheduled hearing on September 25, 2015. Arthur Palkowitz, Jim Novak, and Brad Williams appeared on behalf of the requester, Desert Sands Unified School District (District). Ed Hanson appeared on behalf of the Department of Finance (Finance) and Gwendolyn Carlos appeared on behalf of the State Controller's Office (Controller).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the proposed decision to approve the request to amend the parameters and guidelines at the hearing by a vote of 6-0 as follows:

Member	Vote
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Richard Chivaro, Representative of the State Controller, Vice Chairperson	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

I. CHRONOLOGY

- 4/15/2015 The District filed the request to amend the parameters and guidelines with the Commission.¹
- 6/19/2015 Finance submitted comments on the request to amend the parameters and guidelines.²
- 6/19/2015 The Controller submitted comments on the request to amend the parameters and guidelines.³
- 7/16/2015 Commission staff issued the draft proposed decision.⁴
- 7/21/2015 The District submitted rebuttal comments to Finance and Controller's comments on the request to amend the parameters and guidelines.⁵
- 8/4/2015 The Controller submitted comments on the draft proposed decision.⁶
- 8/6/2015 The District submitted a declaration by Brad Williams, from Capital Matrix Consulting; a declaration of authenticity of records by Gwendolyn Carlos, from the Controller's Office; and copy of a spreadsheet of the reimbursement claims filed with the Controller's office for fiscal years 2011-2012 and 2012-2013.⁷
- 8/10/2015 The District submitted comments on the draft proposed decision.⁸

II. SUMMARY OF THE MANDATE

The *Immunization Record - Pertussis* decision was adopted by the Commission on July 26, 2013, and approved reimbursement, beginning July 1, 2011, for school districts to verify whether pupils entering the 7th through 12th grades were fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. Beginning July 1, 2012, verification is required only for pupils entering 7th grade.

The test claim statute was enacted in response to a pertussis epidemic in California. Under prior law, immunization against pertussis was required prior to the *first* admission to school, typically in kindergarten. The Department of Public Health found that routine childhood immunization against pertussis provided before kindergarten does not provide lasting immunity, that 7th through 12th grade pupils are at the highest risk of waning pertussis immunity, and that without intervention the pertussis epidemic will be prolonged.

¹ Exhibit A, Request to Amend Parameters and Guidelines.

² Exhibit B, Finance Comments on Request to Amend Parameters and Guidelines.

³ Exhibit C, Controller's Comments on Request to Amend Parameters and Guidelines.

⁴ Exhibit D, Draft Proposed Decision.

⁵ Exhibit E, District's Rebuttal to Finance and Controller's Comments on Request to Amend.

⁶ Exhibit F, Controller's Comments on Draft Proposed Decision.

⁷ Exhibit G, District Comments.

⁸ Exhibit H, District Comments on Draft Proposed Decision.

On December 6, 2013, the Commission adopted parameters and guidelines for reimbursement of the following activities: receiving and reviewing the written records of the pertussis vaccination; receiving and reviewing documentation showing a pupil's permanent medical or personal beliefs exemption; receiving and reviewing documentation showing a pupil's temporary exemption; advising the pupil's parent or guardian of the requirement to exclude the pupil from school if written evidence of the vaccination or exclusion is not provided within ten days; and reporting to the attendance supervisor any pupil excluded for attendance based on the immunization verification requirements. These parameters and guidelines require school districts to claim reimbursement based on actual costs incurred, and retain all documents used to support the reimbursable activities during the period subject to audit.

More specifically, the following ongoing approved activities are the subject of this proposal:

Beginning July 1, 2012, only for students entering the 7th grade:

- (1) Receive and review the following documents for all pupils entering the 7th grade to determine whether to unconditionally admit or conditionally admit the pupil:
 - a) A written record of the pertussis vaccination (Tdap booster) that contains the name of the pupil, birth date of the pupil, the date of the pertussis vaccination, and the name of the physician or agency administering the vaccine; *or*
 - b) Documentation showing a pupil's permanent medical exemption or personal beliefs exemption to immunization. A permanent medical exemption shall be granted upon the filing of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. A personal beliefs exemption for the pertussis booster shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of minor, or the person seeking admission if an emancipated minor, that such pertussis booster immunization is contrary to his or her beliefs.
 - c) Documentation showing a pupil is temporarily exempted from immunization for medical reasons.

Pupils who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis shall be unconditionally admitted to grade 7. Pupils who have a temporary medical exemption shall be admitted to grade 7 on condition that the required immunization is obtained at the termination of the exemption.

Reimbursement is not required to perform activities generally required to admit students since those activities are not new. Reimbursement is limited to receiving and reviewing the above documents.

- (2) If it is determined that a pupil seeking admission lacks documentation that he or she has been fully immunized against pertussis, and does not have a permanent medical exemption or a personal belief exemption to the pertussis immunization, advise the pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.
- (3) For any already admitted pupil who is later found not to have complied with requirements for conditional admission, notify that pupil's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
- (4) Report to the attendance supervisor or building administrator any pupil excluded from further attendance who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

In addition, the following activities are specifically excluded from reimbursement: (1) reporting the immunization status of students to county health departments or the state; (2) recording and maintaining student immunization records; (3) periodically reviewing student immunization records to ensure compliance with the test claim statute. These activities are not required to implement the test claim statute and are instead addressed by the Department of Public Health regulations that were not properly pled and therefore beyond the Commission's jurisdiction.

III. POSITIONS OF THE PARTIES

Requester

The District proposes to add a unit cost RRM of \$9.17 per eligible pupil, adjusted for inflation, in lieu of requiring claimants to provide detailed documentation of actual costs incurred. After adjusting for inflation, for fiscal year 2014-2015 the proposed unit cost rate is \$9.47.⁹

In support of the request, the District provides a Statistical Analysis of Pertussis Mandate Claims (statistical analysis) report prepared by Capital Matrix Consulting, which presents the findings of the "statistical analysis of reimbursement claims submitted by school districts for the Pertussis mandate contained in AB 354 (Chapter 434, Statutes of 2010)."¹⁰ The report states that the proposal is based on unaudited claims data received by the Controller, along with school district enrollment data from CDE for fiscal years 2011-2012 and 2012-2013. From these data sources, a per-pupil claim amount was calculated for each district submitting claims during the two years.

For the analysis, the report excluded claims made by county offices of education because they were unable to ascertain how many pupils were covered by those claims. One district in each year was excluded based on the extreme size of the claims relative to all other districts. In both cases, the claims exceeded \$100 per pupil – amounts that were nearly double the second largest

⁹ Exhibit A, Request to Amend Parameters and Guidelines, pages 1, 10.

