

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
May 29, 2003

- Present: Chairperson Robert Miyashiro
 Representative of the Director of the Department of Finance
 Member William Sherwood
 Representative of the State Treasurer
 Member Sherry Williams
 Representative of the Director of the Office of Planning and Research
 Member Walter Barnes
 Representative of the State Controller
 Member John Lazar
 City Council Member
- Vacant: Local Elected Official
 Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Miyashiro called the meeting to order at 9:35 a.m.

APPROVAL OF MINUTES

Item 1 April 24, 2003

Upon motion by Member Sherwood, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

INCORRECT REDUCTION CLAIMS

Item 5 *Certification of Teacher Evaluator's Demonstrated Competence*
 Education Code Section 35160.5,
 Statutes 1983, Chapter 498 (SB 813)
 Elk Grove Unified School District, 01-4136-I-41
 Santa Maria-Bonita School District, 01-04136-I-42
 Milpitas Unified School District, 01-04136-I-43
 Del Mar Union School District, 01-4136-I-44
 Saratoga Union Elementary School District, 01-4136-I-45
 Merced City Elementary School District, 01-04136-I-46
 Davis Joint Unified School District, 01-04136-I-47

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

- Item 7 *Graduation Requirements, 01-4435-I-41*
Sweetwater Union High School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 8 *Standards-Based Accountability, 98-TC-10*
San Diego Unified School District, Claimant
California Department of Education Standards-Based Accountability
Memoranda dated June 30, 1997, and April 15, 1998
Statutes 1995, Chapter 975 (AB 265)
Statutes 1996, Chapter 69 (SB 430)
Statutes 1997, Chapter 828 (SB 376)

Member Williams moved for adoption of the consent calendar, which consisted of items 5, 7, and 8. With a second by Member Sherwood, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)**

The parties and witnesses participating in the hearing of the agenda items were sworn.

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

- Item 2 Staff Report

Paula Higashi, Executive Director, reported that there were no matters to consider at this hearing.

TEST CLAIM

- Item 3 *Differential Pay and Reemployment, 99-TC-02*
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30 (SB 1019)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the Palmdale School District filed a test claim alleging that amendments to the Education Code by Statutes 1998, chapter 30, impose a reimbursable state mandate on school districts.

Ms. Tokarski explained that Education Code section 44977 previously required school districts to pay public school teachers “differential pay,” which is calculated as the difference between the teacher’s salary and the cost of hiring a substitute, for up to five months if they are absent due to illness or injury. The interpretation by the courts was that the five-month period ran concurrently with all accumulated sick leave, following the use of the 10 annual days of sick leave. However, the amendment to this statute specifies that the five-month period runs consecutively, following the exhaustion of all accumulated sick leave.

In addition, Ms. Tokarski explained the claimant's allegation that Education Code section 44978.1 imposes a mandate by requiring that a teacher, if not placed in another position, be placed on a reemployment list when ill or injured and unable to return to his or her original duties after all sick leave and differential pay is exhausted.

Ms. Tokarski stated that the Department of Finance submitted a late filing on May 23, 2003, expressing general agreement with the legal findings in the staff analysis. However, greater specificity in describing the required activities was requested. Ms. Tokarski noted that the test claim process consists of several phases, and that the parameters and guidelines phase, which follows the test claim hearing phase, was the appropriate proceeding for determining specific costs and types of costs, including one-time and ongoing, and the most reasonable methods of complying with the mandate.

Staff concluded that Education Code sections 44977 and 44978.1, as added or amended by Statutes 1998, chapter 30, impose a reimbursable state-mandated program for the specified new activities. Staff recommended denial of the remaining alleged costs and activities because they do not impose a new program or higher level of service, or costs mandated by the state.

Parties were represented as follows: Carol Berg, with Education Mandated Cost Network, representing the Palmdale School District; and Barbara Taylor and Susan Geanacou, for the Department of Finance.

Dr. Berg supported the staff recommendation.

Ms. Taylor and Ms. Geanacou also supported the staff recommendation. However, Ms. Taylor reiterated the Department of Finance's belief that in order to prevent confusion in the parameters and guidelines, the mandated activities should be more detailed in the adopted Statement of Decision.

