GRAY DAVIS
GOVERNOR

STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2002 – December 31, 2002

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INTRODUCTION

The Commission on State Mandates (Commission) is required to report to the Legislature on January 15 of each year on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.[1] The following pages contain the Statements of Decision adopted by the Commission during the period from January 1, 2002 through December 31, 2002 denying test claims and incorrect reduction claims. As required by section 1188.2, of title 2, of the California Code of Regulations, these decisions were based upon the administrative record of the claims, and include findings and conclusions of the Commission.

[1] Government Code section 17601.

BEFORE THE

COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 84030, 84040 and 84040.5, as amended by Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207; Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of 1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206; Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486; Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300, 58301, 58303, 58304, 58305, 58306, 58307, 58308, 58310, 58311, 58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114 Filed on December 26, 1997 By Santa Monica Community College District, Claimant.	No. 97-TC-10, 97-TC-11, 97-TC-12 *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 28, 2002)*

STATEMENT OF DECISION

The Commission on State Mandates (the Commission) heard this test claim on January 24 and February 28, 2002 during regularly scheduled hearings. Keith B. Petersen appeared for claimant Santa Monica Community College District at both hearings. Ramon de la Guardia and Randy Katz appeared on behalf of the Department of Finance at the January hearing. Ramon de la Guardia, Jim Foreman, and Randy Katz appeared on behalf of the Department of Finance at the February hearing. The Commission decided this test claim at the February 28, 2002 hearing. The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4-2, denied this test claim.

BACKGROUND AND FINDINGS

Claimant, Santa Monica Community College District, submitted three test claims alleging reimbursable state mandated costs for the activities performed by community college districts for periodically preparing and submitting various budget and fiscal management reports to the state, and for engaging in annual financial and compliance audits. The three claims were consolidated due to similarity and overlap, including shared exhibits, responses, and correspondence.

The claims were based on enactments or amendments to Education Code sections 84030, 84040 and 84040.5, and twenty-two sections from California Code of Regulations, title 5, referred to collectively as the test claim legislation. Claimant originally alleged the 1991 California Community Colleges Contracted District Audit Manual and subsequent revisions, as well as the 1993 California Community Colleges Budget and Accounting Manual and subsequent Accounting Advisories all constituted executive orders imposing a reimbursable state mandate. However, at the February 28, 2002 hearing, the claimant withdrew all accounting and audit manuals from the test claim.

Statutes of 1976, chapter 1010 reorganized the Education Code as part of the process of transferring the authority over community college districts from the California Department of Education to the California Community College Board of Governors. Before this reorganization, many of the laws referencing "school districts" were inclusive of K-12 districts, county offices of education, and community college districts. The reorganization often created one code section number for school districts and another for community college districts, substituting the words "community college districts" for "school districts." The community college district legislation and manuals in this test claim are frequently parallel to those determined by the Commission in earlier school district and county office of education test claims, including CSM-4498/4498A, *Financial and Compliance Audits*; 97-TC-19, *Budget Process, Financial Statements and County Oversight*; and 97-TC-20, *County Office Budget Process and Financial Statements*.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?[2]

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[3] In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[4]

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[2] Section 6, article XIII B of the California Constitution provides: "Whenever 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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[3] *County of Los Angeles*, *supra*, 43 Cal.3d at 56.

[4] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

The Department of Finance contends that the test claim legislation does not constitute a program within the meaning of article XIII B, section 6 because it does not relate to education. Specifically, the Department of Finance states that:

> maintaining books and accounts, operating responsibly within budgetary constraints, and providing budget and fiscal information to various state officials and other interested parties does not carry out or expand the governmental function of providing higher education, nor do the targeted provisions for sound financial management and reporting impose a broader curriculum or other higher level of educational service.

For the following reasons, the Commission finds that the test claim legislation and regulations constitute a program within the meaning of article XIII B, section 6 of the California Constitution. First, the test claim legislation requires community college districts to engage in specific budgetary and audit processes in order to encourage sound fiscal management practices. The test claim legislation imposes unique requirements upon community college districts that do not apply generally to all residents and entities of the state. Thus, the Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6 of the California Constitution.

The test claim legislation also satisfies the second test that triggers the applicability of article XIII B, section 6 in that it constitutes a program that carries out the governmental function of providing a service to the public. The test claim legislation, Statutes of 1977, chapter 936, added language to Education Code section 84040, as follows:

> It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient use of public funds for the education of community college students in California by strengthening fiscal accountability at the district, county and state levels.

Thus, the purpose of the test claim legislation is to encourage sound fiscal management practices among community college districts for the most efficient use of public funds *for the education of community college students* in California. The courts have held that public education in California is a peculiarly governmental function administered by local agencies as a service to the public.[5] Accordingly, the Commission finds the administration of the community college districts budgetary and audit processes constitutes a "program" and, thus, is subject to article XIII B, section 6 of the California Constitution.[6]

Issue 2: Do the subject statutes and regulations impose a new program or higher level of service within an existing program upon community college districts within the meaning of section 6, article XIII B of the California Constitution by requiring new or additional audit, budgetary, financial statement, and related fiscal management activities?

The claimant contends that all of the test claim legislation and executive orders impose new programs or higher levels of service upon community college districts by requiring specific activities related to the administration of community college budgets, audits and fiscal management practices.

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[5] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

[6] *Id.*

The individual issues addressed by this claim are numerous but all meet the test of imposing unique requirements that do not apply generally to all residents and entities in the state. However, under prior law, community college districts were required to engage in budget, fiscal management and audit activities.[7] For this test claim, the analysis for finding a reimbursable state mandate generally hinges on whether the legislation requires a community college district to engage in a new activity or higher level of service than required by prior law.

I. Test Claim Statutes:

At the outset the Commission notes that Education Code sections 84030 and 84040 were in effect well before the enactment of the test claim legislation, but were renumbered or restated in a "newly enacted" code section. The Commission makes a general finding, in accordance with Education Code section 3, that a renumbered or restated statute is not a newly enacted provision. Education Code section 3 provides:

> The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

The rationale behind Education Code section 3 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

> Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.[8]

The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate.

In addition, the Commission finds that prior to the reorganization of the Education Code by Statutes of 1976, chapter 1010, general laws addressed to school districts were inclusive of community colleges. The Donahoe Higher Education Act, Statutes of 1960, chapter 49, declared that "junior colleges shall continue to be part of the public school system of this State" and at that time they remained under the supervision of the State Board of Education. Whenever Statutes of 1976, chapter 1010 renumbered a single code section as two code sections, giving one number to school districts, and a second number to community college districts, the Commission finds, in the absence of evidence to the contrary, that the former singular code section was prior law for community college districts as well as for K-12 school districts.[9]

<u>Education Code Section 84030: Accounting System; Requirements for Accounting Manual</u>. This section provides, in pertinent part, that "The accounting system including the uniform fund structure used to record the financial affairs of any community college district shall be in

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[7] Former (1959) Education Code sections 939, 966, 17199, 17206, 20501, 20504, 20612, 20613, 20614, 20615, 20951, and 21001.

[8] *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).

[9] The 1976 California Legislature Summary Digest describes Statutes of 1976, chapter 1010, as follows: "Education Code: reorganization. The Education Code was last revised in 1959. This bill would repeal the current version of the Education Code and in so doing would provide for the separate grouping of provisions related to: (1) all levels of education in general, (2) education in public elementary schools and high schools, and (3) postsecondary education. This bill would also make numerous technical changes in connection with the reorganization of the code."

accordance with the definitions, instructions, and procedures published in the California Community Colleges Budget and Accounting Manual as approved and furnished by the Board of Governors."

Statutes of 1976, chapter 1010 renumbered Education Code section 17199 as Education Code section 41010 for school districts and 84030 for community college districts.[10] Former Education Code section 17199 was not changed substantively when it was renumbered Education Code section 84030. Education Code section 84030 was amended by Statutes of 1981, chapter 930, which added the text, "including the uniform fund structure," and substituted "California Community Colleges Budget and Accounting Manual" for "Budget and Accounting Manual, California Community Colleges."[11]

The California Community Colleges Budget and Accounting Manual, as adopted by the Board of Governors in December 1973 "describes the new budget and accounting system required for local control and state level reporting of 1974-75 community college district budgets."[12] This manual included account codes for required activities-based revenue and expenditure accounting, which the Commission finds were not substantively different from what is now termed uniform fund accounting.

The Commission finds that community college districts, whether part of the K-12 school district system or as a separately governed entity, were required to follow a standardized accounting system as expressed in a state-published accounting manual under prior law. Therefore, the Commission finds that required use of the budget and accounting definitions, instructions, and procedures published in the community college Budget and Accounting Manual as described in Education Code section 84030 does not constitute a new program or higher level of service.

Education Code Section 84040: Strengthening Fiscal Accountability; Requirement for Annual Audit. This section provides, in part, that "The governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the California Board of Accountancy. In the event the governing board of a community college district fails to provide for an audit, the board of governors shall provide for an audit, and if the board of governors fails or is unable to make satisfactory arrangements for such an audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds."

In addition, section 84040 provides that "The board of governors shall adopt criteria and standards for periodic assessment of the fiscal condition of community college districts, in the form of regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. … The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special

[10] Education Code section 17199, as last amended by Statutes of 1973, chapter 434, was inclusive of school districts and community colleges. This section provided that: "The accounting system used to record the financial affairs of any school district shall be in accordance with the definitions, instructions, and procedures published in the California School Accounting Manual as approved by the State Board of Education and furnished by the Superintendent of Public Instruction. No accounting manual so approved shall expressly or by implication affect the content of any educational program or objective, except as otherwise specifically provided for by this code. The Legislature hereby finds that such content shall be best determined by those involved in the administration of educational programs, including school district governing boards, local administrators, teachers, students, and parents."

[11] Statutes of 1990, chapter 1372, section 634 also made minor, non-substantive changes to the statutory language.

[12] Preface, California Community College Budget and Accounting Manual, January 1974.

trustee, management review, or other extraordinary costs resulting from the district's fiscal difficulties and to ensure the stabilization of the district's financial condition."

Statutes of 1976, chapter 1010 renumbered Education Code section 17206 as Education Code section 41020 for school districts and 84040 for community college districts.[13] The portion of Education Code section 84040 requiring a district to provide for an annual audit, performed by a CPA at community college district expense, is well established by prior law.[14]

Education Code section 84040 was amended by Statutes of 1977, chapter 36, and Statutes of 1978, chapter 207. When Education Code section 84040 was repealed and reenacted by Statutes of 1990, chapter 1372, the requirement for an annual audit remained intact, but new language was added to describe a requirement that the California Community College Board of Governors adopt regulations regarding the review and improvement of district financial conditions as necessary to encourage sound fiscal management practices. The requirement to develop regulations is a directive to the state, not the local community college districts, and as such does not constitute a reimbursable state mandate. Education Code section 84040 either consists of prior law or directs the Board of Governors to adopt regulations. Amendments to Education Code section 84040 do not impose new duties upon community college districts compared to prior law, therefore, the Commission finds that these changes do not create a new program or higher level of service.

<u>Education Code Section 84040.5: Statements and Information in Audit Reports; Development of Audit Procedures; Costs</u>. The first part of this section provides that "The board of governors, in cooperation with, and upon approval by, the Department of Finance, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop audit procedures for carrying out the purposes of this section. The Department of Finance may make audits, surveys, and reports which, in the judgment of the department will serve the best interest of the state. A review of existing audit procedures, statements, and other information required to be included in the audit reports shall be conducted periodically by the board of governors, in cooperation with the Department of Finance. Standards shall be updated periodically."

Education Code section 84040.5, as added by Statutes of 1977, chapter 936, moves text from Education Code section 84040 to the new Education Code section 84040.5. Statutes of 1988,

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[13] Key language requiring annual audits, performed by a CPA at community college district expense, is found in former Education Code section 17206: "Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his jurisdiction and control and the governing board of each district shall either provide for an audit of the books and accounts of the district or make arrangements with the county superintendent of schools having jurisdiction over the district to provide for such auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1st, the county superintendent of schools, having jurisdiction over the district, shall provide for the audit. Each audit shall include all funds of the district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district. The audits shall be made by a certified public accountant or a public accountant, licensed by the State Board of Accountancy. Not later than November 15th, a report of each audit for the preceding fiscal year shall be filed with the county clerk and the county superintendent of schools of the county in which the district is located, the Department of Education and the Department of Finance. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of state funds, to correct any discrepancies revealed by such audit reports under the provisions of Section 41341." Community colleges were included in "school districts" prior to the renumbering of former Education Code section 17206.

[14] *Id.*

chapter 1331, and Statutes of 1994, chapter 20, made technical amendments to the law.[15] As described above, Statutes of 1976, chapter 1010 renumbered Education Code section 17206 as Education Code section 84040 for community college districts. It has long been statutorily required that the state prescribe the contents of the annual audit reports and develop audit standards and procedures for districts. Former Education Code section 17206 provided that:

> The Department of Finance, with the cooperation of the Department of Education, shall prescribe the statements and other information to be included in the audit reports filed with the state. The Department of Finance may make such audits, surveys and reports, and may develop suggested procedures for carrying out the purposes of this section, as in the judgment of the department will serve the best interests of the state.

Thus, the Commission finds that the initial portion of Education Code section 84040.5 is a rewording of prior law specific now to the California Community College Board of Governors, rather than the Department of Education. Alternatively, this portion of the statute is a directive to the state, not to local community college districts.

The second part of Education Code section 84040.5 provides that "For the audit of community colleges electing to take formal action pursuant to Sections 22714 and 87488 [to seek credit of additional years of service in order to encourage early retirement of academic employees], the audit standards shall require such information as is prescribed by the chancellor ... At the request of Department of Finance, each community college district that elects to take formal action pursuant to Sections 22714 and 87488 shall reimburse the Department of Finance for any related administrative costs incurred by the Department of Finance."

The latter part of Education Code section 84040.5 does not require community college districts to engage in any new activities other than those stemming from discretionary activities. The only activities are for audits of "community colleges *electing* to take formal action"[16] under sections 22714 and 87488 to seek special service credit in order to encourage the early retirement of academic employees. Any further audit and follow-up activities are only required if a district chooses to apply for this special service credit, at the discretion of the district, thus this portion of the statute does not impose mandatory activities. Education Code section 84040.5 does not impose mandatory new activities upon community college districts compared to prior law, thus, the Commission finds that this section does not create a new program or higher level of service.

II. Test Claim Executive Orders: California Code of Regulations:

Statutes of 1990, chapter 1372 continued the process of reorganizing and clarifying the laws governing the community college system. For example, the Education Code previously referred to community colleges as "secondary schools," such as high schools, and as part of the "higher education" system of public universities. This law removed references to community colleges as secondary schools. Statutes of 1990, chapter 1372, section 708, subdivision (a) states:

> Prior to January 1, 1991, the Board of Governors or the California Community Colleges shall initially adopt and put into effect regulations which incorporate the text of the following Education provisions that have been repealed or amended by this act. The text of these sections, as they relate to community colleges, may be

[15] The 1988 amendment changed the frequency of the update of standards from "every two years" to "periodically," and the 1994 amendments merely added subdivision designations.
[16] Emphasis added.

> changed when initially adopted as regulations in accordance with the character of the California Community Colleges as a postsecondary education system … The changes shall not alter the requirements, rights, responsibilities, conditions or prescriptions contained in these statutes. Permitted initial changes include grammatical or technical changes, renumbering or reordering sections, removal of outdated terms or references to inapplicable or repealed statutory authorities, and the correction of gender references of the following sections of the Education Code:
>
> Sections 8070, 8092, 17900, 17901, 17902, 17903, 18120, 18122, 71005, 71034, 72208, 72237, 72601, 72602, 72640, 72641, 72650, 74282, 74283, 76160, 76408, 78002, 78004, 78005, 78006, 78007, 78012, 78200.5, 78202, 78203, 78206, 78222, 78243, 78244, 78245, 78246, 78247, 78248, 78272, 78430, 78431, 78441, 78460, 78920, 79000, 79001, 81000, 81005, 81006, 81008, 81802, 81803, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 82364, 84040.3, 84040.7, 84043, 84044, 84045, 84046, 84051, 84052, 84057, 84324, 84325, 84330, 84331, 84332, 84360, 84370, 84371, 84372, 84387, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84522, 84524.5, 84526, 84527, 84530, 84570, 84571, 84572, 84801, 84810, 84891, 84892, 84893, 84894, 84895, 85000, 85003, 85020, 85021, 85022, 85023, 85024, 85200, and 85210, and the second paragraph of Section 68090 of, the second sentence of Section 78205 of, the first sentence of Section 84041 of, and subdivision (b) of Section 84890. After initial adoption of the Board of Governors regulations specified by this section, all subsequent changes to those regulations shall be made in accordance with Section 70901.5 of the Education Code.

In addition, Statutes of 1990, chapter 1372, section 708, subdivision (b) states:

> It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes. Should the board of governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes *shall remain operative until* the effective date of the corresponding board of governors regulations. (Emphasis added.)

In comments on the draft staff analysis, claimant argues that "The statutes were repealed effective January 1, 1991, as a matter of law[17] by Chapter 1372/90 and never reenacted as code sections." Claimant cites Government Code Section 9600, which establishes the effective date for statutes enacted by the Legislature. Claimant confuses the effective date of a statute with its operative date. As discussed in *Estate of Martin* (1983) 150 Cal.App.3d 1, 3-4, the Legislature has the power to control the operative date of a statute, independent of the statute's effective date:

> 'An enactment is a law on its effective date only in the sense that it cannot be changed except by legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law.'[18] Usually the effective and operative dates of a statute are one and the same, but the courts have recognized the power of the Legislature to establish an operative date later than the effective date.

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[17] Claimant cites Government Code section 9600.

[18] Court cites *People v. Henderson* (1980) 107 Cal.App.3d 475, 488.

Claimant further argues that the language in Statutes of 1990, chapter 1372, section 708, subdivision (b) has no effect because it "expresses only the Legislative *desire* for everyone to pretend that the Education Code requirements continued in force after the board of governors failed to enact replacement regulations, *because no legally enforceable code or regulations existed in the interregnum*."[19] The Commission finds that the law of California is well established that "The legislature may provide for a statute to go into effect or become operative absolutely, conditionally, or contingently on the happening of a future[20] or uncertain event,[21]" and that is exactly what the Legislature did in Statutes of 1990, chapter 1372, section 708, subdivision (b). The Legislature set up an operative date for the repeal of specific Education Code sections, *contingent* upon the enactment date of corresponding regulations, thus preventing any "gap" in the law.

Accordingly, the Commission finds that Statutes of 1990, chapter 1372, did not make substantive changes to prior law by requiring that California Community Colleges Board of Governors adopt regulations corresponding with selected portions of the Education Code. The affected statutes continued in legal, operative effect until the date that each corresponding regulation was adopted. The fact that certain programs, duties or activities are now expressed in regulatory form rather than statutory is not a change in the *substance* of the law.