¹⁰ The report is in Exhibit A, Request to Amend Parameters and Guidelines, pages 65-87.

claim made in each year, and over ten times the overall average claim.¹¹ Although the analysis was performed for both fiscal years, the recommendation for the adoption of the unit cost is based on findings for fiscal year 2012-2013 only, since the ongoing portion of the mandate applies only to incoming 7th grade pupils beginning that fiscal year. The results of the analysis for fiscal year 2011-2012 were used only as a check for reasonableness. The report explains the analysis as follows:

Controller's Office claims data. For purposes of this study, we analyzed claims data provided to us by the state Controller's Office for fiscal years 2011-12 and 2012-13. The data for 2011-12 included claims for 7th through 12th grades for 232 districts, superintendents, and county offices of education, totaling \$6.9 million. The data for 2012-13 includes claims from 175 school districts, superintendents and county offices of education totaling \$1.7 million. The smaller amount of claims in 2012-13 is primarily related to the smaller number of students for which review of immunization records is required. As noted above, only 7th grade students are affected by the mandate in 2012-2013 and thereafter.

The Controller's data for both years includes the total dollar value of claims for each district, as well as a breakout of how the costs are distributed among the four reimbursable activities. However, the Controller's data does not include information regarding the specific number of students involved in each activity. Thus, the data is not amenable to creation of separate reimbursement rates for each activity.

School enrollment data. To determine the cost-per-student claim amounts, we extracted from the California Department of Education database information on enrollment by grade level for each district submitting claims under this mandate. Next, we backed out the number of students in each district that were enrolled in charter schools (which are ineligible to claim mandate reimbursements). We then divided claim amounts for each district by the number of non-charter school students in the 7th through 12th grades for 2011-12, and by non-charter school students in the 7th grade for 2012-13, to arrive at an average per-student claim amount for each of the districts.

For our analysis, we excluded claims made by county offices of education and superintendents of public instruction because we were unable to ascertain how many students were covered by those claims. We also excluded one district in each year based on extreme size of the claims relative to all other districts. In both cases, the claims exceeded \$100 per student – amounts that were nearly double the second largest claim made in each year, and over ten times the overall average claim.

After these exclusions, the remaining dataset on which we conducted our analysis included 214 districts with claims totaling \$6.6 million in 2011-12, and 158

¹¹ For example, the report indicates that Huntington Beach City Elementary had an average claim of \$136.20 per student in fiscal year 2011-2012, and that Central Unified had an average claim of \$105.00 per student in fiscal year 2012-2013. The report states that the claims from these districts were excluded from the analysis (Exhibit A, pages 77, 83).

districts with claims totaling \$1.6 million in 2012-13. The data used in our analysis are included in Appendix 2 of the report.¹²

For fiscal year 2012-2013, the distribution of per-pupil claims by district, for over one half of the districts “(which covered nearly two-thirds of the 7th grade students in districts making claims in 2012-13),” ranged from \$1 to \$10. Another one-quarter of the districts submitted claims ranging from \$10 to \$20 per pupil, and the remaining quarter submitted claims ranging from \$20 to \$60 per pupil.¹³ The report calculates the average and median amounts claimed in 2012-2013 for performing the mandated activities for 7th graders as follows:

- The unweighted average claim for all districts was \$12.87 per pupil. The unweighted average reflects the expected size of a claim drawn from a randomly selected district, regardless of the district’s size.
- The weighted average claim, taking into account the relative number of 7th graders in each district, was \$9.64. The weighted average reflects the expected size of a claim associated with a randomly selected pupil in a district. In the weighted calculation, the number of pupils in each district matters. Districts with 1,000 pupils would have 10 times the weight of the smaller district.
- After eliminating outliers (approximately 5 percent of the districts) the weighted average was \$9.17 per pupil. The methodology used to eliminate outliers compared actual per-pupil claim levels to the expected value for each district, taking into account its size and proportion of claims attributable to follow-up activities. “Specifically, we (1) estimated a regression-based equation relating per-student claiming amounts to district size and percentage of claims related to follow-up activities, (2) calculated the standard error of the estimate (the average variation around the predicted value), and (3) eliminated observations that were more than two standard deviations from their expected values.” The report states that the advantage of this methodology is it does not automatically eliminate districts with high or low claim rates. Rather, it compares each district’s per-pupil claim to its expected value, given its size and proportion of claims related to follow-up activities.
- The median per-district claim amount was \$8.88 per pupil.¹⁴

The District asserts that the proposed RRM considers the variation of costs among school districts and implements the mandate in a cost effective manner because it is based on the number of pupils determined to be immunized at each district.¹⁵

In support of the request, the District submitted a signed declaration from Brad Williams of Capital Matrix Consulting,¹⁶ as well as a declaration of authenticity of records from Gwendolyn

¹² *Id.* page 68.

¹³ *Ibid.*

¹⁴ *Id.* pages 66, 70, and 72.

¹⁵ Exhibit A, Request to Amend Parameters and Guidelines, pages 10-11, 67.

¹⁶ Exhibit G, District’s Comments filed August 6, 2015, Declaration of Gwendolyn Carlos, pages 1-2.

Carlos from the Controller's Office,¹⁷ with a schedule of the unaudited pertussis reimbursement claims submitted to the Controller for fiscal years 2011-12 and 2012-13.¹⁸ Additionally, the District filed comments on the draft proposed decision reiterating many of the assertions made above.¹⁹ In their comments, the District also asserts that their consultant, Mr. Williams, reviewed the report prepared by Ms. Carlos, as well as the numbers in the attached table, and determined that "the bottom line totals and the detail in the report are identical to the information provided to him by the Controller on October 28, 2014, that was the basis for his statistical analysis and conclusions contained therein. Therefore, Mr. Williams's opinions and conclusions included in his statistical analysis remain unchanged."²⁰ The District also addressed the Finance's assertion that the block grant provides for simplicity in funding mandated activities, arguing that inclusion of the program in the block grant program is irrelevant because school districts can decide annually whether to participate in the block grant or to file reimbursement claims.²¹

Finance

On June 19, 2015, Finance submitted comments on the District's request to amend the parameters and guidelines. Finance argues in its comments that "[t]o the extent that school districts desire simplicity of per unit funding for mandated activities, they can participate in the Mandate Block Grant program," which in the 2015 budget, includes \$1.7 million Proposition 98 General Funds to specifically reimburse local educational agencies for mandated costs. Finance also argues that adoption of an RRM is premature because the Controller has not conducted field audits of the reimbursement claims submitted for the *Pertussis* program and therefore it is impossible to substantiate the validity of the costs claimed to date. Finance asserts that this could result in the establishment of a base funding level on unaudited claims, which could prove detrimental to the state if the true costs are ultimately determined to be lower. Finally, Finance asserts that because the Controller has not audited the claims, and since the Controller

¹⁷ *Id.* page 3.

¹⁸ Exhibit G, District's Comments filed August 6, 2015, pages 4-14.

¹⁹ Exhibit H, District's Comments on Draft Proposed Decision, August 10, 2015.

²⁰ *Id.* page 2.