Member Sherwood noted the importance of what the Department of Finance was requesting. Ms. Tokarski acknowledged the concern with making the Statement of Decision specific; however, she maintained that the listed activities were the legal findings that were appropriate at the Statement of Decision phase. She noted that one-time costs and ongoing costs were identified pursuant to statute, but emphasized that this was a two-step process: 1) at the Statement of Decision phase, the Commission makes legal findings pursuant to the alleged statute, regulations, or executive orders; and 2) at the parameters and guidelines phase, the specific types of reimbursable expenses are identified. She maintained that the nature of the Department of Finance's comments related to the parameters and guidelines phase.

Ms. Taylor agreed that their concerns could be addressed at the parameters and guidelines phase. However, she noted that the activities, as written, were left open to interpretation, and thus, it would be better if they were clarified prior to issuing the Statement of Decision.

Ms. Tokarski offered the alternative that the Commission, as part of a motion, ask that the language suggested by the Department of Finance be included in the Statement of Decision as part of the activities.

Chairperson Miyashiro requested clarification from Ms. Taylor regarding the Department of Finance's request, noting that moving forward with this item would not foreclose the detail they were seeking. Ms. Taylor responded that it would be less confusing at the parameters and guidelines phase if the activities were already detailed in the Statement of Decision.

Dr. Berg agreed that better definitions were necessary in the parameters and guidelines, but strongly disagreed that the proper place for this specificity is in the Statement of Decision. She argued that doing this would abort the whole process established in terms of the purpose of the Statement of Decision phase, in which the statute is legally interpreted, and the purpose of the parameters and guidelines phase.

Member Sherwood understood Dr. Berg's concern, but he was also pleased with the points made by the Department of Finance. He stated that he would be considering their comments and looking at them very closely during the parameters and guidelines phase.

Member Barnes commented that the potential for inconsistency between the Statement of Decision and parameters and guidelines can be reduced to the extent that the Commission can provide clear direction in the development of the parameters and guidelines. However, because he had not had the chance to review the request, he was inclined to vote for the staff recommendation, with the direction to closely examine the detail that should be included in the parameters and guidelines.

Ms. Higashi clarified that the agenda item before the Commission was consideration of the test claim staff analysis, and at the next hearing, a proposed Statement of Decision would be presented. She noted that, as indicated by Ms. Tokarski, there was some flexibility in terms of what could be done with the Statement of Decision.

Member Williams made a motion to adopt the staff recommendation. With a second by Member Lazar, the motion carried unanimously.

Member Barnes asked if it would be appropriate to give direction at this time with regard to the parameters and guidelines. Ms. Higashi responded affirmatively. Thus, Member Barnes requested staff to take the Department of Finance's comments into account when developing the parameters and guidelines.

INCORRECT REDUCTION CLAIM

- Item 4 *Graduation Requirements*, 01-4435-I-42
Irvine Unified School District
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

Cathy Cruz, Program Analyst, presented this item. She noted that the Irvine Unified School District filed an incorrect reduction claim on the *Graduation Requirements* program after the State Controller's Office reduced its reimbursement claim for costs associated with science teacher's salaries. The claimant incorporated by reference the same arguments raised in the San Diego Unified School District's incorrect reduction claim, which the Commission denied on September 28, 2000.

Ms. Cruz explained that the State Controller's Office asserted that the claim was adjusted for teacher's salaries because it did not comply with the Commission's parameters and guidelines. If a school district did not identify any offsetting savings from laying off teachers of non-mandated subjects, or provide documentation supporting the reason why there were no offsetting savings, its reimbursement claim for salaries was reduced by the entire amount. The Department of Finance supported the Controller's position.

Ms. Cruz outlined the following five issues and staff findings:

1. Did the Controller exercise its audit authority in accordance with state law when it reduced the claimant's reimbursement claim?

Staff finds that the Controller did exercise its audit authority in accordance with state law.

2. Did the Controller establish a standard of general application without the benefit of law or the due process of rulemaking?

Staff finds that the Commission does not have specific or implied authority to make this determination.

3. Did the Controller reduce the claimant's reimbursement claim based on the Commission's parameters and guidelines, and the claiming instructions?

Staff finds that the Controller did perform the reductions in accordance with the parameters and guidelines and claiming instructions.

4. Does the Controller's payment of teacher's salaries on 38 other claims have a bearing on this incorrect reduction claim?

Staff finds that this argument has no bearing because the referenced claims were not before the Commission.