The Commission finds that the principle of construing renumbered code sections as restatements and continuations, rather than as a new law, is equally applicable when a law changes form from a statute to regulation or other type of executive order. The California Supreme Court held that "a regulation adopted by a state administrative agency pursuant to a delegation of rulemaking authority by the Legislature has the force and effect of a statute."[22] In addition, the rules of construction for statutes also govern rules and regulations.[23] Thus, when legal requirements remain in effect in an altered form, the new format is not a new legal enactment. The Commission finds that only additional, substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. Therefore, the Commission makes an overall finding that any test claim regulations discussed below are prior law, to the extent that they require the same duties and activities found previously in the Education Code.

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[19] Claimant's comments dated October 9, 2001. Emphasis in original.

[20] 58 California Jurisprudence Third (1980) Statutes, section 21, cites the following cases as authority: *Hobart v. Supervisors of Butte County* (1860) 17 Cal. 23; *Robinson v. Bidwell* (1863) 22 Cal. 379; *People ex rel. Graves v. McFadden* (1889) 81 Cal. 489; *Busch v. Turner* (1945) 26 Cal.2d 817; *Ogle v. Eckel* (1942) 49 Cal.App.2d 599. "The operation of a statute dependent on a contingency that may occur in the future is postponed until the occurrence of the contingency." *Ross v. Board of Retirement of Alameda County Emp. Retirement Ass'n* (1949) 92 Cal.App.2d 188.

[21] 58 California Jurisprudence Third (1980) Statutes, section 21, cites the following cases as authority: *People ex rel. Graves v. McFadden* (1889) 81 Cal. 489; *Housing Authority of County of Los Angeles v. Dockweiler* (1939) 14 Cal.2d 437; *Busch v. Turner* (1945) 26 Cal.2d 817; *Ogle v. Eckel* (1942) 49 Cal.App.2d 599.

[22] *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401, citing Zumwalt *v. Trustees of Cal. State Colleges* (1973) 33 Cal.App.3d 665, 675; *Alta-Dena Dairy v. County of San Diego* (1969) 271 Cal.App.2d 66, 75; *Rigley v. Board of Retirement* (1968) 260 Cal.App.2d 445, 450.

[23] *California Drive-In Restaurant Ass'n v. Clark* (1943) 22 Cal.2d 287, 292.

Budgets and Reports

Title 5, Section 58300; Requirements to Prepare and File an Annual Statement. Pursuant to this regulation, "On or before the 15th day of September of each year the governing board of each community college district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year."

Statutes of 1976, chapter 1010, renumbered Education Code section 20501 as 42100 for K-12 school districts and 85000 for community college districts. Prior law provided that on or before August 15 of each year the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding year and a statement of the estimated total expenses for the district for the current fiscal year. Statutes of 1981, chapter 1178 extended the due date for the reports from August to September in the districts' favor. As discussed above, Statutes of 1990, chapter 1372, required the transfer of this provision from the Education Code to the California Code of Regulations. None of these amendments impose new activities compared to prior law, therefore, the Commission finds that these changes do not create a new program or higher level of service.

Title 5, section 58301: Proposed Budget; Hearing; Notice; Publication. Pursuant to this regulation, "The governing board of each district shall hold a public hearing on the proposed budget for the ensuing fiscal year in a district facility, or some other place conveniently accessible to the residents of the district, on or before the 15th day of September but at least three days following availability of the proposed budget for public inspection …."

"Notification of dates and location(s) at which the proposed budget may be inspected by the public and date, time, and location of the public hearing on the proposed budget shall be published by the district in a newspaper of general circulation in the district, at least three days prior to the availability of the proposed budget for public inspection. The cost of the publication shall be a legal proper charge against the district for which the publication is made."

Statutes of 1976, chapter 1010, renumbered Education Code section 20504 as 42103 for school districts and 85003 for community college districts. As last amended by Statutes of 1970, chapter 86, Education Code section 20504 required newspaper publication of the budget for the ensuing school year, showing program expenditures, cash balances, and all appropriations from the state as required to be tabulated in sections 42122 and 42123 for the ensuing and last preceding fiscal year, and the district tax requirement for the school year to which the budget is intended to apply. The publication was also to contain a notice of the public hearing on the proposed budget. The deadline for budget publication was the last week in July of each year, and the hearing was to be held during the first week in August at a place conveniently accessible to the residents of the district. Prior law also required that the district governing board shall not adopt the final budget until after the public hearing.

Prior law required publication of the entire budget in a newspaper of general circulation, plus a notice of the public hearing. Current law requires publication of the notice of public hearing, plus notification of the location and times where the budget is available for public inspection. The Commission finds that the amendments to section 85003 reduced school district activities, as the district no longer has to pay for newspaper publication of the entire budget, but instead now must only provide for a smaller notice and make one copy of the budget available for public inspection before the public hearing. The deadlines for publication and hearing were changed,

all of which are later than the deadlines under prior law, allowing the districts additional time to comply with the notice requirements.

Section 85003 was repealed and reenacted by Statutes of 1981, chapter 1178; however, the substance of the statute, describing the requirements for public hearing and publication of the proposed school district budget, remained largely unchanged. Statutes of 1990, chapter 1372 required the transfer of this provision from the Education Code to the California Code of Regulations. The Commission finds that these changes do not create a new program or higher level of service.

Title 5, Section 58303: Contents of Budget Report. Pursuant to this regulation, "The adopted annual financial and budget report[24] of a district shall show, as specified by the Office of the Chancellor, a statement of the proposed expenditures and of the estimated revenues for the ensuing fiscal year, together with a comparison of each item of revenue and expenditure, with the actual revenues and expenditures of the fiscal year just completed. The tentative as well as the published annual financial and budget reports may show estimates where actual figures cannot be determined at the time. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title I of the Government Code."

Statutes of 1976, chapter 1010, renumbered Education Code section 20612[25] as Education Code section 85021. Aside from the final sentence regarding the inclusion of the Gann appropriations limit in the budget, the legal requirements for the contents of the budget report have not changed substantively since the law was enacted in 1974. Statutes of 1987, chapter 1025, added the requirement to include the Gann limit. Calculation of the appropriations limit is required by the Government Code, and is not a subject of this test claim. Inclusion of the appropriations limit in the district budget appears to be critical to accurately report estimated and actual revenues, which is required under prior law. Therefore, the Commission finds that this change does not substantively change the requirement for completion of annual financial and budget reports.

Statutes of 1990, chapter 1372 required the transfer of this law from Education Code section 85021 to the California Code of Regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58304: Form of Budget Report. Pursuant to this regulation, "Each annual financial and budget report shall be made in the form prescribed by the Office of the Chancellor. Standard forms shall be prepared to show the budgeting items and comparisons required by this article."

Statutes of 1976, chapter 1010, renumbered Education Code section 20613[26] as 85022. Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85022 to the California Code of Regulations. The earlier version of the statute was nearly identical to the current regulation, although Statutes of 1981, chapter 470 deleted a requirement that the form be prepared in quintuplicate, thereby reducing the activities required of community college districts.

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[24] Statutes of 1976, chapter 1010, renumbered Education Code section 20611 as Education Code section 85020, and provided that the definition of "budget" includes the preliminary budget and the adopted budget of a community college district. Statutes of 1990, chapter 1372 required the transfer of this law from Education Code section 85020 to the California Code of Regulations, title 5, section 58302. Although claimant did not include this regulation in the test claim, note that under prior law the definition of "budget" for the test claim legislation was inclusive of the preliminary and adopted budget.

[25] Added by Statutes of 1974, chapter 754.

[26] Added by Statutes of 1974, chapter 754.

The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58305: Tentative Budget; Filing and Approval of Final Budget. Pursuant to this regulation, in pertinent part, "On or before the first day of July in each year, each district shall adopt a tentative budget and forward an information copy to the appropriate county officer. To the extent that the budget is based on information provided by the county, the budget data should be validated by the appropriate county officer. … On or before the 15th day of September, the governing board of each district shall adopt a final budget. On or before the 30th day of September, each district shall submit two copies of its adopted annual financial and budget report to the Chancellor. The district shall also file copies of the report with the appropriate county officers for information and review."

The requirements for preparation of a tentative community college budget and adoption of a final budget was found in former Education Code section 20614, as added by Statutes of 1974, chapter 754. This section provided that on or before July 1, each community college district governing board shall file a tentative budget with the county superintendent of schools; on or before July 15, the county superintendent of schools shall examine the budget and make technical corrections and recommendations to insure that the proposed expenditures do not exceed revenues; after receiving the corrections and recommendations, the governing board shall make necessary changes and send the budget to the county auditor and the county superintendent of schools by July 20; by August 8th, the governing board shall adopt and file a final budget with various county officials and the Chancellor of the California Community Colleges.

Statutes of 1976, chapter 1010, renumbered Education Code section 20614 as 85023. Statutes of 1981, chapter 1178 repealed and reenacted Education Code section 85023 in substantially similar form. Statutes of 1990, chapter 1372 required the transfer of this provision from the Education Code to the California Code of Regulations. Prior law required the preparation and filing of a tentative budget with a county officer, validation by a county officer, adoption and filing of copies of the final budget with various state and county officials. Any changes in deadlines are later than in prior law and are in favor of the community college district. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58306: Effect of Neglect or Refusal to Make a Budget. Pursuant to this regulation, "if the governing board of any community college district neglects or refuses to make a budget as prescribed by the Office of the Chancellor … the Chancellor may withhold any apportionment of state or local money to the particular district for the current fiscal year until the district makes a proper budget. No penalty shall be imposed upon a district … if the Chancellor determines that unique circumstances make it impossible for the district to comply with its duties to adopt a budget, or if there are delays in the adoption of the annual Budget Act."

Education Code section 20615, as added by Statutes of 1974, chapter 754, provided that

> If the governing board of any community college district neglects or refuses to make a community college district budget as prescribed by the office of the Chancellor of the California Community Colleges, the county superintendent of schools may not make any apportionment of state or county money to the particular community college district for the current community college fiscal year.

Statutes of 1976, chapter 1010, renumbered Education Code section 20615 as 85024. Statutes of 1984, chapter 609, added the sentence allowing the Chancellor to not impose a penalty if unique circumstances prevented the community college district from adopting a budget. Prior law

required that the state withhold further funding from a community college district if they fail to make a timely budget. Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85024 to regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58307: District Budget Limitation on Expenditure. Pursuant to this regulation, "Transfers may be made from the reserve for contingencies to [or between] any expenditure classification … by written resolution of the board of trustees of a district. A resolution providing for the transfer from the reserve for contingencies to any expenditure classification must be approved by a two-thirds vote of the members of the governing board; a resolution providing for the transfer between expenditure classifications must be approved by a majority of the members of the governing board."

Statutes of 1976, chapter 1010, renumbered Education Code section 20951 as 85200. Prior law provided that "A resolution providing for the transfer from the reserve for contingencies to any expenditure classifications must be approved by a two-thirds vote of the members of the governing board; a resolution providing for the transfer between expenditure classifications must be approved by a majority of the members of the governing board." Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85200 to regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58308: Appropriation of Excess Funds and Limitations. Pursuant to this regulation, in order to appropriate income from the general reserve in the current fiscal year that is in excess of the current budget, "The governing board of the district shall, by formal action of the board, pass a resolution setting forth the need according to major classification of district expenditures to be met from any portion of the general reserve derived from assured income in excess of the total amount anticipated in the budget."

Statutes of 1976, chapter 1010, renumbered Education Code section 21001 as 85210. Amendments by Statutes of 1980, chapter 884, and Statutes of 1981, chapter 930 deleted portions of the earlier version of statute, leaving the statutory language identical to the current regulation. Statutes of 1990, chapter 1372, required the transfer of the law from Education Code section 85210 to regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58310: Report on District's Financial Condition. Pursuant to this regulation, in part, "The chief executive officer or other designee of the governing board of each district shall regularly report in detail to the governing board of the district the district's financial condition and shall submit quarterly reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board at least once every three months."

Statutes of 1976, chapter 1010, renumbered and reenacted former Education Code section 939 as Education Code section 35035 for school districts and Education Code section 72413 for community college districts. Under former section 939 the superintendent of each school district, in addition to any other powers and duties granted, was required to submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board of the school district at least once every three months during the school year. While Education Code section 72413 remained in operation, the requirement for the superintendent to regularly report in detail the district's financial condition to the district governing board was also included in Education Code section 84043 by Statutes of 1986, chapter 1486. Education Code section 84043 is one of the sections listed in Statutes of 1990, chapter

1372, section 708, subdivision (a). Therefore the requirement for regular district fiscal condition reports to the governing board continues from former Education Code section 939, renumbered as section 72413, then included in section 84043 by Statutes of 1986, chapter 1486, and finally in Title 5, section 58310, without a gap in the law. Thus, the Commission finds that the preparation and submission of quarterly financial and budgetary condition reports to the district governing board is not a new program or higher level of service.

The regulation further provides, "The designee shall also prepare a quarterly report on forms provided by the Chancellor. The district shall submit a copy of the certified report to the appropriate county offices and the Chancellor no later than forty-five days following the completion of each quarter. The certified report shall be reviewed by the district governing board at a regularly scheduled meeting and entered into the minutes of the meeting."

Department of Finance asserts that these activities are "not a reimbursable state mandate because the districts can use the state report as a component of the district financial report which districts have been required to prepare since well before 1975," as discussed above. Finance further asserts, "Since the report will be presented at a regularly scheduled board meeting and since minutes are already required to be taken at these meetings[27] the state requirements are, in all likelihood, already covered when districts comply with these local requirements." In addition, activities related to adding this report to the agenda of a regular meeting may be reimbursable under *Open Meetings Act* parameters and guidelines.[28]

Title 5, section 58310 also states, "Upon review and analysis of the report, the Chancellor or [a] designee shall determine if follow-up or intervention is needed. Intervention may be necessary if a district's financial data indicate a high probability that if trends continue unabated the district will need an emergency apportionment within three years or that the district is not in compliance with the principles of sound fiscal management specified in Section 58311. Such follow-up or intervention may include, but shall not be limited to, requiring the submission of additional or more frequent reports, requiring the district to respond to specific concerns, and directing the district to prepare and adopt a detailed plan for achieving fiscal stability and an educational plan demonstrating the impact of the fiscal plan on the district's educational program."

Regarding this portion of section 58310, Department of Finance states,

> the Chancellor would only require additional information from those districts which are not in compliance with the principles of sound financial management or which have a high probability of needing an emergency apportionment. Thus, no duties or costs are incurred by community college districts except as a result of the districts fiscal instability which results from active decision of the districts. Since the State is not mandated or causing these districts to be in a financially precarious situation, State directed corrected measures or reports cannot be deemed to be mandates within the meaning of Article XIII B, section 6.[29]

The Commission agrees with the foregoing analysis. Therefore, the Commission finds that California Code of Regulations, title 5, section 58310 does not impose a new program or higher level of service.

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[27] Citing Education Code section 72121. Former Education Code section 966 required, prior to 1975, that the governing board meetings be open to the public, and that minutes be taken.

[28] *Open Meetings Act* (Stats. 1986, ch. 641) parameters and guidelines allow school districts, including community college districts, to claim reimbursement for increased costs related to preparing and posting an agenda.

[29] Department of Finance's comments, dated October 19, 2001.

Title 5, Section 58311: Principles for Sound Fiscal Management. This regulation presents an extensive list of principles designed to serve as the "foundation for sound fiscal management in community college districts" - primarily that "each district shall be responsible for the ongoing fiscal stability of the district through the responsible stewardship of available resources. … To the extent that the … principles repeat or paraphrase mandates already in existence, these underlying mandates shall continue to be legally binding. Otherwise, these principles, by themselves, shall be applied to the extent that existing state and district funding is available."

As public funds recipients, school districts have long been required to maintain fiscally sound management practices. This regulation is an enumeration of fiscal management principles and does not require community college districts to engage in any specific *activities* that are not already part of existing mandates. The application of any principles that go beyond existing mandates is explicitly limited to available funding. Thus, adopting any of the listed principles is discretionary, if state funding is not provided for implementation. The Commission finds that California Code of Regulations, title 5, section 58311 does not impose a new program or higher level of service.

Title 5, Section 58312: Inadequate Plans by District or Failure to Implement Plans; Authorized Actions by the Chancellor. Pursuant to this regulation, "If the Chancellor determines that the district's financial and budgetary plans prepared and adopted pursuant to Section 58310 are inadequate to solve the financial problems, or if the district fails to implement the plans, the Chancellor shall have the authority to take" action, including conducting a comprehensive management review of the district and its educational programs and an audit of the financial condition of the district. The Chancellor may direct the district to amend and readopt the fiscal and educational plans based on the findings of the audits. "If the district fails to adequately implement the readopted fiscal and educational plans, … appoint a monitor at district expense for the period of time necessary to achieve the goals of the plans." The Chancellor may pay all costs incurred in performing the fiscal management services by transferring funding that would otherwise have been apportioned to the community college district under Section B of the State School Fund.

The requirements of California Code of Regulations, title 5, section 58312 are based upon language in former Education Code section 84044, as added by Statutes of 1986, chapter 1486. Statutes of 1990, chapter 1372, repealed this statute but the substance was transferred to the California Code of Regulations. Education Code section 84040, as repealed and reenacted by Statutes of 1990, chapter 1372, authorizes the state Community College Board of Governors to develop regulations containing procedures for districts that fail to achieve fiscal stability and "ensure the stabilization of the district's financial condition." Statutes of 1986, chapter 1486 and Statutes of 1990, chapter 1372 are included in this test claim.

Department of Finance argues that this legislation is not a mandate because the state did not cause the fiscal instability, thus the program stems from elected risky activities on the part of the district. The Commission agrees.

Under this regulation, if the district fails to comply with the state's fiscal management, the Chancellor may appoint a monitor at district expense for the period necessary to achieve the goals of the plans. However, the assignment and expense of an appointed monitor only arises if the district does not comply with the state's fiscal management plans. In this case, the district can avoid paying for a monitor by complying with state fiscal management designed to return the district to fiscal solvency. This regulation is not a mandate, because it only arises when the

district fails to comply with legal obligations. The Commission finds that California Code of Regulations, title 5, section 58312 does not impose a new program or higher level of service.

Title 5, Section 58314: Failure of Procedures to Achieve District Financial Stability; Authorized Actions of Chancellor or Designee. Pursuant to this regulation, if the sections 58310 and 58312 procedures fail to achieve district financial stability, the Chancellor or designee shall do any of the following: review and monitor the plans, reports, and other financial material required; require that all actions of the district to implement the fiscal and educational plans be submitted for prior written approval; propose necessary modifications to the plans for the district's achievement of fiscal stability; reduce or withhold any apportionment to the district in any amount he or she deems appropriate; report to various state officials about any corrective action taken by the district pursuant to this section.