²¹ *Id.* pages 2-3. Note also that AB 731, which is currently enrolled, deletes Immunization Records - Pertussis from the block grant and the program does not appear to be funded elsewhere. Interestingly, Government Code section 17581.6(c) (1) specifies that "A school district, county office of education, or charter school that elects to receive block grant funding pursuant to this section in a given fiscal year shall submit a letter requesting funding to the Superintendent of Public Instruction on or before August 30 of that fiscal year. But AB 731 will not be enacted until well after that date and will not be effective until January 1, 2016 – in the middle of the fiscal year. It is unclear what effect this bill would have on mandate reimbursement for this program, if signed by the Governor, for the 2015-2016 fiscal year.

historically disallows claimed costs in excess of 50 percent on average, it would be inappropriate to adopt an RRM for the *Pertussis* program based on unaudited data.²²

Controller

On June 19, 2015, the Controller submitted written comments on the request to amend the parameters and guidelines. The Controller asserts that the proposed RRM should not be adopted “since the unit cost per student shows significant variances ranging from \$1 to \$105.”²³ On August 4, 2015, the Controller submitted comments on the draft proposed decision, which recommended that the Commission deny the request to amend the parameters and guidelines on the ground that the request was not supported by evidence in the record, stating the Controller recommends no changes to the draft decision.²⁴

IV. DISCUSSION

The District proposes to amend Section V. of the parameters and guidelines to include a unit cost RRM in lieu of filing detailed documentation of actual costs, based on evidence of the average costs of complying with the mandate. The Commission finds that the statutory and constitutional requirements for an RRM have been met, and are supported by substantial evidence in the record.

A. A Reasonable Reimbursement Methodology Shall Consider the Variation in Costs Among Local Government Claimants, Balance Accuracy With Simplicity, Reasonably Reimburse Eligible Claimants for Costs Mandated by the State, and Must Be Supported by Substantial Evidence in the Record.

1. The RRM shall consider the variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse eligible claimants for costs mandated by the state.

Article XIII B, section 6 provides: “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”²⁵ Section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.” (Emphasis added.) The courts have

²² Exhibit B, Finance’s Comments on Request to Amend Parameters and Guidelines, pages 1-2.

²³ Exhibit C, Controller’s Comments on Request to Amend Parameters and Guidelines, pages 1-2.

²⁴ Exhibit F, Controller’s Comments on Draft Proposed Decision, August 4, 2015.

²⁵ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.²⁶

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.²⁷ Prior section 17557 provided authority for the Commission, extending back to 1984, to “adopt an allocation formula or uniform allowance.”²⁸ Section 17557 currently provides, and has since 2004, that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider [an RRM] that balances accuracy with simplicity.”²⁹

Express statutory authority for the adoption of an RRM was originally enacted in 2004, and was amended in 2007 to promote greater flexibility in the adoption of an RRM.³⁰ The former section 17518.5 provided that an RRM, which as defined may be in the form of a uniform cost allowance, must “meet the following conditions:”

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.³¹

In a 2007 report, the Legislative Analyst’s Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the Controller’s audit reductions. The

²⁶ *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

²⁷ Government Code section 17500 et seq.

²⁸ Government Code section 17557 (Stats. 1984, ch. 1459).

²⁹ Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

³⁰ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

³¹ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856)).

report identifies, under the heading “Concerns With the Mandate Process,” the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”) typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller’s Office.

The LAO’s recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute³²

The LAO’s recommendations were implemented through Statutes 2007, chapter 329 (AB 1222) which amended 17518.5 to define an RRM as follows:

- (a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs

³² “State-Local Working Group Proposal to Improve the Mandate Process,” Legislative Analyst’s Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 2856 (2004), concurrence in Senate Amendments of August 17, 2004; Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007. These bill analyses identify the purpose of the RRM process is to “streamline the documentation and reporting process for mandates.”; Kaufman & Broad Communities, Inc. v. Performance Plastering (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, 31-32 [Reports of the Legislative Analyst’s Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

(e) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.³³

Thus, Government Code section 17518.5, as amended in 2007, provides a flexible definition, which focuses on the sources of the information used to develop an RRM,³⁴ and only requires that the end result “balances accuracy with simplicity.” Given the LAO’s “Concerns with the Mandates Process” to which the amendments were addressed, the new statute should also be interpreted as imposing less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.³⁵

As noted above, an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of other local costs.”³⁶ The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly, the regulations provide that a “‘representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”³⁷ The statute provides that an RRM “[w]henver possible... shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs.”³⁸ Section 1183.12 of the Commission’s regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”³⁹ There is no requirement that the data upon which an RRM is based include actual cost claimed, or audited data as argued by Finance; an “approximation” is sufficient. Government Code section 17518.5 expressly provides for an RRM as an alternative to the requirement for detailed documentation of actual costs.⁴⁰

³³ Government Code section 17518.5 (b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

³⁴ Government Code section 17518.5 (as amended, Stats. 2007, ch. 329 (AB 1222)).

³⁵ *Kaufman & Broad Communities, supra*, 133 Cal.App.4th 26, 31-32 [LAO reports may be relied upon as evidence of legislative history].

³⁶ Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

³⁷ California Code of Regulations, title 2, section 1183.13 (Register 2008, No. 17).

³⁸ Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

³⁹ Register 2008, number 17.

⁴⁰ See Exhibit I, Assembly Floor Analysis, AB 1222 [“Establishes a streamlined alternative state mandate reimbursement process...”].

Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.”

By determining a unit cost RRM based on approximations or averages of local costs pursuant to section 17518.5, some local entities may receive more than their actual costs incurred to comply with a state-mandated program and some may receive less. And, thus, for any given program with a unit cost, there may be some entities that are not reimbursed the full costs actually incurred, as the courts have determined is required by article XIII B, section 6. Nevertheless, the Legislature has the power to enact statutes, such as Government Code section 17518.5, that provide “reasonable” regulation and control of the rights granted under the Constitution. The Commission must presume that Government Code section 17518.5 is constitutionally valid.⁴¹ Additionally, the Commission has the duty of applying Government Code section 17518.5 in a constitutional manner. If the Commission approves a unit cost that does not comply with the requirements of section 17518.5 and does not represent a reasonable approximation of costs incurred by an eligible claimant to comply with the mandated program, then the Commission’s decision could be determined unconstitutional and invalid by the courts. Accordingly, the substantive requirements for the adoption of an RRM are to consider the variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants the costs mandated by the state.

2. The RRM must be based on substantial evidence in the record.

Government Code section 17559 requires that Commission decisions be based on substantial evidence in the record. Section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”⁴²

Code of Civil Procedure section 1094.5, in turn, provides:

Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. *In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.*⁴³

The latter finding is required for Commission decisions: when reviewing a decision of an administrative body exercising quasi-judicial power, “the reviewing court is limited to the

⁴¹ California Constitution, article III, section 3.5.

⁴² Government Code section 17559(b) (Stats. 1999, ch. 643).