5. Does the Controller have the burden of proof to show a legal basis for the adjustments made in this case?

Staff finds that the Controller does have a legal basis for the adjustments made in this case.

Staff recommended that the Commission deny this incorrect reduction claim.

Parties were represented as follows: Carol Berg, for Education Mandated Cost Network; Jim Jagers, with Centration, representing the Irvine Unified School District; Barbara Taylor and Susan Geanacou, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Mr. Silva agreed with the staff analysis. He added his belief that this claim was no different than the ones that preceded it, and therefore, recommended that the staff analysis be adopted.

Mr. Jagers stated that the claimant did not wish to offer new testimony, but instead opted to restate the arguments previously made.

Ms. Taylor and Ms. Geanacou supported the staff analysis.

Member Sherwood made a motion to adopt the staff recommendation. With a second by Member Williams, the motion carried unanimously.

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 6 *Crime Victims' Domestic Violence Incident Reports, 99-TC-08*
County of Los Angeles, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472)
Statutes 1995, Chapter 965 (SB 132)
Statutes 1999, Chapter 1022 (AB 403)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that this test claim

was originally heard at the April Commission hearing, and by unanimous vote, the Commission partially approved the claim for the activity of storing domestic violence incident reports and face sheets for five years, pursuant to Family Code section 6228. The Commission denied the claim for the activities of preparing, retrieving, and copying the incident report and face sheet.

Ms. Shelton stated that a late filing, which was before the Commission, was received from the County of Los Angeles requesting that the executive summary for this item be amended to include a paragraph indicating that an amendment to the test claim filed by the claimant was severed and would be decided by the Commission separately at a future date. Staff had no objection to this request. Staff provided the Commission with a supplemental executive summary that included the proposed paragraph. Ms. Shelton noted that the claimant had additional comments to make.

Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the Commission's decision.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; and Dirk Anderson and Susan Geanacou, for the Department of Finance.

Mr. Kaye generally agreed that the proposed Statement of Decision accurately reflected the Commission's decision. However, he wished to offer a clarification regarding the parameters and guidelines adopted on January 22, 1987, for Statutes 1984, chapter 1609. He noted that the proposed Statement of Decision here contradicted those parameters and guidelines. The proposed Statement of Decision indicates that Penal Code section 13730, as amended by Statutes 1993, chapter 1230, first added the requirement that domestic violence incident reports be in writing, but was not reimbursable. However, the parameters and guidelines adopted in 1987 indicate that the writing of the mandated reports was required and is reimbursable. Thus, Mr. Kaye requested that the proposed Statement of Decision include that activity as reimbursable.

Ms. Shelton stated that this was a new concern that was not communicated prior to the hearing. She indicated that the parameters and guidelines authorized reimbursement for the preparation of the domestic violence incident report. After the parameters and guidelines were adopted, however, the Legislature suspended the program, which continues to be suspended today. She explained that after the suspension, the Legislature amended Penal Code section 13730 in 1993, and that amendment has never been decided by the Commission as a reimbursable state-mandated program under article XIII B, section 6. And, thus, the 1993 amendment is not suspended. She added that, for purposes of this test claim, it qualifies as prior law because the amendment clearly stated that agencies were required to prepare a written incident report for domestic violence calls. She noted the claimant's allegation that Family Code section 6228, in and of itself, required the preparation of the report. However, Penal Code section 13730, as amended in 1993, required the preparation of the report before Family Code section 6228 was enacted.

Chairperson Miyashiro expressed hesitation to act upon Mr. Kaye's request since staff was not given sufficient time to clearly understand the proposal.

Mr. Kaye stated that the statute in question was made optional, and that there were some concerns as to the interplay between the optionality and the original requirement defined in 1987.

Ms. Higashi suggested that the matter be continued to allow staff time to respond to the issue

raised. Mr. Miyashiro expressed concern regarding the consequences of delaying the matter since the Commission was moving to a bi-monthly hearing schedule.

Mr. Kaye commented that he was not proposing substantive changes, but rather, a clarification to the record. He stated that he was willing to consult with staff to develop a stipulated agreement.

Ms. Geanacou requested clarification as to the claimant's request and whether the substance of the reimbursable activities would remain the same. Mr. Kaye responded that there was an area of possible confusion related to the option years and whether the writing of the reports was mandated. He was seeking clarification to the record, not any substantive changes.