The requirements of California Code of Regulations, title 5, section 58314 are based upon language in former Education Code section 84045, as added by Statutes of 1986, chapter 1486. Statutes of 1990, chapter 1372, repealed this statute but the substance was transferred to regulations. Statutes of 1986, chapter 1486 and Statutes of 1990, chapter 1372 are included in the test claim.

Portions of this regulation are strictly dictates to the State Chancellor, and therefore do not impose a reimbursable state mandate upon community college districts. Regarding the remainder of the regulation, Department of Finance asserts that this regulation does not impose a reimbursable state mandate because "it only arises when the district fails to comply with legal obligations to maintain fiscal stability and with the State's fiscal management plan. Thus, the costs could be eliminated by meeting those obligations."[30] In addition, any modifications "proposed" by the state to the district's fiscal stability plan are proposals, not dictates, and therefore not mandatory. Therefore, the Commission finds that California Code of Regulations, title 5, section 58314 does not impose a new program or higher level of service.

Title 5, Section 58316: Appropriation for Emergency Apportionment; Repayment Schedule. Pursuant to this regulation, in pertinent part, if regulatory procedures "fail to stabilize the financial condition of the district before an emergency apportionment is necessary, the Chancellor may seek an appropriation for an emergency apportionment in an amount necessary to maintain the educational programs of the district … and to preclude a negative ending balance." For each of three following fiscal years, the Controller shall deduct from apportionments paid to a district pursuant to law, at least one-third of the amount of the emergency apportionment, including interest at a rate based on the investment rate of the Pooled Money Investment Account.

The regulation further provides that any district that has received an emergency apportionment may submit a specific request for revision of the repayment schedule to state officials. After consulting with state representatives, the Chancellor may revise the repayment schedule, may forgive the interest payments otherwise compounded as a result of any deferral of payment, and may specify any conditions that he or she determines are necessary to assure the repayment of the emergency apportionment.

Prior law allowed districts to request emergency apportionments and provided a scheme for repayment with interest in former Education Code sections 17311 to 17329, renumbered by Statutes of 1976, chapter 1010 as Education Code sections 84309 to 84314 for community

[30] Department of Finance's comments, dated October 19, 2001.

college districts. Statutes of 1986, chapter 1486 repealed these sections and renumbered them as Education Code section 84046. Statutes of 1990, chapter 1372 repealed Education Code section 84046 and transferred the substance to regulations.

Statutes of 1986, chapter 1486 made one notable change regarding community college emergency apportionments. Prior law required the district to request an emergency apportionment from the state, and thus any administrative activities would follow from discretionary action on the part of the district. Current law places the burden on the state Chancellor to request the emergency apportionment on behalf of the fiscally unstable community college district. Claimant asserts that pursuant to this regulation, community college districts must accept any emergency apportionment in an amount determined by the Chancellor as necessary to maintain the educational programs of the district as specified in the educational plan, and repay the apportionment plus interest in the following three fiscal years.

The Commission finds that accepting a loan from the state under this regulation does not require any reporting or other administrative activities on the part of the community college district. The funds are issued by the state, and repaid by a reduction in future apportionments. Any interest compensates the state for issuing funds to the district in advance of its regular apportionments. The state only offers the emergency apportionment when all other attempts to keep the district fiscally solvent have failed. Thus, the Commission finds that California Code of Regulations, title 5, section 58316 does not impose a new program or higher level of service.

Title 5, Section 58318: Requirement for Employee Indemnity Bond. Pursuant to this regulation, "The governing board of every community college district shall require each employee of the district, whose duty it is to handle funds of the district, … to be bonded under a suitable bond indemnifying the district against loss."

Statutes of 1976, chapter 1010, renumbered Education Code section 17207 as 41021 for school districts and 84041 for community college districts. Prior law required that "The governing board of every school district shall require each employee of the district, whose duty it is to handle funds of the district, . . . to be bonded under a suitable bond indemnifying the district against loss." Statutes of 1990, chapter 1372 required the transfer of the law from Education Code section 84041 to regulations. The substance of the law has not changed, therefore the Commission finds that the changes in the numbering of the code section and the later transfer of its provisions to regulations did not create a new program or higher level of service.

Audits and Reviews

Title 5, Section 59100: General Authority of the Chancellor. Pursuant to this regulation, "the Chancellor is authorized as needed to have audits or reviews conducted or to investigate any audit or review citing which indicates that the allocation of state moneys or applicable federal funding may have been in error, and where necessary, to require action to resolve any substantial error."

The regulation is a directive to the state, not to community college districts. In addition, prior law created authority for the state to have audits of any entity receiving disbursements from the state. Government Code section 12410, as last amended by Statutes of 1968, chapter 449, gives authority to the state Controller to "audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment. Whenever the annual audit "is not adequate, the Controller may make such field or other audit of any claim or disbursement of state money as may be appropriate to such determination." The fact that this power of review is now shared with another state authority, namely the Chancellor, does not impose any new activities

upon community college districts to be accountable to the state for their receipt of government funds. Therefore, the Commission finds that California Code of Regulations, title 5, section 59114 does not create a new program or higher level of service.

Title 5, Section 59102: Contracting for Annual Audits. Pursuant to this regulation, "Arrangements for annual audits for any fiscal year as required by Section 84040 of the Education Code shall be made final no later than the May 1 preceding that fiscal year."

Under the prior and current version of Education Code section 84040, a continuous requirement for contracting for an annual audit exists. Although an annual May 1 due date for contracting for the annual audit was not imposed by regulation until Title 5, section 59102 was operative on November 24, 1991, this does not impose a new program or higher level of service because an annual due date does not require additional activities beyond what was required under prior law to provide for an annual audit, performed by a CPA, paid for by district funds. The current regulation provides a more precise explanation of when the final arrangements for the annual audit are to be made. For example, if an audit is for the 2000-01 fiscal year, the audit arrangements must be made no later than May 1, 2000. The specification of a timeframe for contracting for the audit does not impose any new activities upon districts. The basic program is still providing for a timely annual audit by a CPA – this has not changed in comparison to prior law. Thus, the Commission finds that California Code of Regulations, title 5, section 59102 does not impose a new program or higher level of service.

Title 5, Section 59104: Review of Annual Audits. Pursuant to this regulation, community college district governing boards shall review the annual audit report at a public meeting.

Education Code section 84040.3, as added by Statutes of 1978, chapter 207, first added the requirement for the review of the annual audit report at a public meeting of the governing board. Statutes of 1990, chapter 1372 required the transfer of the law from Education Code section 84040.3 to regulations. Department of Finance asserts that all that is required "is an agenda item and discussion at a regularly scheduled meeting of the district board. There is no mandate here because the District is required to keep the public informed of the fiscal affairs of the district and to hold regular meetings."[31] In addition, associated costs may be reimbursable under *Open Meetings Act* parameters and guidelines.[32] Therefore, the Commission finds that California Code of Regulations, title 5, section 59104 does not impose a new program or higher level of service.

Title 5, Section 59106: Annual Audit Reports Due Date. Pursuant to this regulation, community college districts shall file a copy of the annual audit report by December 31 with the Board of Governors and Department of Finance, in accordance with Education Code section 84040.5. Under former Education Code section 84040, in operative effect until January 1, 1991, a filing date for annual audit reports was November 15 for the preceding fiscal year. Although a filing date was omitted from statute or regulation until the operation of Title 5, section 59106 on November 24, 1991, this does not create a new program or higher level of service because an annual due date does not impose additional activities beyond what was required to file an annual audit under the continuous law of current Education Code sections 84040 and 84040.5. Thus, the Commission finds that California Code of Regulations, title 5, section 59106 does not impose a new program or higher level of service.

[31] Department of Finance's comments, dated October 19, 2001.

[32] *Open Meetings Act* (Stats. 1986, ch. 641) parameters and guidelines allow school districts, including community college districts, to claim reimbursement for increased costs related to preparing and posting an agenda.

Title 5, Section 59108: Chancellor's Review of Audit Citings.[33] Pursuant to this regulation, the Chancellor shall review district audit reports. Such review shall determine whether the audit or review reports contain citings that warrant further investigation.

Claimant asserts that this regulation requires that community college districts must respond to any audit review comments made by the Chancellor's Office. The plain language of section 59108 requires the State Chancellor to review district audit reports and determine whether any citings by the auditor require further investigation on the part of the Chancellor. The regulatory language does not require action by local community college districts. The following regulation, section 59110, deals with any community college district response regarding audit citings selected for further investigation. The Commission finds that California Code of Regulations, title 5, section 59108 is a directive to the state Chancellor to review district audit reports, not a directive to community college districts, thus the regulation does not create a new program or higher level of service.

Title 5, Section 59110: District's Right to Respond.[34] Pursuant to this regulation, "a district shall be given the opportunity to present information which might mitigate or refute any audit citing selected by the Chancellor for further investigation."

Claimant asserts that pursuant to section 59110, community college districts must participate and respond to any financial or compliance audit, review or investigation by the Chancellor. The Commission finds that the regulation requires the state Chancellor to allow a community college district to present information in response to any audit citing investigation the state Chancellor undertakes. The plain language of section 59110 allows community college districts to comment on the state Chancellor's audit findings before any further action is taken, but in no way requires a specific response by a district. Therefore, the Commission finds that California Code of Regulations, title 5, section 59110 does not create a new program or higher level of service.

Title 5, Section 59112: Audit Resolution Actions.[35] Pursuant to this regulation, "If, … the Chancellor finds that there is a need for corrective action to resolve a citing, the Chancellor may require the district to do one or more of the following: (1) Submit a corrected apportionment claim, (2) Implement procedures to ensure future compliance with the rules and regulations in question, or (3) Report periodically to the Chancellor on the status of actions taken to comply with the rules and regulations in question."

Department of Finance asserts "that the Chancellor is authorized to act as the State's representative to enforce the State's fiscal management plan. It is the district's responsibility to ensure that they comply with legal obligations pursuant to the established regulations. The district can avoid the additional activities and associated costs by complying with the State's fiscal management plan." Therefore, the Commission finds that California Code of Regulations, title 5, section 59112 does not impose a new program or higher level of service.

Title 5, Section 59114: Apportionment Adjustments. Pursuant to this regulation, "The Board of Governors shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by audit reports."

Under former Education Code section 84040, operative until January 1, 1991, "The board of governors shall make any adjustments necessary in future apportionments of state funds, to

[33] Regulation operative November 24, 1991.
[34] *Id.*
[35] *Id.*

correct any discrepancies revealed by such audit reports." The corresponding regulation was not operative until November 24, 1991. However, the language requiring the state Board of Governors to make an apportionment adjustment to correct a mistake made the previous year in the disbursement of funds to a community college district does not impose a new activity or duty on community college districts. It provides a mechanism for the state to correct an error in an earlier disbursement of funding. Thus, the Commission finds that California Code of Regulations, title 5, section 59114 does not create a new program or higher level of service.

Conclusion

The Commission denies all test claim statutes and regulations because they do not impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. 99-TC-01/01-TC-06
Statutes 1998, Chapter 868; Education Code Section 48200, As Amended by Statutes 1987, Chapter 1452;	***Eastview Optional Attendance Area***
Filed on August 20, 1999, and Amended on October 9, 2001;	STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7
By Palos Verdes Peninsula Unified School District, Claimant.	*(Adopted on December 19, 2002)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during regularly scheduled hearings on August 29, 2002, and November 21, 2002. Paul C. Minney and David E. Scribner represented claimant, Palos Verdes Peninsula Unified School District. Ira Tobin, Superintendent, and Bruce Auld, Deputy Superintendent Business Services, appeared on behalf of claimant, Palos Verdes Peninsula Unified School District. Susan S. Geanacou, Walt Schaff, and Dan Troy appeared on behalf of the Department of Finance. Senator Betty Karnette, sponsor of Senate Bill 1681, which enacted Statutes 1998, chapter 868, appeared at the hearing on August 29, 2002. Senator Karnette provided testimony on behalf of claimant. At the hearings testimony was given, the test claim was submitted, and the vote was taken.

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 denied the test claim with a 3-1 vote.

BACKGROUND

The uncodified test claim statute, Statutes 1998, chapter 868, grants those parents and legal guardians who reside in the area of Eastview the choice of sending their children to school in either the Palos Verdes Peninsula Unified School District (PVPUSD) or the Los Angeles Unified School District (LAUSD).[36]

[36] Chapter 868 was amended by the Statutes 1999, chapter 153 to clarify some of the procedures and time periods in which a parent or guardian may make their school election choice. The effective and operative date was July 22, 1999, because it was an urgency statute. Additionally, on February 22, 2001, Senator Karnette introduced SB 549, a bill to further amend chapter 868, to allow parents the opportunity to make their school election choice as early as pre-school.

The test claim statute provides in relevant part the following:

> (a) Commencing with the 1999-2000 school year, the area of Eastview as delineated in subdivision (c) is an **optional** attendance area. Parents and legal guardians residing in the area of Eastview **may make an election** for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999-2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview may make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000-01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by May 1 of the school year in which the pupil first enters elementary school, and shall make a second election by May 1 of the school year in which the pupil enters middle school. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. [Emphasis added.]
>
> (b) Any school facility belonging to the Los Angeles Unified School District that is located in the area delineated in subdivision (c) shall remain the property of the Los Angeles Unified School District. The status of an employee as an employee of the Los Angeles Unified School District shall not be affected by this act.

On October 9, 2001, the claimant amended its test claim to include Education Code section 48200, as amended in 1987. That section generally provides that each person between the ages of 6 and 18 years is subject to compulsory full-time education in the school district in which the residence of either the parent or legal guardian is located.

This test claim is unusual in that the uncodified test claim statute affects only the claimant and LAUSD. Thus, section 2 of Statutes 1998, chapter 868, classifies the statute as special legislation. The legislative history of the uncodified test claim statute is provided below.

<u>Genesis of the Uncodified Test Claim Statute (Stats. 1998, ch. 868)</u>

In 1983, the unincorporated area of Eastview was annexed to the City of Rancho Palos Verdes. However, Eastview remained in the LAUSD while the rest of Rancho Palos Verdes was in the PVPUSD, resulting in Eastview residents having a different academic and recreational schedule than the community in which they lived. Although the entire Eastview community, including PVPUSD, wanted to be part of PVPUSD, school districts and cities are independent units of government with independently determined boundaries.[37]

At first, it was primarily the Eastview residents who wanted the Eastview area transferred to PVPUSD and its boundaries redrawn. According to Walt Yeager, then president of the Rolling Hills Riviera Homeowners Association in Eastview, the community was not dissatisfied with the

[37] Education Committee, Assembly Republican Bill Analysis, Senate Bill No. 1681 (1997-1998 Regular Session), as amended June 22, 1998.

quality of education in LAUSD but wanted to complete the annexation process that began in 1983.[38]

Nonetheless, Eastview residents recognized early on that their efforts to transfer the Eastview area or, in the alternative, to obtain an open transfer agreement with LAUSD through the Education Code[39] was an "uphill battle." According to then Councilman Robert Ryan, the proposed transfer of the Eastview area from LAUSD to PVPUSD would never survive the process of petition and hearings at the local and state levels, and he urged the city to hire a lobbyist and begin seeking special legislation. Jeffery Younggren, then president of PVPUSD Board of Education, stated that although it made sense for the Eastview area to be part of PVPUSD the transfer involved a predominately Anglo student group that would run up against the ethnic balance criteria of the State Board of Education.[40]

Eventually, the City of Rancho Palos Verdes and PVPUSD also became actively involved in the transfer process. The transfer process failed, in part, due to the effort of LAUSD, who adamantly opposed the transfer. Thus, the entire Eastview community, including PVPUSD, pursued special legislation to ensure that the Eastview residents had the option of sending their children to PVPUSD. A general chronology of the events that led up to the test claim statute is as follows:

- 1983 through 1989 – Eastview Residents Pursue Open Enrollment

Eastview residents pursued an open enrollment agreement between LAUSD and PVPUSD. LAUSD refused to participate in such an arrangement.[41]

- August of 1989 – Eastview Residents Initiate Reorganization Process

RULE (Residents for Unified Local Education), formed by the residents of Eastview with the sole purpose of facilitating the Eastview transfer, started the process of a formal transfer through the Education Code.[42]

- January 28, 1991 - Resolution by PVPUSD

On January 28, 1991, the entire Board of Education for PVPUSD signed Resolution 16 supporting the territory transfer of the Eastview area from LAUSD to PVPUSD.[43] According to claimant, this resolution was sent to the County Committee on School District Reorganization in an effort to support the territory transfer through the school district reorganization process. Resolution 16 states, in part:

> Now, therefore, be it resolved, that the Board of Education of the Palos Verdes Peninsula Unified School District supports the transfer of the "Eastview" territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District.

- Late 1991 - School District Reorganization Process

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[38] Faris, *Rancho P.V. to Work with Eastview Parents in School Secession Bid*, Los Angeles Times (September 7, 1989).
[39] Education Code sections 35510 et seq. are the code sections that provide for school district reorganization.
[40] Faris, *Rancho P.V. to Work with Eastview Parents in School Secession Bid*, Los Angeles Times (September 7, 1989).
[41] Assembly Education Committee, Bill Analysis Worksheet, Assembly Bill 401 (1997-1998 Regular Session).
[42] Education Code sections 35510 et seq. are the code sections that provide for school district reorganization.
[43] Palos Verdes Peninsula Unified School District, Resolution No. 16, 1990-1991, adopted on January 28, 1991.

PVPUSD was successful in its efforts to transfer the Eastview area through the school district reorganization process when the County Committee on School District Reorganization approved the transfer. However, LAUSD appealed the decision to the State Board of Education. The Board upheld the County Committee's decision and authorized an Eastview only election to determine the percentage of Eastview residents that supported the transfer. Since the election was limited to Eastview, it did not include the LAUSD area. Eastview residents approved the transfer by an 84 percent margin. However, before the vote was certified, a Los Angeles County superior court judge ordered that the county recorder not certify the vote, because it did not include the residents of LAUSD. This issue was never resolved. [44]

- March 4, 1992 - Letter from PVPUSD to the State Board of Education

The March 4, 1992 letter from the Board of Education for PVPUSD, signed by its then president, Marlys J. Kinnel, to the State Board of Education, advised the State Board of Education of its continued support of the Eastview residents in their efforts to transfer the Eastview area to PVPUSD:

> At our regularly scheduled Board meeting on Monday, March 2, 1992, the members of the Board of Education reaffirmed its intent to support the Residents for the Unified Local Education (RULE) in the movement of Eastview students to the Palos Verdes Unified School District from the Los Angeles Unified School District.
>
> It is not our intent to operate Crestwood Elementary and Dodson Intermediate schools, which are located in the Eastview area and presently owned by the Los Angeles Unified School District. We are willing to meet with officials of LA Unified to negotiate a workable solution so they could continue to utilize the two school sites with no interruption to their fine programs.[45]

- November of 1995 – PVPUSD Seeks Open Transfer with LAUSD

In November of 1995, PVPUSD attempted to obtain an open transfer with LAUSD allowing pupils from LAUSD to attend Rancho Palos Verdes schools. The school board for LAUSD denied the request stating that the measure might encourage segregation.[46]

- February 20, 1997 – AB 401 is Introduced by Assembly Member Kuykendall

On February 20, 1997, AB 401 was introduced in the Legislature to require the transfer of the Eastview territory from LAUSD to PVPUSD. [47] The bill stated that the Eastview area would be transferred to, and become part of, PVPUSD and would include the transfer of Crestwood Street Elementary School and Dodson Middle School to PVPUSD. It also stated that students who lived in the Eastview area could remain in LAUSD upon written request of a student's parent or guardian.