⁴³ Code of Civil Procedure section 1094.5 (Stats. 2011, ch. 296 § 41).

determination of whether or not the decision is supported by substantial evidence and the court may not substitute its view for that of the administrative body, nor reweigh conflicting evidence.”⁴⁴ Moreover, Government Code section 17559 expressly “requires that the trial court review the decision of the Commission under the substantial evidence standard.”⁴⁵

The evidence required to adopt an RRM is necessarily more relaxed than an actual cost reimbursement methodology.⁴⁶ However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.⁴⁷ In 2011, the Commission clarified its regulations to specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.⁴⁸ Thus, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM.

The Commission is not required to observe strict evidentiary rules, but its decisions cannot be based on hearsay evidence alone. The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.⁴⁹

⁴⁴ *Board of Trustees of the Woodland Union High School District v. Munro* (Cal. Ct. App. 3d Dist. 1958) 163 Cal.App.2d 440, 445.

⁴⁵ *City of San Jose v. State* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, 1810.

⁴⁶ See Government Code section 17518.5 [Employs terms like “projections;” “approximations”].

⁴⁷ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

⁴⁸ California Code of Regulations, title 2, section 1187 (Register 2010, No. 44).

⁴⁹ *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. The board based its denial of land use permit for a race track on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to “reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing,

Section 1187.5(a) of the Commission's regulations provides that when exercising the quasi-judicial functions of the Commission, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."⁵⁰ This regulation is borrowed from the evidentiary requirements of the Administrative Procedures Act (APA), which contains substantially the same language.⁵¹ Section 1187.5(c) requires that oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.

Both the Commission's regulations, and the APA provisions in the Government Code, provide that hearsay evidence is admissible if it is inherently reliable, but *will not be sufficient in itself* to support a finding unless the evidence would be admissible over objection in a civil case with a hearsay exception.⁵² Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence.⁵³

Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated. Under the evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination. However, under the relaxed rules of evidence in section 1187.5 of the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁵⁴

Out-of-court statements that are *not* made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence alone cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁵⁵ There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is

and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." *Id.* page 456.

⁵⁰ California Code of Regulations, title 2, section 1187.5.

⁵¹ Government Code section 11513.

⁵² California Code of Regulations, title 2, section 1187.5; Government Code section 11513.

⁵³ California Code of Regulations, title 2, section 1187.5.

⁵⁴ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁵⁵ *People v. Cudjo* (1993) 6 Cal.4th 585.

considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁵⁶

In addition, the Commission may take official notice of any facts which may be judicially noticed by the courts.⁵⁷ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.

Section 1187.5(d) further provides that each party has the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing witnesses. The regulation further states that “[i]f declarations are to be used in lieu of testimony, the party proposing to use the declarations shall comply with Government Code section 11514.”⁵⁸ Government Code section 11514, in turn, provides:

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, *shall be given the same effect as if the affiant had testified orally*. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.⁵⁹

Note that the Commission’s regulations use the word “declaration,” and the Government Code refers to an “affidavit.” An affidavit, by definition, if it is to be used before a court, must “be taken before any officer authorized to administer oaths,” usually a judge.⁶⁰ But under the Code of Civil Procedure, section 2015.5, a declaration made *under penalty of perjury* is given the same force and effect as an affidavit sworn before an authorized officer. Such declaration must be in writing, must be “subscribed by him or her,” and must name the date and place of execution.⁶¹

For expert testimony, an expert must be qualified, pursuant to section 720 of the Evidence Code, which provides:

(a) A person is qualified to testify as an expert if he has special knowledge, skill, expertise, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such

⁵⁶ See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁵⁷ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

⁵⁸ California Code of Regulations, title 2, section 1187.5.

⁵⁹ Government Code section 11514(a) (Stats. 1947, ch. 491 § 6) [emphasis supplied].

⁶⁰ Code of Civil Procedure section 2012 (Stats. 1907, ch. 393 § 1).

⁶¹ Code of Civil Procedure section 2015.5 (Stats. 1980, ch. 889 § 1).

special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

- (b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.⁶²

The California Supreme Court has held that an expert witness is qualified “if his peculiar skill, training, or experience enable him to form opinion that would be useful to the jury.”⁶³ And in order to lay the foundation to introduce expert testimony, “[it is] the province of the court to determine, from the examination as to the witness' qualifications, whether he [is] competent to testify as an expert.”⁶⁴ An expert's testimony is intended to make complicated facts or information more understandable to the fact finder, and in so doing may rely on any information, including that which is not admissible in itself, but may not make legal conclusions.⁶⁵

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge:

- Commission decisions must be supported by “substantial evidence” under Government Code section 17559.
- Any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely. Oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.⁶⁶
- Hearsay evidence may be used to supplement or explain, although it shall not be sufficient alone to support a finding unless admissible over objection in civil actions.⁶⁷
- Under Government Code section 11514, as referenced in the Commission's regulations, an affidavit or declaration may be “given the same effect as if the affiant had testified orally,” if properly noticed and an opportunity to cross-examine the affiant is given.⁶⁸

⁶² Evidence Code section 720 (Stats. 1965, ch. 299 § 2).

⁶³ *People v. Davis* (1965) 62 Cal.2d 791, 800.

⁶⁴ *Bossert v. Southern Pacific Co.* (1916) 172 Cal. 504, 506.

⁶⁵ Evidence Code section 805; *WRI Opportunity Loans II LLC v. Cooper* (Cal. Ct. App. 2d Dist. 2007) 154 Cal.App.4th 525, 532, fn 3 [“Generally, Evidence Code section 805 permits expert testimony on the ultimate issue to be decided by the fact finder. However, this rule does not ... authorize ... an ‘expert’ to testify to legal conclusions in the guise of expert opinion. Such legal conclusions do not constitute substantial evidence.” (internal citations omitted)].

⁶⁶ California Code of Regulations, title 2, section 1187.5.

⁶⁷ *Id.*

⁶⁸ *Id.*

- Expert testimony, in the form of an affidavit or declaration is admissible if the Commission finds a witness is qualified by special skill or training, and the testimony is helpful to the Commission.⁶⁹
- The Commission may take official notice of any facts which may be judicially noticed by the courts, including official acts of any legislative, executive, or judicial body and records of the court.⁷⁰
- Furthermore, surveys and other cost analyses of eligible claimants as a method of gathering cost data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission's regulations and the evidence rules, as discussed above.⁷¹

As discussed further below, the Commission finds that the evidence submitted is sufficient to support adoption of an RRM for reimbursement of the ongoing portion of the Pertussis mandate, consistent with the constitutional and statutory requirements of RRMs, and with Commission decisions generally.

B. The District's Proposal Meets the Requirements of an RRM and Is Supported by Substantial Evidence in the Record.

The District's proposed base unit rate of \$9.17 per pupil was developed using enrollment data from California Department of Education (CDE) and unaudited claims data for costs claimed under this program in fiscal years 2011-2012 and 2012-2013. The claims data was provided to the District's consultant by the Controller's Office.⁷² In support of the proposal, the District filed a declaration from Gwendolyn Carlos, an Accounting Administrator I (Supervisor) with the State Controller's Office, Division of Accounting and Reporting, which states in relevant part the following:

I am the Accounting Administrator I, Supervisor, of the Division of Accounting and Reporting within the State Controller's Office (SCO) and am duly authorized and qualified witness to certify the authenticity of the attached records of the SCO.