Chairperson Miyashiro noted that to the extent that significant issues are raised before the Commission, they should be brought to the attention of staff in advance of the hearing, and in a timely manner, so that the Commission could be advised fairly and thoroughly.

Ms. Higashi stated that she advised Mr. Kaye to submit his comments in writing. Although he did, the issue raised here was not included in his comments.

Since the clarification requested by Mr. Kaye would not affect what was reimbursable, Member Barnes made a motion to adopt the staff recommendation. With a second by Member Sherwood, the motion carried unanimously.

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

Nancy Patton, Staff Services Manager, noted that items 9, 10, and 11 were related. Item 9 was the proposed parameters and guidelines for *Comprehensive School Safety Plans*, which deals with routine and disaster emergency plans; item 10 was the proposed parameters and guidelines amendment for the *Emergency Procedures* program, which deals solely with earthquake disaster plans; and item 11 was a proposal to consolidate the parameters and guidelines for both programs.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 9 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Education Code Sections 35294.1, 35294.2, 35294.6 and 35294.8
Statutes 1997, Chapter 736 (SB 187)
Statutes 1999, Chapter 996 (SB 334)

Nancy Patton, Staff Services Manager, presented this item. She noted that on August 23, 2001, the Commission adopted the Statement of Decision for the *Comprehensive School Safety Plans* program, which requires school districts to develop and adopt comprehensive school safety plans that are relevant to the safety needs of each school. On July 23, 2002, the Commission reconsidered and amended the Statement of Decision to clarify that the program requires preparation of routine and emergency disaster procedures.

Ms. Patton outlined the following two issues and staff findings:

1. Is training a reimbursable activity under this program?

Staff finds that training is not a reimbursable activity because the test claim statutes and the Statement of Decision do not expressly provide for training. In addition, training is not necessary because this program only requires schools to develop comprehensive

school safety plans in consultation with law enforcement agencies and other school sites. It does not require schools to implement the safety plans.

2. The period of reimbursement for Statutes 1997, chapter 736 was incorrect.

Staff revised the period of reimbursement to begin January 1, 1998, and to update the language to reflect the correct deadline for filing test claims.

Staff recommended that the Commission adopt the proposed parameters and guidelines.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; David Scribner, with Spector, Middleton, Young & Minney; Shawn Silva, for the State Controller's Office; and Susan Geanacou, Blake Johnson, and Barbara Taylor, for the Department of Finance.

Mr. Scribner commented that the parameters and guidelines included a series of ongoing activities related to updating the safety plans. Since these activities must be done on an annual basis and since there was the potential for staff turnover, he contended that training should be included.

Mr. Johnson concurred with the staff analysis.

Mr. Silva also concurred with the staff analysis.

Member Sherwood made a motion to adopt the staff recommendation that was seconded by Member Lazar. Ms. Higashi recommended that a reference to the *School Site Councils* mandate in the body of the parameters and guidelines be stricken. With that correction, the motion carried unanimously.

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 10 *Emergency Procedures*, 01-PGA-01
State Controller's Office, Requestor
Statutes 1984, Chapter 1659 (AB 2786)
Education Code Sections 35295, 35296, 35297, 40041.5, and 40042

Nancy Patton, Staff Services Manager, presented this item. She noted that the *Emergency Procedures, Earthquake and Disasters* program requires the governing body of each school district, private school, and county superintendent of schools to establish an earthquake emergency procedure in each school building under their jurisdiction. The parameters and guidelines provide for reimbursement for the cost to establish emergency procedures and to train employees and students in earthquake disaster procedures.

Ms. Patton explained that the State Controller's Office requested that the *Emergency Procedures, Earthquake and Disasters* Parameters and Guidelines be amended to clarify that the program only includes preparation of earthquake plans. This request was originally heard on July 30, 2002. At that hearing, the Commission directed staff to revise the proposed parameters and guidelines to: 1) clarify that the provisions of the program that require school facilities to be used for mass care and welfare shelters apply to earthquake and other disasters, and 2) clarify that these amendments apply to the 2000-2001 fiscal year.

Staff made the requested modifications and recommended that the Commission adopt the proposed parameters and guidelines amendment.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; Carol Berg, with Education Mandated Cost Network; Shawn Silva, for the State Controller's Office; and Susan Geanacou, Blake Johnson, and Barbara Taylor, for the Department of Finance.