- March 17, 1997 and December 8, 1997 - Resolutions by PVPUSD

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[44] Education Committee, Assembly Republican Bill Analysis, Senate Bill No. 1681 (1997-1998 Regular Session), as amended June 22, 1998. PVPUSD was listed as a supporter of the bill.
[45] Letter dated March 4, 1992 from Marlys J. Kinnel to Joseph Carrabino.
[46] Metro Desk, *South Bay; Eastview Students Denied Open Transfers*, Los Angeles Times (November 16, 1995).
[47] Assembly Bill No. 401, (1997-1998 Regular Session), as introduced on February 20, 1997.

Once AB 401 was introduced in the Legislature requesting the territory transfer of PVPUSD to LAUSD, PVPUSD adopted two more resolutions supporting the transfer of the Eastview area. The first resolution, Resolution 13, was dated March 17, 1997 and was signed by Ellen Perkins, then president of the Board of Education for PVPUSD. The second resolution, Resolution 10, was dated December 8, 1997, and was signed by Joan Davidson, then president of the Board of Education for PVPUSD. [48]

In the March 17, 1997 resolution, PVPUSD acknowledged that it had issued a prior resolution, Resolution 16- 1990/91, in support of the transfer. Resolution 13 states, in part:

> NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Palos Verdes Peninsula Unified School District reaffirms Resolution 16- 1990/91, supports the transfer of the "Eastview" territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District, and supports AB 401, provided that a fiscally neutral accommodation can be reached regarding the transfer of the facilities and other wise.

In the December 8, 1997 resolution, PVPUSD again acknowledged its support of the transfer but deleted its previous reference to AB 401.

Resolution 10 states, in part:

> NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Palos Verdes Peninsula Unified School District reaffirms Resolution 16- 1990/91, supports the transfer of the "Eastview" territory from the jurisdiction of the Los Angeles Unified School District to that of the Palos Verdes Peninsula Unified School District provided that a fiscally neutral accommodation can be reached.

- January 5, 1998 – AB 401 is Amended in Assembly

This amendment made two substantive changes to the bill. The first change affirmed that any facility belonging to LAUSD that is transferred under the bill would remain the property of LAUSD and that the status of LAUSD employees would not be affected by the bill. Second, the bill added a provision allowing Eastview residents the right to vote in any election held by PVPUSD and not LAUSD.[49]

- January 15, 1998 - Letters from PVPUSD Supporting AB 401

On January 15, 1998, PVPUSD sent two letters to various members of the Legislature supporting the amended version of AB 401. These letters show that the transfer could occur without a "fiscal impact on the state."

The first letter was sent to former Assembly Member Kuykendall, and the second letter was sent to the Assembly Appropriations Committee.[50] Both letters were signed by then president of the

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[48] Palos Verdes Peninsula Unified School District, Resolution No. 13, 1996 – 1997, adopted March 17, 1997 and Palos Verdes Peninsula Unified School District, Resolution No. 13, 1996 – 1997 and Resolution No. 10 1997-1998, adopted December 8, 1997.

[49] Assembly Bill No. 401, (1997-1998 Regular Session), as amended on January 5, 1998.

[50] Letter dated January 15, 1998 from Joan Davidson and Ann Chlebicki, representing PVPUSD, to Steve Kuykendall. Letter dated January 15, 1998 from Joan Davidson and Ann Chlebicki, representing PVPUSD, to the Assembly Appropriations Committee.

PVPUSD Board of Education, Joan Davidson, and by then superintendent of schools, Ann Chlebicki.

In the letter to Steven Kuykendall, PVPUSD restated its position that it fully supported the Eastview transfer and welcomed the "remainder of the Rancho Palos Verdes residents into the PVPUSD community." Additionally, PVPUSD responded to a question posed by Kuykendall regarding adequate housing for the new students if the transfer occurred. In response, PVPUSD stated that it could "adequately house the Eastview students" in a "fiscally responsible manner" for the following reasons:

- PVPUSD had four closed intermediate sites that could house 4,800 students.
- PVPUSD had two undersized high schools that at the time housed two intermediate schools.
- PVPUSD was a fiscally sound district with approximately percent reserves and a balanced budget.
- PVPUSD had a strong community support as evidenced by the district's Peninsula Education Foundation and PTA, which annually donated $700,000 to the school district.

In PVPUSD's letter to the Assembly Appropriations Committee, PVPUSD urged the Committee's support of AB 401 and provided the Committee with a copy of its December 8, 1997 resolution. In addition, PVPUSD again reaffirmed that it endorsed the transfer and that the transfer would "have no fiscal impact on the state."

- February 2, 1998 – AB 401 Dies in Committee

Even though the entire Eastview community, including PVPUSD, supported the transfer, there was also ample opposition to AB 401 from LAUSD and others who argued that the bill, among other things, circumvented the safeguards in current law regarding desegregation. Thus, AB 401 died in committee on February 2, 1998, pursuant to Article IV, section 10, subdivision (c), of the California Constitution.[51]

- February 27, 1998 – SB 1681 is Introduced by Senator Greene

On February 17, 1998, SB 1681 was introduced in the Legislature. The bill, however, did not apply to PVPUSD. Rather, it applied to the reorganization of Grant Joint Union High School.[52]

- April 13, 1998 – SB 1681 Amended in Senate

This amendment changed the author of the bill to Senator Karnette and also added Assembly Member Kuykendall as a co-author. The amendment deleted the entire bill as introduced and was now identical to the January 5, 1998 amended version of AB 401.[53]

- April 17, 1998 – Letter from PVPUSD in Support of SB 1681

In support of SB 1681, PVPUSD sent a letter dated April 17, 1998 to Senator Karnette that was signed by the then president of the PVPUSD Board of Education, Joan Davidson, and by the then superintendent of schools, Ann Chlebicki. This letter quoted nearly the same language as its January 15, 1998 letter to the Assembly Appropriations Committee. The only difference in the two letters is that the Karnette letter refers to SB 1681 while the Committee letter refers to AB

[51] Assembly Bill History, Assembly Bill No. 401 (1997-1998 Regular Session).
[52] Senate Bill 1681, (1997-1998 Regular Session), as introduced February 17, 1998.
[53] Senate Bill 1681, (1997-1998 Regular Session), as amended April 13, 1998.

401. Additionally, like the letter sent to the Assembly Appropriations Committee, PVPUSD provided Senator Karnette with a copy of its resolution dated December 8, 1997.[54]

- April 20, 1998 – PVPUSD's Lobbyist Sends Letter to Legislature re: SB 1681

On April 20, 1998, PVPUSD's lobbyist, Peter Birdsall,[55] sent a letter to Senator Greene requesting his support of SB 1681, so that the students of Ranchos Palos Verdes could attend one school district, PVPUSD. [56]

- April 29, 1998 – SB 1681 Amended in Senate

This amendment rewrote SB 1681. It made the Eastview area an optional attendance area and stated that parents and legal guardians residing in the area may make a one-time election to send their child/children to LAUSD or PVPUSD. In addition, it restated that any school facility belonging to LAUSD will remain the property of LAUSD and that the status of LAUSD employees will not be affected by the legislation. The amendment deleted the provision that allowed residents of Eastview the eligibility to vote in any election held by PVPUSD and not LAUSD.[57]

- May 13, 1998 – PVPUSD's Lobbyist Sends Letter to Legislature re: SB 1681

On May 13, 1998, Peter Birdsall sent another letter on behalf of PVPUSD in support of SB 1681. This letter was addressed to Senator Patrick Johnston, the then Chair of the Senate Appropriations Committee, and again requested that the students of Rancho Palos Verdes be allowed to attend school in PVPUSD.[58]

- June 22, 1998 – SB 1681 Amended in Senate

This amendment changed the one-time election provision to when a student first enters elementary school and again when the student enters middle school. All other provisions remained the same.[59]

- July 16, 1998 and July 21, 1998 – SB 1681 Amended in Assembly

Like the prior amendment, these amendments merely changed the time periods in which a parent or guardian may elect to send their children to PVPUSD.[60]

- August 24, 1998 - SB 1681 Amended in Assembly

This amendment made no substantive changes. It merely added Assembly Member Washington as a co-author.[61]

Like AB 401, letters in opposition to SB 1681 were sent to the Legislature, claiming that the bill circumvented the safeguards in current law regarding desegregation. In addition, opponents of the bill noted that the current process is a local one and that there is no compelling reason for the Legislature to insert itself into such decisions just because a particular community is unhappy

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[54] Letter dated April 17, 1998 form PVPUSD to Senator Betty Karnette.
[55] Excerpts from the 1997 – 1998 and 1999 – 2000, Directory of Lobbyists, Lobbying Firms and Lobbyist Employers.
[56] Letter dated April 20, 1998 from Peter Birdsall to Senator Greene.
[57] Senate Bill 1681, (1997-1998 Regular Session), as amended April 29, 1998.
[58] Letter dated May 13, 1998 from Peter Birdsall to Senator Patrick Johnston.
[59] Senate Bill 1681, (1997-1998 Regular Session), as amended June 22, 1998.
[60] Senate Bill 1681, (1997-1998 Regular Session), as amended July 16 & 21, 1998.
[61] Senate Bill 1681, (1997-1998 Regular Session), as amended August 24, 1998.

with the results. Despite opposition to the bill, it was passed with an effective date of January 1, 1999, and an operative date of July 1, 1999.

Claimant's Position

Claimant contends that before the test claim statutes all persons subject to compulsory full-time education were required to attend the school in which the residence of the parent or legal guardian was located, subject to specific exceptions. Thus, all students in the Eastview area of Los Angeles County could only attend schools maintained by LAUSD, and PVPUSD had no duty to house and educate these students. Now, because of the test claim statutes, parents and legal guardians who reside in the Eastview area may make an election for their children to attend either PVPUSD or LAUSD when the child enters elementary and middle school. The claimant states that the test claim legislation did not transfer any property or other resources to the claimant district to house or educate the additional pupils, as originally proposed in AB 401. In this regard, the claimant states the following:

> If the territory transfer (i.e., the creation of an optional attendance area) had gone through the normal territory transfer procedures [pursuant to Education Code section 35700 and following] then claimant district would not have received the over 430 pupils (a 4.9% increase in enrollment in the 99/2000 school year) with an "equitable division of property and facilities" or some other capital or resources to mitigate the fiscal impact of having to house the Eastview pupils. Had the territory transfer occurred through the normal mechanism, and not by legislative fiat, the claimant district would have had the ability to challenge the transfer as not complying with Section 35753 (facilities and resources equitable division) and mitigate the cost of the additional student population.[62]

Accordingly, the claimant contends that "the test claim legislation is either a new program (in that claimant has the new duty to house and educate students that elect to attend its schools under the 'optional attendance area') or a higher level of service within an existing program (in that the claimant has significant increased costs within an existing program – educating California school children – to house and educate students that elect to attend its schools under the 'optional attendance area')." Claimant is seeking reimbursement for the following activities:

1. Review chaptered legislation for impact on PVPUSD and seek legal advice.
2. Send out surveys to parents residing in the Eastview area notifying them that they must make an election of either PVPUSD or LAUSD prior to March 1, 1999 for the 1999/2000 school year.
3. Based on the number of new students entering PVPUSD from the Eastview attendance area, determine whether existing district facilities will accommodate the new students and if not determine the most cost effective method of housing these students.
4. Determine whether newly enrolled students reside in the area of Eastview.
5. Hold and prepare for administrative meetings, community meetings and board meetings to discuss and plan for the impact of between 200 to 300 new students in PVPUSD.
6. Renovation costs necessary to re-open Dapplegray (K-5) for the 1999/2000 school year and Ridgecrest Intermediate School (6-9) for the 2000/2001 school year in order to

[62] Claimant's Response to Department of Finance comments dated September 6, 2000.

accommodate the Eastview residents transferring to PVPUSD due to the test claim statute.

7. Lost rental income from the Dapplegray and Ridgecrest sites.
8. Ongoing costs to staff, supply and operate Dapplegray and Ridgecrest Schools.
9. Ongoing costs to compile and record initial elections of school attendance for each elementary and middle school student.
10. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.[63]

On October 23, 2002, the claimant filed comments on the revised draft staff analysis. The claimant now contends that the activities of housing and educating students that elect to attend its schools is not a "new program," but a "higher level of service."

Claimant further contends that it did not request the legislative authority to implement the uncodified test claim statute, as alleged by the Department of Finance, for the following reasons:

1. The resolutions of support from PVPUSD Board of Education were sent to the County Committee on School District Reorganization, not the Legislature.
2. The resolutions requested something other than what was imposed upon claimant. PVPUSD wanted the Eastview students to attend their schools but only if the transfer did not "cause a fiscal drain on the district."
3. If the alleged claimant-supported territory transfer had occurred, then claimant would be able to tax the residents of Eastview.

The claimant states that "the acts by the claimant were *in response to* the Legislature's actions and initial drafting of the test claim legislation." (Emphasis in original.)[64]

Finally, claimant argues that although the operative date of the uncodified test claim statute was July 1, 1999, the claimant was forced to incur costs from its effective date of January 1, 1999, because the express terms of the statute required the Eastview parents to make their first election by March 1, 1999.

Senator Betty Karnette's Position

Senator Betty Karnette filed comments to the draft staff analysis issued in June 2001. Senator Karnette states the following:

> When enacting SB 1681, it was clear to the Legislature, and me, that once an election was made, PVPUSD would be required to house and educate new pupils entering the district from the Eastview area. The Legislature understood that the full force and effect of the Education Code would come to bear upon Palos Verdes for those pupils entering the district under an Eastview parent election. SB 1681 expressly allows a parent or legal guardian of pupils residing in the Eastview area to elect to place their child in PVPUSD. Thus, the legislation imposes costs upon the District to, among other things, review parent elections, receive and enroll Eastview pupils, and house the Eastview pupils.

[63] Amended test claim filed by claimant on May 18, 2001.
[64] Claimant's comments dated October 23, 2002.

As such, I respectfully request that Commission staff review its current position on this issue in light of the intent behind my sponsorship of SB 1681 and the Legislature's general understanding of the impact of SB 1681 on the PVPUSD[65]

Department of Finance's Position

Department of Finance contends that PVPUSD requested the legislative authority to implement the uncodified test claim statute based on the resolutions described above.[66] The Department of Finance claims that these resolutions provide an exception to "costs mandated by the state" under Government Code section 17556, subdivision (a).

In addition, Department of Finance responded to each of the claimed activities as follows:

Claimed Activity	Department of Finance's Comments
Review chaptered legislation for impact on PVPUSD and seek legal advice.	There is no new program or higher level of service. The Legislature passes a large volume of legislation each year that affects various entities. There is no expectation or requirement for impacted individuals, businesses or entities to hire legal counsel to interpret the laws.
Send out surveys to parents residing in the Eastview area notifying them that they must make an election of either PVPUSD or LAUSD prior to March 1, 1999 for the 1999/2000 school year.	There is no new program or higher level of service. The test claim statute does not require the district to send out surveys but rather requires the parents to elect their district of choice. Claimant's participation in this claimed activity is voluntary.
Based on the number of new students entering PVPUSD from the Eastview attendance area, determine whether existing district facilities will accommodate these new students and if not determine the most cost effective method of housing these students.	There is no new program or higher level of service. Determining facility needs is part of a district's normal planning process. If not, it is a one-time activity.
Determine whether newly enrolled students reside in the area of Eastview.	There is no new program or higher level of service. Title V, section 432, of the California Code of Regulations already requires that districts annually verify pupils' residency. PVPUSD receives funding for the basic function of enrolling new pupils through appropriations associated with the attendance of new enrollments .
Hold and prepare for administrative meetings, community meetings and board meetings to discuss and plan for the impact	There is no new program or higher level of service. The test claim statute does not require

[65]Senator Karnette's July 27, 2001 letter.

[66] Claimant and the Department of Finance do not specifically refer to Resolution 13 adopted on March 17, 1997. Rather, they refer to Resolution 10, which references Resolution 13.

of between 200 to 300 new students in PVPUSD.	this activity. If so, it would be a one-time activity.
Renovation costs necessary to re-open Dapplegray(K-5) for the 1999/2000 school year and Ridgecrest Intermediate School (6-9) for the 2000/2001 school year in order to accommodate the Eastview residents transferring to PVPUSD due to the test claim statute.	There is no new program or higher level of service. There is no evidence that the district could not absorb the extra students within existing facilities. Also, funding for facilities growth is based on average daily attendance growth and excess capacity. There is a specific program for this with 80% state and 20% local cost sharing. School facility sitting and boundary determination is a local choice. However, if the Commission determines this to be an activity, an offset by state funding would apply and it would be limited to a one-time activity only.
Lost rental income from the Dapplegray and Ridgecrest sites.	There is no new program or higher level of service. Schools are for housing pupils and not profit.
Ongoing costs to staff, supply and operate Dapplegray and Ridgecrest Schools.	Any additional instructional and administrative workloads associated with enrollments in the Eastview area would be fully funded through claiming additional average daily attendance from the state's general apportionment program.
Ongoing costs to compile and record initial elections of school attendance for each elementary and middle school student.	The test claim statute does not require any such action on the part of claimant.

The Department of Finance did not file comments on the claimant's amended test claim.

COMMISSION FINDINGS

Generally, a test claim statute or executive order may impose a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task. In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service. The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[67] To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation.

[67] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[68]

Issue: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

As fully described below, the Commission finds that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution for the following reasons:

- The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities on claimant, or any other school district;
- The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district; and
- A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

Discussion of these issues is provided below.

I. The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities on claimant, or any other school district.

The uncodified test claim statute (Stats. 1998, ch. 868) grants those parents and legal guardians who reside in the Eastview area the choice of sending their children to school in either the PVPUSD or the LAUSD. The initial election by the Eastview parent or guardian must be made when the child first enters elementary school. The parent or guardian shall make a second election when the child enters middle school. The express language of the statute does not impose any requirements on school districts. The statute, in relevant part, states the following:

> (a) Commencing with the 1999-2000 school year, the area of Eastview as delineated in subdivision (c) is an **optional attendance area**. **Parents and legal guardians** residing in the area of **Eastview may make an election** for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999-2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview **may** make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000-01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by May 1 of the school year in which the pupil first enters elementary school, and shall make a second election by May 1 of the school year in which the pupil enters middle school. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. [Emphasis added.]

[68] Government Code section 17514.