The copies of the documents of the SCO as described below and which are attached hereto is a true copy of the records as maintained by this office.

The documents are as follows:

- Report showing list of school districts who filed claims with SCO for Immunization Records – Pertussis (Program #357), which identifies the activities and costs for the 7th graders (not new entrants) for reimbursement:

⁶⁹ *Id.*; Evidence Code section 720 (Stats. 1965, ch. 299 § 2).

⁷⁰ *Id.*; Government Code section 11515.

⁷¹ Government Code section 17518.5; Code of Regulations, title 2, section 1183.13.

⁷² Exhibit G, District's Comments filed August 6, 2015, Declaration of Brad Williams, Capital Matrix Consulting, page 1.

Schedule A is for fiscal year 2011-2012 with 232 unaudited claims totaling \$6,907,220; and

Schedule B is for fiscal year 2012-2013 with 175 unaudited claims totaling \$1,722,043.

These documents were prepared by personnel of the SCO under my direct supervision and were prepared in the ordinary course of business at or near the time of the acts, conditions or events described in the records.⁷³

The documents attached to the Carlos declaration are spreadsheet schedules for each fiscal year that identify the claimant, the total amount claimed for the program in the two fiscal years, and the amounts claimed for each reimbursable direct and indirect cost relating to incoming 7th through 12th grade pupils in fiscal year 2011-2012 (schedule A) and 7th grade pupils only in fiscal year 2012-2013 (schedule B).⁷⁴

The District also filed a declaration by its consultant, Brad Williams of Capital Matrix Consulting, which states in relevant part the following:

1. My Statistical analysis was based on the unaudited claims data for fiscal years 2011-12 and 2012-13 provided to me by the State Controller's Office on October 28, 2014.
2. I have reviewed the declaration of Gwen Carlos, Accounting Administrator I, State Controller's Office, dated July 27 [sic], 2015 as well as the more detailed report prepared by Gwen Carlos attached to her declaration showing claim data for the cost incurred by each school district under each reimbursable activity and the total amount of claim.
3. Based on my review of the declaration of Gwen Carlos dated July 27 [sic], 2015 as well as the report prepared by Gwen Carlos attached to her declaration, the bottom line totals and the detail in the report are identical to the information provided to me by the Controller's Office on October 28, 2014, that was the basis for my statistical analysis and conclusions contained therein. Therefore, my opinions and conclusions in my Statistical Analysis remain unchanged.
4. The school district enrollment data was used in my Statistical Analysis is from the State Department of Education. (<http://www.cde.ca.gov/ds/sd/sd/filesenr.asp>). We downloaded the data enr11 and enr12, which corresponds to enrollment data for academic years 2011-12 and 2012-13. In these data files, enrollment counts are given for each school by grade level. We imported the data into STATA (a database and statistical software package) to construct our relevant enrollment measures.
5. I excluded Charter Schools from the enrollment totals using information from the Department of Education's public schools data base.

⁷³ Exhibit G, District's Comments filed August 6, 2015, Declaration of Gwendolyn Carlos, page 3.

⁷⁴ *Id.* pages 4-14.

(<http://www.cde.ca.gov/ds/si/ds/pubschols.asp>). (Charter Schools are excluded because they are not eligible to receive mandate reimbursements). From these data sources, I calculated a per-student claim amount for each district submitting claims during the two years. The public schools database file does not include enrollment. However, all public schools (whether Active, Closed, Merged, or Pending) are listed. A variable called “Charter” identifies whether the school is a charter school.

6. We combined the public schools database file with the enrollment data for years 2011 and 2012 and dropped districts that did not make claims. Since we are interested in enrollment for grades 7-12, we created a count of total enrollment in each district for grades 7, 8, 9, 10, 11, and 12, excluding charter schools. Total district enrollment for grades 7-12 is the sum of these measures.
7. I received my Bachelor of Arts and my Master of Arts in Economics from University of California, Davis. My thirty-two years of professional employment includes holding positions of Budget Analyst for the California Legislative Analyst’s Office, Director of Economic and Revenue Forecasting/Executive Director for the California Commission in State Finance, and Senior Economist/Director of Economic and Revenue Forecasting for the California Legislative Analyst’s Office. My formal education and professional experience includes among other tasks, developing statistical analysis similar to the analysis I completed for the Immunization Records-Pertussis program. I have attached to this declaration my current resume.⁷⁵

The Statistical Analysis of Pertussis Mandate Claims (statistical analysis) report prepared by Mr. Williams of Capital Matrix Consulting summarizes the findings and the District’s proposal for a base unit cost of \$9.17 adjusted for inflation.⁷⁶ The report explains the analysis as follows:

Controller’s Office claims data. For purposes of this study, we analyzed claims data provided to us by the state Controller’s Office for fiscal years 2011-12 and 2012-13. The data for 2011-12 included claims for 7th through 12th grades for 232 districts, superintendents, and county offices of education, totaling \$6.9 million. The data for 2012-13 includes claims from 175 school districts, superintendents and county offices of education totaling \$1.7 million. The smaller amount of claims in 2012-13 is primarily related to the smaller number of students for which review of immunization records is required. As noted above, only 7th grade students are affected by the mandate in 2012-13 and thereafter.

The Controller’s data for both years includes the total dollar value of claims for each district, as well as a breakout of how the costs are distributed among the four reimbursable activities. However, the Controller’s data does not include information regarding the specific number of students involved in each activity. Thus, the data is not amenable to creation of separate reimbursement rates for each activity.

⁷⁵ Exhibit G, District’s Comments filed August 6, 2015, pages 1-2.

⁷⁶ Exhibit A, Request to Amend Parameters and Guidelines, pages 65-87.

School enrollment data. To determine the cost-per-student claim amounts, we extracted from the California Department of Education database information on enrollment by grade level for each district submitting claims under this mandate. Next, we backed out the number of students in each district that were enrolled in charter schools (which are ineligible to claim mandate reimbursements). We then divided claim amounts for each district by the number of non-charter school students in the 7th through 12th grades for 2011-12, and by non-charter school students in the 7th grade for 2012-13, to arrive at an average per-student claim amount for each of the districts.

For our analysis, we excluded claims made by county offices of education and superintendents of public instruction because we were unable to ascertain how many students were covered by those claims. We also excluded one district in each year based on extreme size of the claims relative to all other districts. In both cases, the claims exceeded \$100 per student – amounts that were nearly double the second largest claim made in each year, and over ten times the overall average claim.