Mr. Silva, Dr. Berg, and Mr. Johnson agreed with the staff analysis.

Member Sherwood made a motion to adopt the staff recommendation. With a second by Member Lazar, the motion carried unanimously.

ADOPTION OF CONSOLIDATED PARAMETERS AND GUIDELINES

- Item 11 *Emergency Procedures*, 01-PGA-01
Statutes 1984, Chapter 1659 (AB 2786)
Education Code Sections 35295, 35296, 35297, 40041.5, and 40042
-and-
Comprehensive School Safety Plans, 98-TC-01 and 99-TC-10
Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
Statutes 1997, Chapter 736 (SB 187)
Statutes 1999, Chapter 996 (SB 334)
Beginning Fiscal Year 2003-2004
Kern High School District, Requestor

Nancy Patton, Staff Services Manager, presented this item. She noted that as part of the request to amend the parameters and guidelines for the *Emergency Procedures, Earthquake Procedures and Disasters* program, San Diego Unified School District and Education Mandated Cost Network requested that the parameters and guidelines for these two programs be consolidated for reimbursement purposes. If the Commission adopts the consolidated set, claimants would file reimbursement claims, including estimated claims, beginning in the 2003-2004 fiscal year under the consolidated parameters and guidelines.

Staff finds that it is reasonable to consolidate the parameters and guidelines since both programs impose similar duties upon school districts by requiring them to develop safety plans. Also, filing reimbursement claims simultaneously may reduce workload for claimants and the State Controller's staff. Therefore, staff recommends that the Commission consolidate the parameters and guidelines for *Comprehensive School Safety Plans* with the parameters and guidelines for the *Emergency Procedures, Earthquake Procedures and Disasters* program, commencing with the reimbursement claims, including estimated claims, filed for the 2003-2004 fiscal year.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; Carol Berg, with Education Mandated Cost Network; Shawn Silva, for the State Controller's Office; and Susan Geanacou, Blake Johnson, and Barbara Taylor, for the Department of Finance.

Mr. Palkowitz noted that there had been many changes throughout government in the past year, and stated his feeling that negative implications outweigh the benefits of consolidation at this time. He explained that there was a lot of personnel change in the San Diego Unified School District, and the potential for confusion was great. Thus, he proposed that the two programs remain separate and be reanalyzed for consolidation in a couple of years.

Dr. Berg agreed with Mr. Palkowitz regarding changes that took place in the past year. Although, she did not object to combining the programs at this time if in fact it would be easier

for the State Controller's Office, she noted that there was a record of real problems when an old program was combined with a newer program. Unless there was a way to clearly communicate the expectation for claimants, she recommended that the Commission consider whatever was easiest for the parties involved.

Mr. Silva generally concurred with the staff analysis. However, he pointed out that the dates referenced in the period of reimbursement section may cause confusion. Also, he suggested a point of clarification regarding the routine and emergency disaster procedures.

Mr. Johnson concurred with staff.

Member Barnes requested staff's response to Mr. Silva's comments. Ms. Patton suggested including sentences to clarify the effective date of the amendment.

Mr. Silva noted that with so many different versions of parameters and guidelines on these programs, there was potential for confusion and error. He wanted to ensure that claimants had a good understanding of which version should be relied on for a specific year. Therefore, he recommended that the dates referencing the original reimbursement periods be deleted since the consolidated set would only be effective from fiscal year 2003-2004 and forward.

Ms. Patton suggested that this item be taken back and that the parties discuss the language further.

Member Barnes stated that consolidation was still a good idea, particularly when two programs relate as to the types of activities. However, since this was a confusing item, he did not object to continuing the item to resolve the issues and ensure that claims would be filed correctly.

Member Sherwood and Member Williams agreed.

Chairperson Miyashiro acknowledged the issues raised by Mr. Palkowitz and Dr. Berg, and expressed concern as to the potential for increased workload. Member Barnes explained that when there are two programs that have the potential for overlap, consolidating them would avoid the need to deny parts of one claim because the cost should have been claimed under the other program.

Dr. Berg stated that the issues could be worked out if given time to put a package together.