The claimant agrees that this statute does not expressly impose any requirements on PVPUSD. However, the claimant contends that the Legislature intended to require PVPUSD to house and educate the "new" pupils. In this respect, the claimant cites the following statement of Legislative intent:

> The residents of the area of Eastview in Los Angeles County are part of the community of the City of Rancho Palos Verdes, as that area was annexed to that city in 1983. Thus, the residents of that area should be allowed to participate in the events and activities that surround that community, including those that are sponsored by the Palos Verdes Peninsula Unified School District. The school district boundaries were not changed in 1983 when the city boundaries were changed which resulted in leaving the residents of the area of Eastview within the boundaries of the Los Angeles Unified School District and thereby with a different academic and recreational schedule than the community in which they actually reside. *Therefore, it is the intent of the Legislature to grant residents of the area of Eastview the right to enroll their children in the school district of the community that they belong to and identify with.* (Emphasis in claimant's comments dated July 30, 2001.)[69]

The claimant also argues that the Commission should look beyond the plain language of the test claim statute. The claimant states that "[f]or the Commission to find that the test claim legislation does not require Palos Verdes to do anything after a parent elects to have their children attend a school of the District is to exalt form over substance."

The claimant further argues that the statute is vague and ambiguous because the claimant, the Department of Finance, and Commission staff, disagree as to the effect of the statute's language.[70] The claimant asserts that "a court should never exclude relevant and probative evidence from consideration," even if the plain meaning of a statute is clear on its face. Thus, the claimant contends that the Commission should not simply look at the literal words when deciding a district's right to reimbursement. Rather, "[a]ll evidence must be included when making mandate determinations," including the legislative history and other "probative evidence."[71]

Finally, the claimant contends that the Commission is not bound by the express language of a test claim statute because of the Commission's authority to include "downstream activities stemming from the test claim legislation" in parameters and guidelines.[72]

The Commission also received separate comments from the author of the uncodified test claim statute, Senator Betty Karnette. Senator Karnette contends that it was clear to her and to the Legislature that once the parent made the election to send their children to PVPUSD, the district would be required to house and educate the new pupils under the Education Code.

The Commission disagrees with these arguments. Based on the legal authorities described below, the Commission finds that the uncodified test claim statute is not subject to article XIII B, section 6 of the California Constitution.

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[69] Claimant's Comments to Draft Staff Analysis (July 30, 2001).
[70] To support these arguments, claimant relies collectively on Alaska law, unpublished California law and Lord Coke. (*U.S. v. Atlantic Richfield Co.* (9th Cir. 1980) 612 F.2d 1132, 1138, 1139; *Ford & Valahos v. ITT Commercial Finance Corp* (1993) 23 Cal.Rptr.2d 175; and *Heydon's Case* (1584) 3 Co Rep 72.)
[71] Claimant's comments to Draft Staff Analysis (July 30, 2001).
[72] *Id.*

Article XIII B, section 6 of the California Constitution provides that "whenever 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." The Legislature implemented article XIII B, section 6 by enacting Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur. . . as a result of any statute . . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.)

The courts have explained that article XIII B, section 6 was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.[73] In this respect, the California Supreme Court and the Courts of Appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the state.[74]

Thus, even though a school district may incur increased costs as a result of a statute, as alleged by the claimant here, increased costs alone are not determinative of the issue whether the statute imposes a reimbursable state mandated program. Rather, the statute must satisfy all of the elements required by the Constitution and the Government Code. The first element is whether the statute "mandates" local agencies and school districts to do something. The Second District Court of Appeal, in *Long Beach Unified School District v. State*, has interpreted the word "mandates" as it is used in article XIII B, section 6 to mean "orders" or "commands."[75]

The question whether a test claim statute is a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is purely a question of law.[76] Thus, based on the principles outlined below, when making the determination on this issue, the Commission, like the court, is bound by the rules of statutory construction.

The Legislature created the Commission as a quasi-judicial agency to hear and decide claims that a local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. [77] The courts have also recognized that the interpretation of the statutory language of a test claim statute is solely a judicial function.[78] If a local governmental entity or state agency believes the Commission's decision is wrong, they may commence a proceeding in the courts under Government Code section 17559 to set aside the Commission's decision. The court then independently reviews the Commission's legal conclusions about the meaning and effect of constitutional and statutory provisions.[79] The final responsibility for the interpretation of a test

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[73] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.
[74] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 834; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.
[75] *Long Beach Unified School District v. State* (1990) 225 Cal.App.3d 155, 174.
[76] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1810.
[77] Government Code sections 17500 and 17551, subdivision (a).
[78] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 543, fn. 14.
[79] *City of San Jose, supra*, 45 Cal.App.4th at 1810.

claim statute rests with the court.[80] Accordingly, under these principles, the Commission is bound by the rules of statutory construction.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted][81]

In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[82] This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." [Citations omitted.]["Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation."] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies."[83]

In the present case, the claimant reads requirements into the uncodified statute (Stats. 1998, ch. 868), which, by the plain language of the statute, are not there. As indicated above, this violates the rules of statutory construction.

Furthermore, when the statutory language is plain, the courts have consistently held that a statement of a legislator that only reveals the author's personal opinion and understanding of a statute is not a proper subject for consideration when determining legislative intent.[84] Thus, with all due respect, Senator Karnette's comments fall outside of the Commission's determination in this case. Rather, the Commission is required to follow the rules of statutory construction, as described above.

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[80] *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8.

[81] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

[82] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

[83] *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816-1817.

[84] *California Teachers Association v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699-700.

Moreover, since 1973, article IX, section 14 of the California Constitution has provided that "[t]he Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established." The Legislature implemented article IX, section 14 in 1976 by enacting Education Code section 35160, which also provides that "[t]he governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." Legislative intent of Education Code section 35160 was clarified by the Legislature in 1987, when the Legislature enacted Education Code section 35160.1. Section 35160.1 clarifies that school districts are given broad authority to carry on activities necessary or desirable in meeting their needs. Section 35160.1 states, in relevant part, the following:

> In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

Under these constitutional and statutory authorities, unless the Legislature expressly imposes statutory requirements on local school districts, school districts have substantial discretionary control.[85]

Thus, in the present case, while the claimant believes it is necessary to send out surveys to parents, determine if the existing facilities will accommodate new students, determine whether the newly enrolled students reside in Eastview, renovate and reopen two schools, and generally plan for the effects of the test claim statute, the Legislature has not forced or mandated the claimant to do so. Rather, the Legislature has left the decision-making up to the claimant.

Finally, the claimant's argument that the Commission has the authority at the test claim phase to determine that implied "downstream activities stemming from the test claim legislation" are state mandated is misplaced. To support this argument, the claimant relies on the Commission's authority to adopt parameters and guidelines. Under the Commission's regulations, the Commission has the authority to include in the parameters and guidelines a description of the most reasonable methods of complying with the mandate.[86]

While it is true that the Commission may exercise discretion when adopting parameters and guidelines, the determination here, of whether a statute imposes a reimbursable state mandated program under the Constitution, is purely a question of law. As indicated in the analysis above, the Commission's power to make that finding is limited by the rules of statutory interpretation. It is not until the Commission determines that there is a reimbursable state mandated program can the Commission proceed and adopt the parameters and guidelines.[87]

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[85] *Dawson v. East Side Union High School District* (1994) 28 Cal.App.4th 998, 1017-1018.

[86] California Code of Regulations, title 2, section 1183.1.

[87] Government Code section 17555 states the Commission shall determine if there are any costs "mandated" by the state, as defined in section 17514, at the test claim hearing. Under Government Code section 17557, *if* the

This is further explained by the Commission's regulations. Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the activities found to be *required* under the statutes or executive orders that contain the mandate or increased level of service. At that point, the Commission can use its discretion and *may* also include in the parameters and guidelines a description of the most reasonable methods of complying with the mandate.[88] Here, however, the uncodified test claim statute does not contain a mandate on any local agency or school district.

Accordingly, the Commission finds that the uncodified test claim statute (Stats. 1998, ch. 868) is not subject to article XIII B, section 6 of the California Constitution because the state has not imposed any mandated activities on the claimant, or any other school district.

II. The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district.

On October 9, 2001, the claimant amended the test claim to include Education Code section 48200, as amended by Statutes 1987, chapter 1452. As amended, Education Code section 48200 states the following:

> Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the pubic full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.
>
> Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.

The claimant alleges that Education Code section 48200, coupled with the uncodified test claim statute, requires claimant to house and educate all pupils that establish residency within the district once the district election is made by the parent or legal guardian. The claimant also contends that the duty to house and educate these students is new. The claimant states the following:

> …Education Code section 48200 requires that all children between the ages of 6 and 18 years receive a compulsory full-time education in the school district their

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Commission determines there are costs mandated by the state, it shall determine the amount to be subvened to local agencies and school districts.

[88] The California Supreme Court has held that "a regulation adopted by a state administrative agency pursuant to a delegation of rulemaking authority by the Legislature has the force and effect of a statute." *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401.

> parent or legal guardian establishes residency. The test claim legislation creates a new way for Eastview residents to establish residency within Palos Verdes. Under the test claim legislation, parents with pupils residing in the Eastview area can establish residency in one of two districts – Palos Verdes or LAUSD. To establish residency, the parent needs to make a district election by the timeframes outlined [in Statutes 1998, chapter 868]. If a parent residing in Eastview wants to send their child to Palos Verdes, the child can attend Palos Verdes district once a district election is made.
>
> Under section 48200, once a parent residing in the Eastview area elects to send their pupil to Palos Verdes, the District must house and educate the pupil based on the requirements outlined in the Education Code. Palos Verdes has no choice but to house and educate this pupil. Therefore, section 48200, coupled with Statutes of 1998, Chapter 868, requires Palos Verdes to house and educate *all pupils that establish residency within the district by making a district election*. According to the test claim legislation, parents can establish residency within Palos Verdes by exercising their right to make a district election to send their children to Palos Verdes rather than LAUSD. (Emphasis in original.)[89]

On October 23, 2002, the claimant filed comments contending that the activities of housing and educating students that elect to attend its schools constitutes a "higher level of service," rather than a "new program."

For the reasons described below, the Commission disagrees that the requirement to house and educate pupils who establish residency within its district pursuant to Education Code section 48200 and the uncodified test claim statute constitutes a reimbursable state mandated program. The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district.

The courts have consistently held that local agencies and school districts are not entitled to reimbursement for all increased costs mandated by the state, but only those costs resulting from a new program or higher level of service.[90] The California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at *state-mandated increases in the services* provided by local agencies.[91]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[92] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[93] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

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[89] Claimant's Amended Test Claim (October 9, 2001).
[90] *County of Los Angeles, supra,* 43 Cal.3d at 54-56; *Lucia Mar, supra,* 44 Cal.3d at 835.
[91] *County of Los Angeles, supra,* 43 Cal.3d at 56.
[92] *Long Beach Unified School District, supra,* 225 Cal.App.4th 155.
[93] *Id.* at page 173.

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are *required acts*. *These requirements constitute a higher level of service*. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[94]

In the present case the uncodified test claim statute authorizes parents and legal guardians to elect to send their children to the claimant's district instead of LAUSD. This results in increased costs to the claimant for having to house and educate new and additional students. However, that increase in population does not constitute a new program or higher level of service because the state is not imposing any new required acts or activities on the claimant beyond those already required by law.

The requirement to house and educate pupils who establish residency in a district was imposed on school districts long before the enactment of either the 1998 uncodified test claim statute or the 1987 amendment to Education Code section 48200.

Education Code section 48200 derives from section 12101 of the 1959 Education Code. Like section 48200, section 12101 required school districts to house and educate pupils that live within the district's boundaries. Former Education Code section 12101 stated in relevant part the following:

> Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 7 (commencing with Section 12551) shall attend public full-time day school or continuation school or classes for the full time for which the public schools of the city, city and county, or school district in which the pupil lives are in session. . . .

Education Code section 12101 was renumbered as section 48200 in 1976. Education Code section 48200 was amended in 1987, as pled by the claimant, and changed the requirement for compulsory full-time education for students between 6 and 16 years of age, to students between 6 and 18 years of age. As a result, districts are now required to house and educate students between the ages of 16 and 18 years. The claimant, however, has not made a claim that this change in the age requirement constitutes a reimbursable state mandated program. Thus, that issue is not before the Commission.

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[94] *Ibid.*, emphasis added.

Rather, the claimant contends that Education Code section 48200, as amended in 1987, coupled with the uncodified test claim statute, requires claimant to house and educate additional students as a result of the parents' ability to choose to send their children to the claimant's district. As indicated above, however, the requirement to perform the activities of housing and educating students is not new.

Thus, the Commission finds that the test claim legislation has not imposed any new activities, and has not mandated a higher level of service, on claimant to house and educate students that elect to attend its schools under the test claim legislation.

The court, however, has allowed reimbursement under article XIII B, section 6, in situations where the state has shifted financial responsibility to local entities for programs funded and administered entirely by the state before the advent of article XIII B. In 1988, the California Supreme Court decided the *Lucia Mar* case. *Lucia Mar* involved Education Code section 59300, which required school districts to contribute part of the cost of educating district students at state schools for the severely handicapped. The Supreme Court determined that even though school districts were not required to perform any new activities as a result of the test claim statute, the test claim statute still imposed a new program on school districts because it shifted the financial responsibility from the state to the school districts. The court stated that "whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article."[95]

As indicated by the Supreme Court in *Lucia Mar,* two factors must be present before a new program exists under the "financial shift" theory. These factors are as follows: (1) before the measure, the state had borne the entire cost of the governmental activity, and (2) before and after the measure, the state retained administrative control over the governmental activity.[96]

The Courts of Appeal in the First, Second, Third, and Sixth Districts agree that reimbursement under the *Lucia Mar* case hinges on the two factors discussed above and have found that the *Lucia Mar* factors were not present in the cases they reviewed. In *County of Sonoma v. Commission on State Mandates* and *City of El Monte v. Commission on State Mandates*, the First and Third District Courts of Appeal determined that the *Lucia Mar* case was not applicable to the ERAF legislation because the state has never entirely funded public education.[97] In *County of Los Angeles v. Commission on State Mandates*, the Second District Court of Appeal held that the *Lucia Mar* decision was not applicable to the state's elimination of a state appropriation to counties to pay for investigators and experts for indigent defendants in capital cases since the legal and financial responsibility for implementing the program historically belonged to counties, not the state.[98] The court in *City of San Jose v. State of California*, a case that is discussed below, also found that the *Lucia Mar* decision was not applicable based on the facts of that case.[99]

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[95] *Lucia Mar, supra*, 44 Cal.3d at 836.
[96] *Ibid*.
[97] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1285-1289; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 277-278. In *City of El Monte*, the court analyzed *Lucia Mar* in terms of a "new program or increased level of service." (*Ibid*.)
[98] *County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th at 817.
[99] *City of San Jose v. State of California, supra*, 54 Cal.App.4th at 1815.

Similarly, neither of the factors the Supreme Court relied upon in *Lucia Mar* is applicable here. There has not been a shift of administrative and financial responsibility from the state to the PVPUSD as a result of the test claim legislation. As described above, the long-standing task of educating students remains with the school districts and has not shifted to PVPUSD by the test claim legislation. Additionally, public education has never been funded entirely by the state, but has historically been dependent on local tax revenues.[100] Thus, the Commission finds that claimant is not entitled to reimbursement pursuant to the court's ruling in *Lucia Mar*.

Rather, contrary to the claimant's assertions[101], the facts of this case are similar to those in *City of San Jose*. In *City of San Jose*, the test claim statute authorized counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by the cities and other local entities. Like the claimant here, the cities in the *City of San Jose* case made the argument that the state shifted to local entities the financial responsibility for providing public services and, thus, urged the court to require reimbursement pursuant to the *Lucia Mar* case.[102] The court rejected the cities' argument and held that the shift in funding was not from the state to the local entity, but from county to city. The court held that nothing in article XIII B, section 6 prohibits the state from shifting costs between two local governmental entities.[103] The court based its conclusion on the fact that local agencies, rather than the state, were traditionally required to bear the expenses to capture, detain, and prosecute persons charged with a crime.[104]

The rule of the *City of San Jose* case applies in this case. Here, the parent, and not the state, triggers the applicability of the uncodified test claim legislation. Once the parent exercises the option under the test claim legislation, a shift of population of students occurs from LAUSD to the claimant district. As analyzed above, local school districts, and not the state, have traditionally been responsible for housing and educating students. Citing Education Code section 48200, the California Supreme Court has found that the primary duty of local school officials and teachers is the education and training of young people.[105] Thus, in the present case, the shift in costs from one district to another as a result of a parent election does not require reimbursement under article XIII B, section 6.

Accordingly, the Commission finds that the uncodified test claim statute (Stats. 1998, ch. 868) and Education Code section 48200, as amended in 1987, do not impose a new program or higher level of service to house and educate Eastview students, and do not result in a shift of financial responsibility for housing and educating these students from the state to the claimant district. Therefore, the test claim legislation is not subject to article XIII B, section 6, of the California Constitution.

III. A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

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[100] *County of Sonoma v. State of California, supra*, 84 Cal.App.4th at 1285-1289; *City of El Monte v. Commission on State Mandates, supra*, 83 Cal.App.4th at 277-280.

[101] The claimant contends that *City of San Jose* is not applicable because, in *City of San Jose*, the counties imposed the costs on the cities, and not the state. The claimant argues that here, on the other hand, the state imposed the costs on the claimant. (Claimant's Comments on Revised Draft Staff Analysis, dated October 23, 2002.)

[102] *City of San Jose, supra*, 45 Cal.App.4th at 1812.

[103] *City of San Jose, supra*, 54 Cal.App.4th 1802, 1815; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817.

[104] *City of San Jose, supra*, 54 Cal.App.4th 1802, 1812-1815;

[105] *In re Randy G.* (2001) 26 Cal.4th 556, 562, where the court stated the following: "To begin, minor students are required to be in school. (Ed. Code, § 48200.) While they are there, the 'primary duty of school officials and teachers . . . . is the education and training of young people."