After these exclusions, the remaining dataset on which we conducted our analysis included 214 districts with claims totaling \$6.6 million in 2011-12, and 158 districts with claims totaling \$1.6 million in 2012-13. The data used in our analysis are included in Appendix 2 of the report.⁷⁷

For fiscal year 2012-2013, the distribution of per-pupil claims by district, for over one half of the districts “(which covered nearly two-thirds of the 7th grade students in districts making claims in 2012-13),” ranged from \$1 to \$10. Another one-quarter of the districts submitted claims ranging from \$10 to \$20 per pupil, and the remaining quarter submitted claims ranging from \$20 to \$60 per pupil.⁷⁸ The report calculates the average and median amounts claimed in 2012-2013 for performing the mandated activities for 7th graders as follows:

- The unweighted average claim for all districts was \$12.87 per pupil. The unweighted average reflects the expected size of a claim drawn from a randomly selected district, regardless of the district’s size.
- The weighted average claim, taking into account the relative number of 7th graders in each district, was \$9.64. The weighted average reflects the expected size of a claim associated with a randomly selected pupil in a district. In the weighted calculation, the number of pupils in each district matters. Districts with 1,000 pupils would have 10 times the weight of the smaller district.
- After eliminating outliers (approximately 5 percent of the districts) the weighted average was \$9.17 per pupil. The methodology used to eliminate outliers compared actual per-pupil claim levels to the expected value for each district, taking into account its size and proportion of claims attributable to follow-up activities. “Specifically, we (1) estimated a regression-based equation relating per-student claiming amounts to district size and percentage of claims related to follow-up activities, (2) calculated the standard error of

⁷⁷ *Id.* page 68.

⁷⁸ *Ibid.*

the estimate (the average variation around the predicted value), and (3) eliminated observations that were more than two standard deviations from their expected values.” The report states that the advantage of this methodology is it does not automatically eliminate districts with high or low claim rates. Rather, it compares each district’s per-pupil claim to its expected value, given its size and proportion of claims related to follow-up activities.

- The median per-district claim amount was \$8.88 per pupil.⁷⁹

Claims data from fiscal year 2011-2012 was used to check reasonableness and consistency with the above calculations.⁸⁰

The report concludes by recommending the adoption of a base unit cost of \$9.17, adjusted for inflation as follows:

Based on the Controller’s claims data for 2012-13, we believe that a unit cost of \$9.17 per (non-charter school) 7th grader is reasonable for the period we examined. This amount is equal to the weighted average that results after elimination of outliers using our preferred (regression-based) methodology. Our recommended amount is modestly lower than the weighted average before elimination of outliers, but modestly higher than the median estimate. If adjusted for inflation, the \$9.17 rate would rise to \$9.47 in 2014-15.⁸¹

Finance and the Controller both oppose the proposed RRM. The Controller states that the cost per pupil shows significant variance, ranging from \$1 to \$105. Finance asserts that the Commission should deny the request because the underlying data has not been audited by the Controller. Finance further asserts that if school districts want simplicity in claiming costs, the education mandates block grant, which provides funding for this program, is available to school district claimants.

As more fully described below, the Commission finds that the District’s proposal meets the requirements of an RRM and is supported by substantial evidence in the record.

1. The proposal considers the variation in costs among local government claimants, balances accuracy with simplicity, and reasonably reimburses eligible claimants the costs mandated by the state.

The District argues that the unit cost proposal meets the definition of an RRM since it is based on cost information from a representative sample of eligible claimants, balances accuracy with simplicity, and based on the statistical analysis performed by the consultant, reasonably represents the costs mandated by the state to comply with the *Pertussis* program for pupils entering 7th grade.⁸² The Commission agrees.

⁷⁹ *Id.* pages 66, 70, and 72.

⁸⁰ *Id.* page 67.

⁸¹ *Id.* page 73.

⁸² *Id.* page 11.

The activities for the mandated program include receiving and reviewing the written records of the pertussis vaccination; receiving and reviewing documentation showing a pupil's permanent medical or personal beliefs exemption; receiving and reviewing documentation showing a pupil's temporary exemption; advising the pupil's parent or guardian of the requirement to exclude the pupil from school if written evidence of the vaccination or exclusion is not provided within ten days; and reporting to the attendance supervisor any pupil excluded for attendance based on the immunization verification requirements. The proposed base unit cost for these activities is \$9.17 per student, based on 2012-2013 data, and is adjusted for inflation to \$9.47 for fiscal year 2014-2015. The reimbursable activities are performed by school districts for every incoming 7th grade pupil and, in that sense, the reimbursable activities are task repetitive and should be relatively stable and consistent from district to district. The Commission has previously adopted unit costs for other similar school immunization programs.⁸³

As discussed above, the purpose of an RRM is to reimburse local government efficiently and simply. The statute governing RRM was amended in 2007 to promote flexibility in the development of an RRM, and the only remaining statutory requirements of an RRM are to consider variations in costs among eligible claimants and to balance accuracy in reimbursement with simplicity in the claiming process. There is no requirement of a minimum sample size for the data used to develop an RRM, nor a requirement to use actual, detailed cost data at all; estimated cost information is sufficient. There is no requirement that an RRM mitigate or eliminate cost variation among local government claimants, or that cost data from more than one fiscal year be considered. However, the purpose of an RRM is to promote simplicity; not to ignore accuracy, where accuracy can be achieved.

Here, the proposed RRM does consider the variation in costs among school districts to implement the mandate in a cost efficient manner. The proposed RRM is developed on the basis of cost information from reimbursement claims filed by 175 school districts for fiscal year 2012-2013, which is a representative sample of eligible claimants.⁸⁴ The sample used in the statistical analysis is representative because it includes rural and urban, and large and small districts,⁸⁵ and

⁸³ See, for example, *Immunization Records* (SB90-120), which involves the required proof of immunizations for diphtheria, pertussis, tetanus, polio, and measles prior to a pupil's first entry into school. This program is currently being reimbursed under the SMAS program (State Mandate Apportionment System), which requires a finding that the reimbursable costs be stable. (Gov. Code, §§ 17615 et seq., Cal. Code Regs., tit. 2, § 1186.3.) The parameters and guidelines for *Immunization Records* can be found on the Commission's website at <http://www.csm.ca.gov>. The Commission also adopted a unit cost to reimburse school districts for the *Immunization Records, Hepatitis B* program (98-TC-05). That program addressed Legislative amendments from 1979-1997, which required proof of immunizations for mumps, rubella, and hepatitis B prior to a pupil's first entry into school, and proof of a hepatitis B booster prior to a pupil's entry into 7th grade. The parameters and guidelines for *Immunization Records, Hepatitis B* program (98-TC-05) can be found on the Commission's website at <http://www.csm.ca.gov>.

⁸⁴ Exhibit A, Request to Amend Parameters and Guidelines, page 68.