Ms. Geanacou requested clarification that what was being continued was how to consolidate the two programs and not the question of whether the programs should be consolidated. Member Barnes affirmed.

Ms. Higashi offered to convene another prehearing conference and reminded the parties to submit comments in writing.

STAFF REPORTS

Item 12 Bimonthly Hearings

Ms. Higashi noted that due to the proposed cuts to the Commission's budget, meetings were being reduced to six times a year. The Commission was presented with a schedule for next year's hearings on a bi-monthly schedule, as well as proposed cancellations for the remainder of the current year.

Also, Ms. Higashi stated that staff would be doing everything possible to communicate with all of the parties and claimants to use the Commission's website to get information out as timely as

possible. However, she added that the schedule would only work if everyone cooperated and participated in getting information to staff on a timely basis.

Chairperson Miyashiro asked what provisions were available for adding meetings between those that were scheduled. Ms. Higashi stated that special meetings could be scheduled.

Member Barnes noted the reference to Government Code section 17526, which Ms. Higashi explained was the provision that specifies that the Commission would meet monthly. She indicated her understanding that the provision would be amended as part of the budget trailer bills. Dirk Anderson, with the Department of Finance, came forward to confirm Ms. Higashi's statement.

Since there were concerns about the ability to hold special meetings, Paul Starkey, Chief Legal Counsel, clarified that the current statutory scheme allows the Chairperson to cancel any meeting for good cause. Under the amended statutory scheme, the Commission has complete flexibility as far as scheduling meetings. The only restrictions relate to noticing requirements.

Member Williams made a motion to adopt the proposed 2004 hearing calendar, as well as the cancellations for the remainder of 2003. With a second by Member Lazar, the motion carried unanimously.

Item 13 Executive Director's Report on Pending Workload, Budget, and Legislation

Ms. Higashi introduced two members of the audience: Mr. Jim Apps, formerly with the Department of Finance; and Mr. John Korach, with the State Controller's Office. She also introduced three new members of the Commission staff: Soraida Melgar and Charles Frank, Student Assistants; and Amber Pearce, Law Clerk.

Ms. Higashi noted the following:

- *Workload.* Several new test claims were received.
- *Budget.* The May revision proposes to defer education mandates, resulting in a savings of \$125 million. The local agency mandates have already been proposed for suspension in the Governor's budget. Other mandates are being proposed for repeal, including the *Open Meetings Act*. The Commission's budget has been approved by both budget subcommittees and the last report to the Legislature has been filed.
- *Assembly Special Committee on State Mandates.* There is now an Assembly Special Committee on State Mandates, chaired by Assemblyman John Laird. Ms. Higashi provided background on the committee, a brief summary of the committee's first meeting held on May 28, 2003, and an overview of the handouts prepared by staff that were distributed to the committee. She indicated that any proposed legislation that would improve the efficiency of the Commission can be brought to Dan Wall, Committee staff.

Member Barnes stated that the committee had a short time frame and their focus was on financial proposals. But he noted that they were also interested in any suggestions from a legislative perspective that addressed perceived problems associated with mandates.

Chairperson Miyashiro noted that the Governor asked that the Legislature address structural issues with the budget, which he believed the mandates process fits into. He added that the Commission should participate if there were ideas to be contributed. The Commission members expressed sentiments regarding the importance of Ms. Higashi's

participation in the process.

- *Legislation.* The Karnette bill [SB 525] was amended, making some education mandates optional programs.
- *Future Hearing Agendas.* The next hearing agenda was being developed and will include test claims, parameters and guidelines, and incorrect reduction claims.

Ms. Higashi also noted that the *School Site Councils* case was recently decided by the Supreme Court. Mr. Starkey provided a brief summary of the case and decision, and commended the Commission's legal staff, especially Senior Commission Counsel, Camille Shelton, for ably presenting the Commission's position before the Supreme Court. In addition, Ms. Susan Geanacou, with the Department of Finance, pointed out that the court recognized that sources of revenue other than that found in test claim statutes can be basis for defeating the finding of reimbursability.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00816, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
3. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
4. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
5. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
6. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]

8. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District.

CSM Case No. 02-L-04 [*Property Tax Administration*]

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

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

PERSONNEL

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

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

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

REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Hearing no further business, Chairperson Miyashiro adjourned the meeting at 12:09 p.m.


PAULA HIGASHI
Executive Director