As a result of the uncodified test claim statute, the claimant opened two closed school facilities, Dapplegray and Ridgecrest, that were generating over $350,000 a year in rental income, to accommodate the increased enrollment. The claimant is requesting reimbursement under article XIII B, section 6 for this lost income, contending that it constitutes a "cost" under the Constitution and under generally accepted accounting principles.[106]

The Commission disagrees with the claimant's argument since it contradicts the court's holding in the *County of Sonoma* case. In *County of Sonoma*, the court concluded that lost revenue is not reimbursable under article XIII B, section 6 of the California Constitution. [107]

The *County of Sonoma* case dealt with the ERAF legislation, which reduced property taxes previously allocated to local governments and placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF) for distribution to schools. The counties contended that the reduced allocation of tax revenues was a cost under article XIII B, section 6. The court disagreed. After analyzing Supreme Court cases on mandates, reviewing Government Code section 17500 et seq., and other Constitutional provisions differentiating "costs" from "lost revenue," the court came to the following conclusions:

- "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6 (*County of Fresno v. State of California* [citation omitted]) [stating that section 6 was 'designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.']"[108]
- "No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes."[109]
- "The obvious view of the Legislature is that reimbursement is intended to replace actual costs incurred, not as compensation for revenue that was never received."[110]
- "The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word 'cost' in section 6 the voters meant the common meaning of cost as an expenditure or expense actually incurred."[111]

And finally, the court held that "we cannot extend the provisions of section 6 to include concepts such as lost revenue."[112]

Accordingly, the Commission finds that the claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

CONCLUSION

The Commission concludes that the test claim legislation (Stats. 1998, ch. 868, and Ed. Code, § 48200 as amended by Stats. 1987, ch. 1452) is not subject to article XIII B, section 6 of the California Constitution for the following reasons:

- The uncodified test claim statute (Stats. 1998, ch. 868) does not impose any mandated activities claimant, or any other school district;

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[106] Claimant's comments dated September 6, 2000.
[107] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1285.
[108] *Id.* at 1283.
[109] *Id.* at 1284.
[110] *Ibid.*
[111] *Id.* at 1285.
[112] *Ibid.*

- The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district; and
- A claim for the loss of rental income is not subject to article XIII B, section 6 because lost rental income does not constitute an expenditure.

Accordingly, the test claim is denied.

GRADUATION REQUIREMENTS

INCORRECT REDUCTION CLAIMS

Education Code Section 51225.3

Statutes 1983, Chapter 498

The Commission denied 24 claims from school districts in 2002, alleging that the State Controller's Office incorrectly reduced their claims for the *Graduation Requirements* program. There are three groups of Statements of Decision for the denied claims. All 24 claims were denied because the State Controller's Office (SCO) performed the reductions in accordance with the Claiming Instructions and Parameters and Guidelines. Group 1 claims were also denied because the SCO's payment of teachers' salaries on claims filed by 38 other school districts has no bearing on these claims. Group 2 and 3 claims were also denied because the claimants did not identify any offsetting savings or provide sufficient documentation to support their claims for teachers' salaries.

The Statements of Decision within each group are virtually identical except for information specific to each claimant (i.e., name of the school district, claim number, and amount of claim). To minimize the length of this report, the full text of the statement of decision is provided for the first claim within each group. For the remainder of the claims, only the first page of the Statement of Decision is provided.[113]

The three groups consist of:

Group 1	4435-I-02, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 31, and 34 (Adopted August 29, 2002)
Group 2	4435-I-20, 27, 30, 32, and 33 (Adopted September 26, 2002)
Group 3	4435-I-6 and 38, 35 (Adopted January 24, 2002)

Following are 24 denied claims:

[113] To view a copy of the full text of any of the above-named claims, please contact the Commission on State Mandates at (916) 323-3562.

GROUP 1 CLAIMS

Claim Number	Name of Claimant	Amount of Claim
4435-I-02	Yuba City Unified School District	$1,104,949
4435-I-14	Vallejo City Unified School District	$ 667,628
4435-I-15	West Contra Costa Unified School District	$3,610,533
4435-I-16	John Swett Unified School District	$ 364,025
4435-I-17	Stockton Unified School District	$1,210,189
4435-I-18	Novato Unified School District	$ 408,552
4435-I-19	Center Unified School District	$ 184,344
4435-I-21	Lake Tahoe Unified School District	$ 131,925
4435-I-22	San Francisco Unified School District	$ 5,073,401
4435-I-23	El Dorado Union High School District	$ 559,796
4435-I-24	Dixon Unified School District	$ 507,944
4435-I-25	Eastside Union High School District	$ 7,684,873
4435-I-26	Galt Joint Union High School District	$ 665,798
4435-I-28	Lincoln Unified School District	$ 575,356
4435-I-31	Simi Valley Unified School	$ 280,454
4435-I-34	Linden Unified School District	$ 38,055
Total		**$23,067,822**

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on December 9, 1993, to include Fiscal Years 1984-1985 through 1991-1992; By Yuba City Unified School District, Claimant.	NO. CSM 4435-I-02 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Yuba City Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 17551, subdivision (b), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

> The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its statement of decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On January 22, 1987, the Commission adopted its decision that the *Graduation Requirements* program constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-1987 school year, to complete at least two courses in science before receiving a high school diploma.[114] Under prior law, the Education Code only required the completion of one science course.

The Commission's parameters and guidelines were adopted on consent on March 23, 1988.[115,] Under section V. of the parameters and guidelines entitled, "Reimbursable Costs," the following activities are described as eligible for reimbursement:

> A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
>
> B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
>
> C. *Increased cost to school district for staffing and supplying* the new science classes mandated. (Emphasis added.)

Under section VI. of the parameters and guidelines entitled, "Offsetting Savings and Other Reimbursement," the following costs are described as offsetting savings:

> Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes…shall be identified and deducted from this claim*. (Emphasis added.)

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[114] Education Code section 51225.3 (Stats. 1983, ch. 498.)

[115] The parameters and guidelines were amended on August 24, 1988 and January 24, 1991. The August 24, 1988 amendment was technical and has no bearing on this claim. The January 24, 1991 amendment required documentation to demonstrate actual need for capital improvements, and did not relate to teachers' salaries.

In January 1991, the SCO issued new claiming instructions mirroring the Commission's parameters and guidelines.

On September 15, 1992 and April 27, 1993, the claimant submitted its initial reimbursement claims to the SCO. On August 20, 1993, the SCO sent the claimant a letter denying reimbursement for the cost of all teachers' salaries. Specifically, the letter stated:

> The amounts claimed for teacher salaries have been adjusted. Reimbursement of staffing costs is limited to salary and other remuneration differentials, if any, of a science teacher and the costs of laboratory assistants or special teaching aides required by a science class. The addition of science classes should have resulted in offsetting savings due to a corresponding reduction of non-science classes. Your claims do not indicate a corresponding reduction.

As a result, the Yuba City Unified School District filed its IRC on the *Graduation Requirements* program. The claimant contended that the SCO incorrectly reduced its claim by $1,104,949 for fiscal years 1984-1985 through 1991-1992, for costs associated with science teachers' salaries.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Did the SCO reduce the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines, and the claiming instructions?
2. Should the methodology the SCO used to determine increased costs for staffing under its audits of the *Court-Ordered Desegregation* and *Voluntary Integration* programs be compared to the methodology used to determine increased costs for teachers' salaries?

For the reasons stated in the Commission's findings, the Commission concluded that the SCO did not incorrectly reduce this reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contended that the cost of teachers' salaries should be reimbursed since increased costs for the additional science teachers required to implement the mandate were incurred and no offsetting savings were realized.

The increase in science teachers was established by comparing pre-mandate science staffing (adjusted for enrollment changes) with science staffing during the claim years of 1984-1985 through 1991-1992. Accordingly, the claimant employed more science teachers as a result of the mandate.

Regarding offsetting savings, the claimant argued that the mandate was met by hiring additional teachers and "keeping all of the districts' non-science course offerings intact." Therefore, no offsetting savings from discontinued courses were realized because the total number of teachers increased and an increased cost for teachers' salaries was incurred. The claimant's methodology to determine increased costs for teachers' salaries is the same methodology the SCO used to determine increased costs for staffing when it audited two other programs with similar cost requirements.[116] Therefore, the claimed costs should be reimbursed.

[116] *Court-Ordered Desegregation* and *Voluntary Integration* programs.

State Controller's Office Position

The SCO based its position on its response to Stockton Unified School District's *Graduation Requirements* IRC.[117] The SCO contended that the claimant's reimbursement claim was reduced in accordance with the Commission's parameters and guidelines, which state in part:

> "Any savings the claimant experiences as a direct result of this statute must be deducted from costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes."

The parameters and guidelines require claimants to identify any "Offsetting Savings and Other Reimbursement" associated with the mandate. However, the claimant failed to report any offsetting savings in its IRC, or otherwise provide sufficient information demonstrating reasons why offsetting savings could not be realized by laying off non-science teachers.

Furthermore, the SCO maintained that:

> [T]he amendment to section 44955 authorizes school boards to lay off teachers when state law requires modification of the curriculum…. [¶] A reasonable conclusion is that the Legislature intended and contemplated that school districts would exercise this lay off authority whenever possible to minimize or meet the costs of hiring additional science teachers.

An indication of legislative intent was communicated in a memo to the Commission from the California Department of Education (CDE), dated May 5, 1986, which stated:

> The Department does not support the portion of the claim for teacher salaries because the addition of science classes should have resulted in a corresponding reduction of classes other than science.

Therefore, if a school district has the authority to lay off a non-science teacher to meet the salary of a new science teacher, then the district is not "required" to incur increased costs under the mandate. The SCO does not dispute the fact that a school board is not required to lay off teachers to achieve offsetting savings, but by not electing to lay off the non-science teacher, the districts are voluntarily assuming the salary cost of the new teacher. Accordingly, the increased cost was not required; it is a cost that could have been avoided by exercising the statutory layoff authority.

Thus, the reimbursement claim was reduced by the entire amount claimed for teachers' salaries.

Department of Finance's Position

The DOF filed comments on the claimant's IRC on July 20, 2000, reiterating its December 20, 1993 letter addressing San Diego Unified School District's (SDUSD) IRC. The DOF supported the SCO's position by stating:

> [T]he Parameters and Guidelines and Claiming Instructions clearly state that any offsetting savings must be deducted from the amounts claimed. It appears reasonable to us that the claimant must document the "increased costs" resulting

[117] SCO filed its response on Stockton Unified School District's IRC on June 12, 2000.

> from the mandate and that such documentation of the marginal cost increases resulting from such a mandate would logically exclude such savings.
>
> [The test claim legislation] does not require that school districts offer the new science class in addition to all previously offered classes and, therefore, the choice of any school district to continue to offer un-mandated classes should not be funded through the mandate process. It has long been our position that it is entirely appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation [under mandates law]. [The Legislature through the test claim legislation] has deemed the second science class to be of higher priority than other courses which are not mandated as a prerequisite to graduation from high school.

COMMISSION FINDINGS

Background

In a letter dated May 5, 1986, where the CDE commented on the *Graduation Requirements* test claim, the CDE noted that it was opposed to reimbursing schools for the increased cost of science teachers' salaries. CDE stated, "[t]he extent to which elective courses take funds away from the core curriculum, the courses may be discontinued and funds redirected to the core curriculum." In response to CDE's opposition, the Commission stated that CDE's concerns would be given primary consideration in the development of the parameters and guidelines. The Commission adopted the Statement of Decision for the *Graduation Requirements* test claim on January 22, 1987.

The parameters and guidelines were adopted on March 23, 1988. 118 Following the adoption of the parameters and guidelines, Commission staff, based upon information received from school districts, prepared a statewide cost estimate, which was presented to the Commission at the August 1988 hearing. The amount of this proposed statewide cost estimate was approximately $151 million. However, Commission staff cautioned that the cost estimate might be inaccurate based on: 1) the school districts' failure to offset the additional science classes with corresponding staffing reductions in non-science classes, and 2) failure to account for increased enrollment. The Commission did not adopt the $151 million statewide cost estimate and directed staff to resurvey the school districts to attempt to develop a more accurate estimate.

At the May 25, 1989 hearing, a revised statewide cost estimate of approximately $159 million was presented to the Commission. Again, staff reported that responding school districts failed to offset savings for reductions of non-science staff. In response to the staff's revised estimate, the DOF, in its submission of April 18, 1989, proposed a statewide cost estimate in the amount of $16.8 million. In the preparation of this estimate, the DOF set forth the following assumptions:

> It may be assumed, except where demonstrated otherwise, that any cost of hiring science teachers and acquiring space for second science courses is fully offset by reductions of non-science teaching staff and by space made available for courses dropped by districts as not needed for addressing the changes in curriculum required by the mandate.

[118] See footnote 2, ante.

> This assumption reflects the fact that Education Code section 44955 was amended by Chapter 498/83 (the same chapter requiring the second science course) to provide that whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall become necessary by reason of [this condition] to decrease the number of permanent employees in the district, the…governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district….
>
> Payable claims associated with this mandate are expected to be selected cases in which districts are successfully able to demonstrate special circumstances which prove that the expected offsets were absent or not sufficient to cover their costs.
>
> Only costs associated with the hiring of new teachers which could not be offset would be claimable.
>
> Only very small high schools might have to hire additional staff to be able to offer newly required courses. Larger schools, because of the provisions described above [Education Code section 44955] allowing layoffs to reorganize to meet changes in curriculum, would experience no net increases in staff costs and might even have decreases where new teachers start at a lower salary than existing teachers.
>
> The burden of proof is upon local educational agencies to demonstrate that any additional costs have resulted from the graduation requirements mandate…. (Emphasis added.)

The Commission did not adopt a statewide cost estimate at the May 25, 1989 hearing; instead, the Commission directed staff, the DOF, and the school districts to convene a pre-hearing conference to jointly arrive at a cost estimate. The pre-hearing conference was held on June 22, 1989. At this pre-hearing, the parties agreed to a statewide cost estimate based upon the DOF's assumptions. On July 27, 1989, the Commission adopted, by consent, a statewide cost estimate developed by the parties equaling $16.8 million ($2.8 million per year) for fiscal years 1984-1985 through 1989-1990 for all school districts.

The Commission first considered the SCO's reduction of science teachers' salaries for the Graduation Requirements program in the IRC filed by the SDUSD (CSM 4435-I-01). SDUSD filed its IRC on October 4, 1993, arguing that the SCO incorrectly reduced its reimbursement claim for the costs for teachers' salaries. The Commission disagreed and SDUSD's IRC was denied on September 28, 2000. The Commission subsequently denied 13 other Graduation Requirements IRCs for costs associated with science teachers' salaries. Two of those IRCs were also for costs associated with science classroom construction and remodeling.

Like SDUSD, the claimant here also contended that the SCO incorrectly reduced its claim for costs associated with science teachers' salaries. The issues are discussed below.

Issue 1: Did the SCO reduce the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines, and the claiming instructions?

The claimant contended that the claimed costs met the criteria for reimbursement listed in the Commission's parameters and guidelines and the SCO's claiming instructions for science teachers' salaries. The claimant maintained that the district incurred increased costs because it employed more science teachers as a result of the mandate and no offsetting savings were

realized because all of the district's non-science courses remained intact. Therefore, the increased cost of teachers' salaries should be reimbursed.

For the reasons provided below, the Commission found that the SCO reduced the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines and the SCO's claiming instructions, as authorized by state law.

Section V. of the parameters and guidelines, entitled "Reimbursable Costs," provides that the following activities are eligible for reimbursement:

> A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
>
> B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
>
> C. Increased cost to school district for staffing and supplying the new science classes mandated. (Emphasis added.)

Section VI. of the parameters and guidelines, entitled "Offsetting Savings and Other Reimbursement," identifies offsetting savings that apply against reimbursement for the cost of hiring new science teachers:

> Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes…shall be identified and deducted from this claim.* (Emphasis added.)

In other words, the parameters and guidelines require reimbursement for the "increased cost…to staff and supply the new science classes," minus the cost savings associated with "any savings…experience[d by]…reductions in non-science classes resulting from the increase in required science classes…." The SCO's claiming instructions mirrored the Commission's parameters and guidelines. Thus, the Commission found, that based on the express language contained in the parameters and guidelines, the claimant is only entitled to reimbursement for the difference between the increased cost of hiring new science teachers and the savings from laying off teachers of non-mandated subjects.

The Commission also found that the SCO's reliance on Education Code section 44955, subdivision (b), and the positions of the DOF and the CDE to reduce the claimant's reimbursement claim is reasonable and not misplaced. As discussed below, Education Code section 44955 and the positions of the DOF and CDE are consistent with the Commission's parameters and guidelines and the SCO's claiming instructions, and require reimbursement only when a claimant can *show increased costs mandated by the state* for complying with the program.

Education Code section 44955, subdivision (b), was amended in the same legislative act as the Graduation Requirements mandate (Statutes 1983, chapter 498). As amended, that section authorizes local governing school boards to lay off teachers and reduce non-mandated courses when the Legislature changes mandated curriculum. Education Code section 44955, subdivision (b), provides in pertinent part the following:

> [W]henever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary…to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district…at the close of the school year.

Since Education Code section 44955, subdivision (b), was amended in the same legislative act as the *Graduation Requirements* mandate, the Commission agreed with the SCO that the Legislature offered the option to school districts to exercise the layoff authority to minimize the costs of hiring additional science teachers.

The Commission further agreed with the SCO that if a school district chooses not to trigger the provisions of Education Code section 44955, it does so at its own option. Thus, any additional costs incurred by a claimant, *without* corresponding offsetting savings as a result of Education Code section 44955 or documentation supporting the reason why there were no offsetting savings, are optional and do not result in costs mandated by the state.

The DOF's interpretation of the relationship between the test claim statute and Education Code section 44955 is also consistent with the parameters and guidelines and claiming instructions. The DOF, in preparation of the final statewide cost estimate, determined the following:

> 1) *Except where demonstrated otherwise*, any cost of hiring science teachers if fully offset by reductions of non-science teaching staff not needed for addressing the changes in the curriculum, 2) Education Code section 44955, subdivision (b), was amended in the same legislation (Chapter 498/83) that added the additional science course and authorized districts to lay off teachers in response to legislative changes in the curriculum . . . 3) The science course curriculum change did not require lengthening the instructional day or year,
> 4) The additional hiring of teachers caused by a district's enrollment growth is not reimbursable under this program, 5) Only very small high schools might have to hire additional staff, but larger schools, because of the layoff provisions of Education Code section 44955, would experience no net increases in staff costs and might even have decreases where new teachers start at lower salary than existing teachers, and 6) The *burden of proof is upon the districts to demonstrate that any additional costs have resulted from this program*. (Emphasis added.)

Furthermore, the CDE, in response to the test claim on *Graduation Requirements*, made the following statement: "The Department does not support the portion of the claim for teacher salaries because the addition of science classes would have resulted in a corresponding reduction of classes other than science. [The claimant] should have adjusted their teaching staff accordingly, resulting in no net cost to the district." The Commission found that the CDE's position is also consistent with the parameters and guidelines and claiming instructions, in that they require a claimant to show increased costs mandated by the state.

Here, the SCO audited the claimant's reimbursement claim in accordance with the parameters and guidelines, the claiming instructions, and Education Code section 44955. As indicated above, the parameters and guidelines and claiming instructions require that the claimant identify offsetting savings, "e.g., reductions in non-science classes resulting from increase in required science classes…." Thus, the SCO anticipated that the cost of hiring new science teachers would

be offset by the savings authorized Education Code section 44955, or in the alternative, that the claimant would provide supporting documentation to support its claim for teachers' salaries.