⁸⁵ Exhibit A, Request to Amend Parameters and Guidelines, pages 83-87 (for example, the sample includes: San Diego Unified School District [3532 eligible 7th grade students] and

none of the parties or interested parties dispute that the data was drawn from a representative sample of the school districts in California. A representative sample of eligible claimants is a permissible source of information upon which to develop an RRM rate.⁸⁶ The proposal is also based on enrollment data published by CDE on its website. The proposed RRM considers the variation in costs because the number of students varies in the different districts and “the level of actual costs incurred is tied to the number of students.”⁸⁷

In addition, the RRM proposal is supported with a statistical analysis prepared by the consultant who took the claims data provided by the Controller’s Office and the enrollment data published by CDE to determine the weighted average of costs claimed for fiscal year 2012-2013 for pupils entering the 7th grade. This method also eliminated outliers (about 5 percent of district claims) and did not consider claims which exceeded \$100 per pupil – amounts that were nearly double the second largest reimbursement claim submitted for each year, and over ten times the overall average claim.⁸⁸ The consultant also eliminated outliers by comparing “actual per-student claim levels to the expected value for each district, taking into account its size and proportion of claims attributable to follow-up activities.”⁸⁹ The proposed unit cost was then checked for reasonableness by reviewing the claims and enrollment data for fiscal year 2011-2012.⁹⁰

Neither the Department of Finance nor the State Controller’s Office rebut the findings of the District’s consultant, or suggest that the proposed base unit cost of \$9.17 per pupil fails to represent the costs mandated by the state. The Controller questions the variance of costs claimed by school districts, ranging from \$1 to \$105, but does not acknowledge that the proposal eliminated the outliers, including those claims that exceeded \$100. And Finance simply argues that the claims data was unaudited and suggests that the use of education block grant funding provides a simpler approach for funding. However, as indicated above, the fact that the underlying data has not been audited does not defeat the request. Government Code sections 17557 and 17518 specifically authorize the Commission to adopt a unit cost RRM in the original parameters and guidelines *before* reimbursement claims are filed. In addition, the education block grant is governed by Government Code section 17581.6, which authorizes a school district to receive block grant funding, in lieu of filing reimbursement claims with the Controller, for costs mandated by the state for over 40 state-mandated programs; this program is included in the

Newcastle Elementary School District [20 eligible 7th grade students]; Oakland Unified School District [urban with 2425 eligible 7th grade student] and Arcadia Unified School District [rural with 826 eligible 7th grade students].)

⁸⁶ Government Code section 17518.5(b).

⁸⁷ Exhibit A, Request to Amend Parameters and Guidelines, page 11.

⁸⁸ Exhibit A, Request to Amend Parameters and Guidelines, pages 66, 70, and 72. For example, the report indicates that Huntington Beach City Elementary had an average claim of \$136.20 per student in fiscal year 2011-2012, and that Central Unified had an average claim of \$105.00 per student in fiscal year 2012-2013. The report states that the claims from these districts were excluded from the analysis (Exhibit A, pages 77, 83).

⁸⁹ *Id.* page 73.

⁹⁰ *Id.* page 67.

block grant beginning on July 1, 2015 (one year after the potential period of reimbursement for this request). If a school district elects to receive block grant funding in a given fiscal year, it must submit a letter to the Superintendent of Public Instruction. School districts are not required to participate in the block grant funding program, and may continue to request reimbursement through the parameters and guidelines. Government Code section 17518.6 does not defeat the right of a local government claimant that does not participate in the block grant program to request a parameters and guidelines amendment to add a unit cost RRM, or defeat the authority of the Commission to approve such a request.

Accordingly, the Commission finds that the District's proposed unit cost RRM satisfies the statutory requirements for the adoption of an RRM and the constitutional requirements for reimbursement by considering the variation in costs among local government claimants, balancing accuracy with simplicity, and reasonably represents the costs mandated by the state for this program.

2. Substantial evidence in the record supports the adoption of the proposed RRM.

The draft proposed decision issued in this matter determined that the proposed RRM was supported only by hearsay, and not substantial evidence in the record. Under the Commission's regulations, a proposed RRM cannot be adopted on hearsay evidence alone.⁹¹

In response to the draft proposed decision, however, the District submitted a declaration signed under penalty of perjury from the State Controller's Office, certifying that the reimbursement claims data for fiscal years 2011-2012 and 2012-2013, was true and correct. Pursuant to Evidence Code section 664, the Commission can presume, absent evidence to the contrary, that the official duty of the Controller in reporting the costs claimed for this program, has been regularly performed and is accurate. The District also filed a declaration under penalty of perjury from the District's consultant, Brad Williams of Capital Matrix Consulting, which identified his training and professional experience that enabled him to form the opinions supporting the request, explained how he obtained the data to form his opinion, and the methodology used. The Commission finds that Mr. Williams is qualified as an expert witness, capable of testifying regarding the statistical analysis, the reimbursement claims and district enrollment data with which he worked, and the methodology that he used for the development of the proposed RRM. The Commission may also take official notice of the CDE enrollment data published on its website.⁹² The declarations submitted under penalty of perjury have the same force and effect as oral testimony under Code of Civil Procedure section 2015.5. The evidence is relevant, and non-repetitive, and admissible under the Commission's regulations. The Department of Finance and the State Controller's Office have not filed any evidence rebutting the claims or enrollment data reported in the declarations, and have not disputed the calculations prepared by Mr. Williams.

Accordingly, the Commission finds there is substantial evidence in the record to support the proposed base unit cost RRM of \$9.17 per 7th grade pupil, calculated using fiscal year 2012-2013 reimbursement claims and enrollment data for this program, which, when adjusted for inflation for fiscal year 2014-2015, is \$9.47 per pupil.

⁹¹ California Code of Regulations, title 2, section 1187.5.

⁹² California Code of Regulations, title 2, section 1187.5(c); Evidence Code section 452.

V. CONCLUSION

Based on the above, the Commission approves the request to amend the parameters and guidelines and adopts the base unit cost RRM of \$9.17 per 7th grade pupil based on 2012-2013 data, adjusted in subsequent years by the Implicit Price Deflator, for the period of reimbursement beginning July 1, 2014.⁹³ The base unit cost, when adjusted for inflation by the Implicit Price Deflator for fiscal year 2014-2015, is \$9.47. The following language is included in Section V. of the parameters and guidelines, and replaces former language requiring reimbursement based on a showing of actual costs incurred.

In lieu of filing detailed documentation of actual costs, the Commission hereby adopts a reasonable reimbursement methodology (RRM), as authorized by Government Code sections 17557(b) and 17518.5, to reimburse claimants for all *direct* and *indirect* costs of the reimbursable activities identified in Section IV. Reimbursable Activities of this document.

The RRM for the mandated activities shall be calculated by multiplying the total number of pupils entering the 7th grade by the uniform cost allowance, adjusted each year by the Implicit Price Deflator. The base uniform cost allowance is \$9.17, based on fiscal year 2012-2013 data. The base uniform cost allowance, when adjusted for inflation by the Implicit Price Deflator for the period of reimbursement beginning July 1, 2014, is \$9.47.

Amendments clarifying the adoption of the RRM have also been made to Sections I., III., IV., and VIII. of the parameters and guidelines.