The claimant, however, did not identify any offsetting savings or provide sufficient documentation to support its claim for teachers' salaries. In fact, the claimant clearly indicated that the mandate was met by hiring additional teachers from outside the district and keeping all of its non-science course offerings intact. Similarly, the claimant's consultant stated in a declaration that "…the district[s] had met the Graduation Requirement mandate by hiring additional staff, not by eliminating existing courses and re-assigning current staff." Thus, the claimant chose neither to trigger the provisions of Education Code section 44955, nor to provide sufficient documentation supporting the reason why there were no offsetting savings.[119] Therefore, the additional costs incurred by the claimant were optional and do not result in costs mandated by the state.

Accordingly, the Commission found that the SCO correctly reduced the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines and the claiming instructions, as authorized by state law.

Issue 2: Should the methodology the SCO used to determine increased costs for staffing under its audits of the *Court-Ordered Desegregation* and *Voluntary Integration* programs be compared to the methodology used to determine increased costs for teachers' salaries?

The claimant's methodology to determine increased costs for teachers' salaries was to compare the total number of high school teachers on staff prior to the *Graduation Requirements* mandate, with the total number of teachers on staff following implementation of the *Graduation Requirements* mandate. The claimant also factored in the total number of teachers that would have been hired due to enrollment increases (one new teacher per every additional thirty students). The claimant concluded that "[t]here was no offsetting savings due to discontinued courses since the total teacher staff number increased so an increased cost for teachers was

[119]On July 9, 2002, the claimant responded to the staff analysis released on February 1, 2002, with the contention that it "should be reimbursed for the pay differential between the salary cost of those teachers that *should be let go* and the cost of hiring new science teachers." The claimant sought to redefine "pay differential" so the district can be reimbursed for costs that were incurred at its option. This proposal is inconsistent with the parameters and guidelines and claiming instructions. The express language of the parameters and guidelines provides reimbursement only for the difference between the increased cost of hiring new science teachers and the *savings from laying off teachers* of non-mandated subjects.

The claimant requested that the Commission find that the districts should be reimbursed for those costs incurred related to pay differentials as outlined in the State Controller's claiming instructions. The Commission does not have jurisdiction to address this issue because the districts did not claim pay differentials as outlined in the State Controller's claiming instructions. The claimant also contended that the district should be allowed to file claims based on the pay differential since it has been pursuing all costs incurred for the hiring of science teachers. The Commission does not have jurisdiction to address this issue because reimbursement claims are filed with the State Controller.

incurred." The claimant asserted that this methodology is the same methodology the SCO used when it audited two other programs with similar cost requirements (*Court-Ordered Desegregation* and *Voluntary Integration* programs), and therefore, the claimed costs should be reimbursed.

The Commission found that the claimant's argument was misplaced. No party has challenged the SCO's audits of the *Court-Ordered Desegregation* and *Voluntary Integration* programs. Thus, these audits have never been before the Commission and are not before the Commission here. Accordingly, the Commission found that the claimant's contention that the methodology used to determine increased costs for salaries is the same methodology the SCO used to determine increased costs for staffing under its audits of the *Court-Ordered Desegregation* and *Voluntary Integration* programs has no bearing on this IRC and cannot be compared to the methodology used to determine increased costs for science teachers' salaries.

CONCLUSION

Based on the foregoing, the Commission found that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Graduation Requirements* program based on the following findings:

- The SCO performed the reductions in accordance with the Commission's parameters and guidelines and the SCO's claiming instructions. The claim was reduced because the claimant did not identify any offsetting savings nor did it provide sufficient documentation to support its claim for teachers' salaries.
- The SCO's methodology to determine increased costs for staffing under its audits of the *Court-Ordered Desegregation* and *Voluntary Integration* programs has no bearing on this IRC and cannot be compared to the methodology used to determine increased costs for science teachers' salaries.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Vallejo City Unified School District, Claimant.	NO. CSM 4435-I-14 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Vallejo City Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1991-1992; By West Contra Costa Unified School District, Claimant.	NO. CSM 4435-I-15 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for West Contra Costa Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1991-1992; By John Swett Unified School District, Claimant.	NO. CSM 4435-I-16 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for John Swett Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; 1Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Stockton Unified School District, Claimant.	NO. CSM 4435-I-17 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Stockton Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1991-1992; By Novato Unified School District, Claimant.	NO. CSM 4435-I-18 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Novato Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 26, 1996, to include Fiscal Years 1984-1985 through 1991-1992; By Center Unified School District, Claimant.	NO. CSM 4435-I-19 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Center Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; Lake Tahoe Unified School District, Claimant.	NO. CSM 4435-I-21 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Lake Tahoe Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By San Francisco Unified School District, Claimant.	NO. CSM 4435-I-22 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for San Francisco Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By El Dorado Union High School District, Claimant.	NO. CSM 4435-I-23 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for El Dorado Union High School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Dixon Unified School District, Claimant.	NO. CSM 4435-I-24 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Dixon Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Eastside Union High School District, Claimant.	NO. CSM 4435-I-25 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Eastside Union High School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 8, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Galt Joint Union High School District, Claimant.	NO. CSM 4435-I-26 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Galt Joint Union High School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 14, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Lincoln Unified School District, Claimant.	NO. CSM 4435-I-28 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Lincoln Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 20, 1996, to include Fiscal Years 1991-1992 through 1993-1994; By Simi Valley Unified School District, Claimant.	NO. CSM 4435-I-31 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Simi Valley Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 21, 1996, to include Fiscal Years 1984-1985 through 1989-1990; By Linden Unified School District, Claimant.	NO. CSM 4435-I-34 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on August 29, 2002)*

STATEMENT OF DECISION

On July 30, 2002, the Commission on State Mandates (Commission) heard this incorrect reduction claim (IRC) during a regularly scheduled hearing. Mr. David Scribner appeared for Linden Unified School District. Ms. Virginia Brummels and Mr. Shawn Silva appeared for the State Controller's Office (SCO). Mr. Mohammed Wardak and Mr. Michael Wilkening appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the IRC was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 6 – 0, denied this IRC.

GROUP 2 CLAIMS

Claim Number	Name of Claimant	Amount of Claim
4435-I-20	Placer Union High School District	$3,011,129
4435-I-27	Ojai Unified School District	$ 211,487
4435-I-30	Anderson Union High School District	$ 118,584
4435-I-32	Woodland Joint Unified School District	$ 677,134
4435-I-33	San Juan Unified School District	$4,906,590
Total		**$8,924,924**

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on July 31, 1996, to include Fiscal Years 1984-1985 through 1994-1995; By Placer Union High School District, Claimant.	NO. CSM 4435-I-20 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 26, 2002)*

STATEMENT OF DECISION

Government Code section 17551, subdivision (b), requires the Commission on State Mandates (Commission) to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) incorrectly reduced payments to the local agency or school district. The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law..

On August 13, 2002, the Placer Union High School District requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

On August 29, 2002, the Commission, by a vote of 6 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 17551, subdivision (b), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

> The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its statement of decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On January 22, 1987, the Commission adopted its decision that the *Graduation Requirements* program constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-1987 school year, to complete at least two courses in science before receiving a high school diploma.[120] Under prior law, the Education Code only required the completion of one science course.

The Commission's parameters and guidelines were adopted on consent on March 23, 1988.[121] Under section V. of the parameters and guidelines entitled, "Reimbursable Costs," the following activities are described as eligible for reimbursement:

> A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
>
> B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
>
> C. *Increased cost to school district for staffing and supplying* the new science classes mandated. (Emphasis added.)

Under section VI. of the parameters and guidelines entitled, "Offsetting Savings and Other Reimbursement," the following costs are described as offsetting savings:

> Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes…shall be identified and deducted from this claim*. (Emphasis added.)

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[120] Education Code section 51225.3 (Stats. 1983, ch. 498.)

[121] The parameters and guidelines were amended on August 24, 1988 and January 24, 1991. The August 24, 1988 amendment was technical and has no bearing on this claim. The January 24, 1991 amendment required documentation to demonstrate actual need for capital improvements, and did not relate to teachers' salaries.

In January 1991, the SCO issued new claiming instructions mirroring the Commission's parameters and guidelines.

Between April 1992 and November 1995, the Placer Union High School District submitted its initial reimbursement claims to the SCO. On August 20, 1993, the SCO sent the claimant a letter denying reimbursement for the cost of all teachers' salaries. Specifically, the letter stated:

> The amounts claimed for teacher salaries have been adjusted. Reimbursement of staffing costs is limited to salary and other remuneration differentials, if any, of a science teacher and the costs of laboratory assistants or special teaching aides required by a science class. The addition of science classes should have resulted in offsetting savings due to a corresponding reduction of non-science classes. Your claims do not indicate a corresponding reduction.

Thus, on July 31, 1996, the claimant filed its IRC on the *Graduation Requirements* program. The claimant contended that the SCO incorrectly reduced its claim by $3,011,129 for fiscal years 1984-1985 through 1994-1995, for costs associated with science teachers' salaries.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

Did the SCO reduce the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines, and the claiming instructions?

For the reasons stated in the Commission findings, the Commission concluded that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contended that the cost of teachers' salaries should be reimbursed since increased costs for the additional science teachers required to implement the mandate were incurred and no offsetting savings were realized.

The claimant maintained that the district employed more science teachers as a result of the mandate. To determine the number of teachers needed for the mandated second year of science provided at the tenth grade level, the claimant divided the tenth grade enrollment by the student/teacher ratio. Once the number of teachers necessary was determined, the cost of the new teachers were identified and claimed.

Regarding offsetting savings, the claimant argued that the parameters and guidelines require that claims offset savings from classes that were discontinued "as a result of the mandate." The claimant maintained that the parameters and guidelines do not require that classes be discontinued, and thus, it did not reduce classes "as a result of the mandate."

State Controller's Office Position

The SCO based its position on its response to Stockton Unified School District's *Graduation Requirements* IRC.[122] The SCO contended that the claimant's reimbursement claim was reduced in accordance with the Commission's parameters and guidelines, which state in part:

[122] SCO filed its response on Stockton Unified School District's IRC on June 12, 2000.

> "Any savings the claimant experiences as a direct result of this statute must be deducted from costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes."

The parameters and guidelines require claimants to identify any "Offsetting Savings and Other Reimbursement" associated with the mandate. However, the claimant failed to report any offsetting savings in its IRC, or otherwise provide sufficient information demonstrating reasons why offsetting savings could not be realized by laying off non-science teachers.

Furthermore, the SCO maintained that:

> [T]he amendment to section 44955 authorizes school boards to lay off teachers when state law requires modification of the curriculum…. [¶] A reasonable conclusion is that the Legislature intended and contemplated that school districts would exercise this lay off authority whenever possible to minimize or meet the costs of hiring additional science teachers.

An indication of legislative intent was communicated in a memo to the Commission from the California Department of Education (CDE), dated May 5, 1986, which stated:

> The Department does not support the portion of the claim for teacher salaries because the addition of science classes should have resulted in a corresponding reduction of classes other than science.

Therefore, if a school district has the authority to lay off a non-science teacher to meet the salary of a new science teacher, then the district is not "required" to incur increased costs under the mandate. The SCO does not dispute the fact that a school board is not required to lay off teachers to achieve offsetting savings, but by not electing to lay off the non-science teacher, the district is voluntarily assuming the salary cost of the new teacher. Accordingly, the increased cost was not required; it is a cost that could have been avoided by exercising the statutory layoff authority.

Thus, the reimbursement claim was reduced by the entire amount claimed for teachers' salaries.

Department of Finance's Position

The Department of Finance (DOF) filed comments on the claimant's IRC on July 20, 2000, reiterating its December 20, 1993 letter addressing SDUSD's IRC. The DOF supports the SCO's position by stating:

> [T]he Parameters and Guidelines and Claiming Instructions clearly state that any offsetting savings must be deducted from the amounts claimed. It appears reasonable to us that the claimant must document the "increased costs" resulting from the mandate and that such documentation of the marginal cost increases resulting from such a mandate would logically exclude such savings.
>
> [The test claim legislation] does not require that school districts offer the new science class in addition to all previously offered classes and, therefore, the choice of any school district to continue to offer un-mandated classes should not be funded through the mandate process. It has long been our position that it is entirely appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation [under

> mandates law]. [The Legislature through the test claim legislation] has deemed the second science class to be of higher priority than other courses which are not mandated as a prerequisite to graduation from high school.

COMMISSION FINDINGS

Background

In a letter dated May 5, 1986, where the CDE commented on the *Graduation Requirements* test claim, the CDE noted that it was opposed to reimbursing schools for the increased cost of science teachers' salaries. CDE stated, "[t]he extent to which elective courses take funds away from the core curriculum, the courses may be discontinued and funds redirected to the core curriculum." In response to CDE's opposition, the Commission stated that CDE's concerns would be given primary consideration in the development of the parameters and guidelines. The Commission adopted the Statement of Decision for the *Graduation Requirements* test claim on January 22, 1987.

The parameters and guidelines were adopted on March 23, 1988.[123] Following the adoption of the parameters and guidelines, Commission staff, based upon information received from school districts, prepared a statewide cost estimate, which was presented to the Commission at the August 1988 hearing. The amount of this proposed statewide cost estimate was approximately $151 million. However, Commission staff cautioned that the cost estimate might be inaccurate based on: 1) the school districts' failure to offset the additional science classes with corresponding staffing reductions in *non*-science classes, and 2) failure to account for increased enrollment. The Commission did not adopt the $151 million statewide cost estimate and directed staff to resurvey the school districts to attempt to develop a more accurate estimate.

At the May 25, 1989 hearing, a *revised* statewide cost estimate of approximately $159 million was presented to the Commission. Again, staff reported that responding school districts failed to offset savings for reductions of non-science staff. In response to the staff's revised estimate, the DOF, in its submission of April 18, 1989, proposed a statewide cost estimate in the amount of $16.8 million. In the preparation of this estimate, the DOF set forth the following assumptions:

> It may be assumed, except where demonstrated otherwise, that *any cost* of hiring science teachers and acquiring space for second science courses is *fully offset* by reductions of non-science teaching staff and by space made available for courses dropped by districts as not needed for addressing the changes in curriculum required by the mandate.
>
> This assumption reflects the fact that Education Code section 44955 was amended by Chapter 498/83 (the *same* chapter requiring the second science course) to provide that whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall become necessary by reason of [this condition] to decrease the number of permanent employees in the district, the…governing board *may terminate* the services of not more than a corresponding percentage of the certificated employees of the district….

[123] See footnote 2, ante.

> *Payable* claims associated with this mandate are expected to be selected cases in which districts are *successfully able to demonstrate special circumstances* which *prove* that the *expected offsets were absent or not sufficient* to cover their costs.
>
> *Only* costs associated with the hiring of new teachers which could not be offset would be claimable.
>
> *Only very small high schools* might have to hire additional staff to be able to offer newly required courses. *Larger schools*, because of the provisions described above [Education Code section 44955] allowing layoffs to reorganize to meet changes in curriculum, would experience *no net increases* in staff costs and might even have *decreases* where new teachers start at a *lower* salary than existing teachers.
>
> The *burden of proof is upon local educational agencies* to demonstrate that any additional costs have resulted from the graduation requirements mandate…. (Emphasis added.)

The Commission did not adopt a statewide cost estimate at the May 25, 1989 hearing; instead, the Commission directed staff, the DOF, and the school districts to convene a pre-hearing conference to jointly arrive at a cost estimate. The pre-hearing conference was held on June 22, 1989. At this pre-hearing, the parties agreed to a statewide cost estimate based upon the DOF's assumptions. On July 27, 1989, the Commission adopted, by consent, a statewide cost estimate developed by the parties equaling $16.8 million ($2.8 million per year) for fiscal years 1984-1985 through 1989-1990 for all school districts.

The Commission first considered the SCO's reduction of science teachers' salaries for the *Graduation Requirements* program in the IRC filed by the SDUSD (CSM 4435-I-01). SDUSD filed its IRC on October 4, 1993, arguing that the SCO incorrectly reduced its reimbursement claims for the costs for teachers' salaries. The Commission disagreed and SDUSD's IRC was denied on September 28, 2000. The Commission subsequently denied 29 other *Graduation Requirements* IRCs for costs associated with science teachers' salaries. Two of those IRCs were also for costs associated with science classroom construction and remodeling.

Like SDUSD, the claimant here also contended that the SCO incorrectly reduced its claim for costs associated with science teachers' salaries. The issue is discussed below.

Issue: Did the SCO reduce the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines, and the claiming instructions?

The claimant contended that the claimed costs met the criteria for reimbursement listed in the Commission's parameters and guidelines and the SCO's claiming instructions for science teachers' salaries. The claimant maintained that the district incurred increased costs because it employed more science teachers as a result of the mandate and no offsetting savings were realized because all of the district's non-science courses remained intact. Therefore, the increased cost of teachers' salaries should be reimbursed.

For the reasons provided below, the Commission found that the SCO reduced the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines and the SCO's claiming instructions, as authorized by state law.

Section V. of the parameters and guidelines, entitled "Reimbursable Costs," provides that the following activities are eligible for reimbursement:

A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.

B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.

C. *Increased cost to school district for staffing* and supplying the new science classes mandated. (Emphasis added.)

Section VI. of the parameters and guidelines, entitled "Offsetting Savings and Other Reimbursement," identifies offsetting savings that apply against reimbursement for the cost of hiring new science teachers:

> Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes…shall be identified and deducted from this claim.* (Emphasis added.)

In other words, the parameters and guidelines require reimbursement for the "increased cost…to staff and supply the new science classes," minus the cost savings associated with "any savings…experience[d by]…reductions in non-science classes resulting from the increase in required science classes…." The SCO's claiming instructions mirrored the Commission's parameters and guidelines. Thus, the Commission found, that based on the express language contained in the parameters and guidelines, the claimant is only entitled to reimbursement for the difference between the increased cost of hiring new science teachers and the savings from laying off teachers of non-mandated subjects.

The Commission also found that the SCO's reliance on Education Code section 44955, subdivision (b), and the positions of the DOF and the CDE to reduce the claimant's reimbursement claim are reasonable and not misplaced. As discussed below, Education Code section 44955 and the positions of the DOF and CDE are consistent with the Commission's parameters and guidelines and the SCO's claiming instructions, and require reimbursement only when a claimant can show *increased costs mandated by the state* for complying with the program.

Education Code section 44955, subdivision (b), was amended in the *same* legislative act as the *Graduation Requirements* mandate (Stats. 1983, ch. 498). As amended, that section authorizes local governing school boards to lay off teachers and reduce non-mandated courses when the Legislature changes mandated curriculum. Education Code section 44955, subdivision (b), provides in pertinent part the following:

> [W]henever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary…to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district…at the close of the school year.

Since Education Code section 44955, subdivision (b), was amended in the same legislative act as the *Graduation Requirements* mandate, the Commission agreed with the SCO that the

Legislature offered the option to school districts to exercise the layoff authority to minimize the costs of hiring additional science teachers.

The Commission further agreed with the SCO that if a school district chooses not to trigger the provisions of Education Code section 44955, it does so at its own option. Thus, any additional costs incurred by a claimant, *without* corresponding offsetting savings as a result of Education Code section 44955 or documentation supporting the reason why there were no offsetting savings, are optional and do not result in costs mandated by the state.