In addition, the amended parameters and guidelines delete the activities required during fiscal year 2011-2012 only for pupils entering grades 7 through 12. These activities have already been performed and claimed and are no longer required pursuant to the plain language of the test claim statute.⁹⁴

⁹³ Initial claims for reimbursement for fiscal years 2011-2012 and 2012-2013 were due July 15, 2014, and claims for fiscal year 2013-2014 were due February 15, 2015; therefore, the period of reimbursement for the amendment begins on July 1, 2014 based on the filing date of the request (April 15, 2015), pursuant to Government Code section 17557(d)(1).

⁹⁴ Health and Safety Code section 120335(d), Statutes 2010, chapter 434.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Health and Safety Code Section 120335, as
amended and replaced by Statutes 2010,
Chapter 434 (AB 354)

Filed April 15, 2015, by

Desert Sands Unified School District, Requester

Case No.: 14-PGA-01 (11-TC-02)

Immunization Records - Pertussis

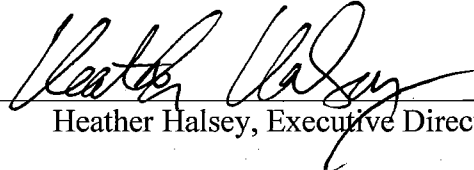
DECISION PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5,
ARTICLE 7.

(Adopted September 25, 2015)

(Served September 30, 2015)

AMENDMENT TO PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached amendment to parameters and guidelines on September 25, 2015.


Heather Halsey, Executive Director

PARAMETERS AND GUIDELINES

Health and Safety Code Section 120335

Statutes 2010, Chapter 434 (AB 354)

Immunization Records – Pertussis

11-TC-02 (14-PGA-01)

Effective for Costs Incurred Beginning July 1, 2014

I. SUMMARY OF THE MANDATE

On July 26, 2013, the Commission on State Mandates (Commission) adopted a statement of decision finding that Health and Safety Code section 120335(d), as added and replaced by the test claim statute, imposes a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- A. For fiscal year 2011-2012, only for students entering the 7th through 12th grades:
 - (1) Unconditionally admit students who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis.
 - (2) Conditionally admit students that have not been fully immunized against pertussis and have not obtained a permanent medical exemption or a personal belief exemption to immunization if that pupil has a temporary medical exemption or is in the process of receiving doses of the required vaccines.
 - (3) For any student found not to have received all immunizations for pertussis which are required before admission or advancement to grades 7 through 12, or who is found not to have complied with requirements for conditional admission, notify that student's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
 - (4) Exclude from further attendance any pupil who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.
- B. Beginning July 1, 2012, only for students entering the 7th grade:
 - (1) Unconditionally admit students who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization,

or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis.

- (2) Conditionally admit students that have not been fully immunized against pertussis and have not obtained a permanent medical exemption or a personal belief exemption to immunization if that pupil has a temporary medical exemption or is in the process of receiving doses of the required vaccines.
- (3) For any student who is found not to have complied with requirements for conditional admission, notify that student's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
- (4) Exclude from further attendance any pupil who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

The Commission also found that these provisions require school districts to receive and review the pertussis immunization records of a pupil, or letters or affidavits in support of an exemption from the immunization requirements.

On September 25, 2015, the Commission amended the parameters and guidelines to delete the activities required during fiscal year 2011-2012 only for pupils entering grades 7 through 12. These activities have already been performed and are no longer required pursuant to the plain language of the test claim statute. In addition, the Commission adopted a unit cost reasonable reimbursement methodology (RRM) as authorized by Government Code sections 17518.5 and 17557, for the reimbursement of all direct and indirect costs of the ongoing activities, in lieu of requiring claimants to provide detailed documentation of actual costs incurred.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

The amendments to these parameters and guidelines are effective July 1, 2014.

Reimbursement for state-mandated costs may be claimed as follows:

1. Reimbursement shall be based on the unit cost reasonable reimbursement methodology (RRM) described in Section V. of these parameters and guidelines.
2. Pursuant to Government Code section 17558(c), the Controller shall issue revised claiming instructions within 90 days after receiving these amended parameters and guidelines. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)

3. Thereafter, pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim for that fiscal year.
4. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
5. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

For students entering the 7th grade:

- (1) Receive and review the following documents for all pupils entering the 7th grade to determine whether to unconditionally admit or conditionally admit the pupil:
 - a) A written record of the pertussis vaccination (Tdap booster) that contains the name of the pupil, birth date of the pupil, the date of the pertussis vaccination, and the name of the physician or agency administering the vaccine; *or*
 - b) Documentation showing a pupil's permanent medical exemption or personal beliefs exemption to immunization. A permanent medical exemption shall be granted upon the filing of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. A personal beliefs exemption for the pertussis booster shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of minor, or the person seeking admission if an emancipated minor, that such pertussis booster immunization is contrary to his or her beliefs.
 - c) Documentation showing a pupil is temporarily exempted from immunization for medical reasons.

Pupils who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis shall be unconditionally admitted to grade 7. Pupils who have a temporary medical exemption shall be admitted to grade 7 on condition that the required immunization is obtained at the termination of the exemption.

Reimbursement is not required to perform activities generally required to admit students since those activities are not new. Reimbursement is limited to receiving and reviewing the above documents.

- (2) If it is determined that a pupil seeking admission lacks documentation that he or she has been fully immunized against pertussis, and does not have a permanent medical exemption or a personal belief exemption to the pertussis immunization, advise the

pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.

- (3) For any already admitted pupil who is later found not to have complied with requirements for conditional admission, notify that pupil's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
- (4) Report to the attendance supervisor or building administrator any pupil excluded from further attendance who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

In addition, the following activities are specifically excluded from reimbursement: (1) reporting the immunization status of students to county health departments or the state; (2) recording and maintaining student immunization records; (3) periodically reviewing student immunization records to ensure compliance with the test claim statute. These activities are not required to implement the test claim statute and are instead addressed by the Department of Public Health ("DPH") regulations that were not properly pled and therefore beyond the Commission's jurisdiction.¹

V. CLAIM PREPARATION AND SUBMISSION

In lieu of filing detailed documentation of actual costs, the Commission hereby adopts a RRM, as authorized by Government Code sections 17557(b) and 17518.5, to reimburse claimants for all *direct* and *indirect* costs of the reimbursable activities identified in Section IV. Reimbursable Activities of this document.

The RRM for the mandated activities shall be calculated by multiplying the total number of pupils entering the 7th grade by the uniform cost allowance, adjusted each year by the Implicit Price Deflator. The base uniform cost allowance is \$9.17, based on fiscal year 2012-2013 data. The base uniform cost allowance, when adjusted for inflation by the Implicit Price Deflator for the period of reimbursement beginning July 1, 2014, is \$9.47.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by

¹ Test Claim Statement of Decision, pages 11-12.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(c), the Controller shall issue revised claiming instructions within 90 days after receiving these amended parameters and guidelines, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim, parameters and guidelines and amendments thereto are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.