The DOF's interpretation of the relationship between the test claim statute and Education Code section 44955 is also consistent with the parameters and guidelines and claiming instructions. The DOF, in preparation of the final statewide cost estimate, determined the following:

> 1) *Except where demonstrated otherwise*, any cost of hiring science teachers if fully offset by reductions of non-science teaching staff not needed for addressing the changes in the curriculum, 2) Education Code section 44955, subdivision (b), was amended in the same legislation (Chapter 498/83) that added the additional science course and authorized districts to lay off teachers in response to legislative changes in the curriculum . . . 3) The science course curriculum change did not require lengthening the instructional day or year, 4) The additional hiring of teachers caused by a district's enrollment growth is not reimbursable under this program, 5) Only very small high schools might have to hire additional staff, but larger schools, because of the layoff provisions of Education Code section 44955, would experience no net increases in staff costs and might even have decreases where new teachers start at lower salary than existing teachers, and 6) The *burden of proof is upon the districts to demonstrate that any additional costs have resulted from this program*. (Emphasis added.)

Furthermore, the CDE, in response to the test claim on *Graduation Requirements*, made the following statement: "The Department does not support the portion of the claim for teacher salaries because the addition of science classes would have resulted in a corresponding reduction of classes other than science. [The claimant] should have adjusted their teaching staff accordingly, resulting in no net cost to the district." The Commission found that the CDE's position is also consistent with the parameters and guidelines and claiming instructions, in that they require a claimant to show increased costs mandated by the state.

Here, the SCO audited the claimant's reimbursement claim in accordance with the parameters and guidelines, the claiming instructions, and Education Code section 44955. As indicated above, the parameters and guidelines and claiming instructions require that the claimant identify offsetting savings, "e.g., reductions in non-science classes resulting from increase in required science classes…." Thus, the SCO anticipated that the cost of hiring new science teachers would be offset by the savings authorized Education Code section 44955, or in the alternative, that the claimant would provide supporting documentation to support its claim for teachers' salaries.

The claimant, however, did not identify any offsetting savings or provide sufficient documentation to support its claim for teachers' salaries. The claimant chose neither to trigger the provisions of Education Code section 44955, nor to provide sufficient documentation

supporting the reason why there were no offsetting savings.[124] Therefore, the additional costs incurred by the claimant were optional and do not result in costs mandated by the state.

Accordingly, the Commission found that the SCO correctly reduced the claimant's reimbursement claim in accordance with the Commission's parameters and guidelines and the claiming instructions, as authorized by state law.

CONCLUSION

Based on the foregoing, the Commission found that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Graduation Requirements* program based on the following finding:

- The SCO performed the reductions in accordance with the Commission's parameters and guidelines and the SCO's claiming instructions. The claim was reduced because the claimant did not identify any offsetting savings nor did it provide sufficient documentation to support its claim for teachers' salaries.

[124]On August 13, 2002, the claimant responded to the staff analysis released on February 28, 2002, with the contention that it "should be reimbursed for the pay differential between the salary cost of those teachers that *should be let go* and the cost of hiring new science teachers." The claimant sought to redefine "pay differential" so the district can be reimbursed for costs that were incurred at its option. This proposal is inconsistent with the parameters and guidelines and claiming instructions. The express language of the parameters and guidelines provides reimbursement only for the difference between the increased cost of hiring new science teachers and the *savings from laying off teachers* of non-mandated subjects.

The claimant requested that the Commission find that the district should be reimbursed for those costs incurred related to pay differentials as outlined in the State Controller's claiming instructions. The Commission does not have jurisdiction to address this issue because the district did not claim pay differentials as outlined in the State Controller's claiming instructions. The claimant also contended that the district should be allowed to file claims based on the pay differential since it had been pursuing all costs incurred for the hiring of science teachers. The Commission does not have jurisdiction to address this issue because reimbursement claims are filed with the State Controller.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 14, 1996, to include Fiscal Years 1984-1985 through 1991-1992; By Ojai Unified School District, Claimant.	NO. CSM 4435-I-27 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 26, 2002)*

STATEMENT OF DECISION

Government Code section 17551, subdivision (b), requires the Commission on State Mandates (Commission) to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) incorrectly reduced payments to the local agency or school district. The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

On August 13, 2002, the Ojai Unified School District requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

On August 29, 2002, the Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on November 30, 1992, to include Fiscal Year 1991-1992; By Anderson Union High School District, Claimant.	NO. CSM 4435-I-30 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 26, 2002)*

STATEMENT OF DECISION

Government Code section 17551, subdivision (b), requires the Commission on State Mandates (Commission) to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) incorrectly reduced payments to the local agency or school district. The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

On August 13, 2002, the Anderson Union High School District requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

On August 29, 2002, the Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 20, 1996, to include Fiscal Years 1984-1985 through 1989-1990, and 1991-1992; By Woodland Joint Unified School District, Claimant.	NO. CSM 4435-I-32 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 26, 2002)*

STATEMENT OF DECISION

Government Code section 17551, subdivision (b), requires the Commission on State Mandates (Commission) to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) incorrectly reduced payments to the local agency or school district. The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

On August 13, 2002, the Woodland Joint Unified School District requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

On August 29, 2002, the Commission, by a vote of 6 – 0, denied this IRC.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3 as added by Statutes 1983, Chapter 498; Filed on August 20, 1996, to include Fiscal Years 1984-1985 through 1989-1990; By San Juan Unified School District, Claimant.	NO. CSM 4435-I-33 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 26, 2002)*

STATEMENT OF DECISION

Government Code section 17551, subdivision (b), requires the Commission on State Mandates (Commission) to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) incorrectly reduced payments to the local agency or school district. The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

On August 13, 2002, the San Juan Unified School District requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

On August 29, 2002, the Commission, by a vote of 6 – 0, denied this IRC.

GROUP 3 CLAIMS

Claim Number	**Name of Claimant**	**Amount of Claim**
4435-I-06 and 38	Clovis Unified School District	$ 3,915,339
4435-I-35	Grossmont Union High School District	$ 604,996
Total		**$ 4,520,335**

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3, as added by Statutes of 1983, Chapter 498, and Filed on October 4, 1995, to include Fiscal Years 1984-85 through 1992-93; Amended on August 3, 2000 to include Fiscal Years 1993-94 through 1997-98; By Clovis Unified School District, Claimant.	NO. CSM 4435-I-06 and 4435-I-38 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on January 24, 2002)

STATEMENT OF DECISION

On December 12, 2001, the Commission on State Mandates (Commission) heard this incorrect reduction claim during a regularly scheduled hearing. Mr. Keith Petersen and Mr. Leo Shaw of SixTen and Associates appeared for Clovis Unified School District. Ms. Carol Berg appeared for Education Mandated Cost Network. Mr. Shawn Silva and Ms. Ginny Brummels appeared for the State Controller's Office (SCO). Mr. Michael Wilkening and Mr. Mohammed Wardak appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the incorrect reduction claim was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission, by a vote of 5 to 1, denied this incorrect reduction claim.

Introduction

Clovis Unified School District filed this Incorrect Reduction Claim (IRC) on the *Graduation Requirements* program. As indicated by the table below, the claimant contends that the SCO incorrectly reduced the costs claimed for leasing portable science classrooms and for the salaries of science teachers in the amount of $3,915,339 for fiscal years 1984-85 through 1997-98.

Table 1

Fiscal Year	*Portable Classrooms*	*Teachers' Salaries*	*Totals by Fiscal Year*
1984-85	$ 0	$ 83,687	$ 83,687
1985-86	0	97,178	97,178
1986-87	0	102,254	102,254
1987-88	0	102,071	102,071
1988-89	0	108,705	108,705
1989-90	0	145,730	145,730
1990-91	0	119,437	119,437
1991-92	0	125,866	125,866
1992-93	0	119,469	119,469
1993-94	0	127,516	127,516
1994-95	14,250	537,999	552,249
1995-96	57,784	628,984	686,768
1996-97	0	892,619	892,619
1997-98	0	651,790	651,790
Totals by Area of Reduction	$ 72,034	$ 3,843,305	**$ 3,915,339**

The Commission first considered the SCO's reduction of science teachers' salaries for the *Graduation Requirements* program in the San Diego Unified School District's (SDUSD) IRC, (CSM 4435-I-01). The Commission denied SDUSD's IRC, finding that the SCO did not incorrectly reduce SDUSD's reimbursement claims for teacher salaries because:

- Government Code sections 17561, subdivision (d), and 17564, subdivision (c), authorize the SCO to audit claims for legality, correctness and to adjust claims if they are excessive or unreasonable.

- Statutory law does not define the scope or manner in which the SCO must conduct an audit. There is no legal basis in which to conclude the SCO did not perform a proper audit.
- The Commission does not have specific or implied authority to determine whether the SCO created a standard of general application without the benefit of law or due process of rulemaking. The Commission is prohibited from deciding the rulemaking issue raised by the claimants.
- The SCO performed the reductions in accordance with the Claiming Instructions, and the Parameters and Guidelines, because the claimant did not include offsetting savings and claim salary differentials in its claim, or provide documentation to support its claim for teachers' salaries.
- There is no evidence that the SCO arbitrarily denied payment of teachers' salaries to the claimant.
- The SCO does not have the burden of proof to demonstrate that the claimant is ineligible for reimbursement.

The SDUSD decision applies to this IRC, because the claimant has incorporated by reference SDUSD's arguments and supporting documentation.

However, this IRC raises the issue of leasing portable classrooms for the first time.

Statement of Authority

Government Code section 17561, subdivision (b), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the SCO determines is excessive or unreasonable.

Government Code section 17551, subdivision (b), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its statement of decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

Background

On January 22, 1987, the Commission adopted its decision that the *Graduation Requirements* program constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma.[125] Under prior law, the Education Code only required the completion of one science course.

[125] Education Code section 51225.3 (Stats. 1983, ch. 498).

The staff analysis for the *Graduation Requirements* test claim noted that the State Department of Education (SDE) was opposed to reimbursing schools for the increased cost of science teachers' salaries. SDE stated, "[t]he extent to which elective courses take funds away from the core curriculum, the courses may be discontinued and funds redirected to the core curriculum." In response to SDE's opposition, the staff analysis stated that SDE's concerns would be given primary consideration in the development of the Parameters and Guidelines. The Commission adopted the staff analysis.

Between August 1987 and January 1988, the Santa Barbara High School District, SDE, DOF, and SCO filed comments on the proposed Parameters and Guidelines. Consequently, Commission staff, SDE staff, and a School Services of California representative met to discuss concerns raised about suggested revisions to the proposed Parameters and Guidelines. At this meeting, the parties agreed that board certification should serve as the documentation for science remodeling and construction costs claimed. The proposed Parameters and Guidelines were adopted on consent on March 23, 1988.

Under section V. of the Parameters and Guidelines, entitled "Reimbursable Costs," the following activities are described as eligible for reimbursement:

> D. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
>
> E. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
>
> F. Increased cost to school district for staffing and supplying the new science classes mandated. (Emphasis added.)

Under section VI. of the Parameters and Guidelines entitled, "Offsetting Savings and Other Reimbursement," the following costs are described as offsetting savings:

> Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., reductions in non-science classes resulting from increase in required science classes…shall be identified and deducted from this claim.

Section IX. of the Parameters and Guidelines, entitled "Supporting Data for Claims," requires that the claimant submit the following documentation with the claim:

> A. Documentation of increased units of science course enrollments due to the enactment of Education Code section 51225.3 necessitating such an increase.
>
> B. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.

C. *Certification by the Board* that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code section 51225.3. To reasonably accommodate includes:

a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.

b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school. (Emphasis added.)

Following the adoption of the Parameters and Guidelines, Commission staff, based upon information received from school districts, prepared a Statewide Cost Estimate, which was presented to the Commission at the August 1988 hearing. The amount of this proposed Statewide Cost Estimate was approximately $151 million. However, Commission staff cautioned that the cost estimate might be inaccurate based on: 1) the school districts' failure to offset the additional science classes with corresponding staffing reductions in *non*-science classes, and 2) failure to account for increased enrollment. The Commission did not adopt the $151 million Statewide Cost Estimate and directed staff to resurvey the school districts to attempt to develop a more accurate estimate.

At the May 25, 1989, hearing, a *revised* Statewide Cost Estimate of approximately $159 million was presented to the Commission. Again, staff reported that responding school districts failed to offset savings for reductions of non-science staff. In response to the staff's revised estimate, the DOF, in its submission of April 18, 1989, proposed a Statewide Cost Estimate in the amount of $16.8 million. In the preparation of this estimate, the DOF set forth the following assumptions:

> It may be assumed, except where demonstrated otherwise, that *any cost* of hiring science teachers and acquiring space for second science courses is *fully offset* by reductions of non-science teaching staff and by space made available for courses dropped by districts as not needed for addressing the changes in curriculum required by the mandate.
>
> This assumption reflects the fact that Education Code section 44955 was amended by Chapter 498/83 (the *same* chapter requiring the second science course) to provide that whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall become necessary by reason of [this condition] to decrease the number of permanent employees in the district, the…governing board *may terminate* the services of not more than a corresponding percentage of the certificated employees of the district….
>
> *Payable* claims associated with this mandate are expected to be selected cases in which districts are *successfully able to demonstrate special circumstances* which *prove* that the *expected offsets were absent or not sufficient* to cover their costs.
>
> *Only* costs associated with the hiring of new teachers which could not be offset would be claimable.
>
> *Only very small high schools* might have to hire additional staff to be able to offer newly required courses. *Larger schools*, because of the provisions described above [Education Code section 44955] allowing layoffs to reorganize to meet

> changes in curriculum, would experience *no net increases* in staff costs and might even have *decreases* where new teachers start at a *lower* salary than existing teachers.
>
> The *burden of proof is upon local educational agencies* to demonstrate that any additional costs have resulted from the graduation requirements mandate…. (Emphasis added.)

The Commission did not adopt a Statewide Cost Estimate at the May 25, 1989 hearing; instead, the Commission directed staff, the DOF, and the school districts to convene a pre-hearing conference to jointly arrive at a cost estimate. The pre-hearing conference was held on June 22, 1989. At this pre-hearing, the parties agreed to a Statewide Cost Estimate based upon the DOF's assumptions. On July 27, 1989, the Commission adopted, by consent, a Statewide Cost Estimate developed by the parties equaling $16.8 million ($2.8 million per year) for fiscal years 1984-85 through 1989-90 for all school districts.

In 1990, the Legislature required the Commission to amend the Parameters and Guidelines for the *Graduation Requirements* program to document the need for additional science classrooms.[126] Specifically, the amendment required that:

> [C]osts related to the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.

Thus, on January 24, 1991, the Commission amended the Parameters and Guidelines by adding the following language to section V.A. of the Parameters and Guidelines ("Reimbursable Costs"):

> However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.

Section IX. of the Parameters and Guidelines ("Supporting Data for Claims") was also amended by the addition of the following language:

> D. Documentation that the additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increasing high school enrollment.
>
> E. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.

In January 1991, the SCO issued new Claiming Instructions mirroring the Commission's Parameters and Guidelines.

[126] Statutes of 1990, chapter 459.

Claimant's Position

On October 4, 1995, the claimant filed an IRC on the *Graduation Requirements* program for fiscal years 1984-85 through 1992-93. On August 3, 2000, the claimant amended its IRC to include fiscal years 1993-94 through 1997-98.[127] As described below, the claimant argues that the SCO incorrectly reduced its claims by over $3.9 million for the cost of leasing portable classrooms and for the salaries of science teachers. [128]

Leasing Portable Classrooms

The claimant contends that its reimbursement claims for the cost of leasing portable science classrooms were incorrectly reduced by $72,034 (fiscal years 1994-95 and 1995-96). The claimant contends that it has submitted the necessary documentation to satisfy the criteria of board certification for the cost of leasing portable classrooms by the filing of a declaration, dated April 30, 2001, from Roger Oraze, Assistant Superintendent of Clovis Unified School District – Facility Services.

Science Teachers' Salaries

The claimant contends that its reimbursement claims for the cost of science teachers' salaries were incorrectly reduced by $3,843,305 (fiscal years 1984-85 through 1997-98). The claimant has incorporated by reference the same arguments raised in SDUSD's IRC regarding science teachers' salaries. Those arguments are as follows:

1) The SCO has not stated a statutory authority for the adjustments.
2) The normative statements and speculation of the state agencies are not determinative of reimbursement issues.
3) Education Code section 44955, subdivision (b), is irrelevant to the issue of state mandate reimbursement.
4) The SCO has unilaterally established a standard of general application without the benefits of law or due process of rulemaking.
5) The SCO has ignored its own Claiming Instructions and the Commission's Parameters and Guidelines.
6) The SCO's conclusion that school districts should have experienced offsetting savings is without factual basis.
7) The SCO's authority was not properly exercised.
8) The SCO arbitrarily denied payment of teachers' salaries on the claimant's claim, while approving payment of all teachers' salaries on similar claims filed by other school districts.[129]
9) The SCO has the burden of proof to show a legal basis for the adjustments.

[127] The amended IRC included fiscal year 1998-99; however, in a letter dated November 20, 2000, the claimant withdrew this fiscal year from the IRC.

[128] The claimant also claimed costs for science classroom equipment, materials, supplies, and textbooks ($147,741). However, in a letter dated April 2, 2001, the claimant's representative stated that the claimant and SCO have agreed to either the amounts claimed or the adjusted amounts. Therefore, this issue has been resolved.

[129] This issue was addressed solely in SDUSD's December 19, 1997 Supplemental Comments.

State Controller's Office Position

Leasing Portable Classrooms

The SCO contends that it disallowed the claimed amounts for leasing portable science classrooms, because the claimant did not submit board certification, as required by the Parameters and Guidelines.

The SCO stated that board certification was not a mere formality, but a demonstration "that the construction or remodeling for which reimbursement is sought was carefully thought out, and that no other reasonable alternatives existed." To be eligible, the SCO maintained that the board must certify the following:

> (1) An analysis has been conducted of all appropriate science facilities within the district; (2) A determination has been made that the need for construction or remodeling is due to an increased enrollment in science courses; (3) A determination has been made that an adjustment of attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the school district will not meet the increased enrollment; (4) Taking advantage of other available secondary school science facilities within a secure walking distance will not meet the increased enrollment; and (5) The increased enrollment in science classes was for the additional science courses required by the enactment of Education Code section 51225.3.

Thus, the SCO reduced the reimbursement claims for costs associated with leasing portable classrooms.

Science Teachers' Salaries

The SCO contends that the claimant's reimbursement claim was reduced based on the Commission's Parameters and Guidelines, which state in part:

> "Any savings the claimant experiences as a direct result of this statute must be deducted from costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes." [130]

The Parameters and Guidelines required claimants to identify any "Offsetting Savings and Other Reimbursement" associated with the mandate. However, the claimant failed to report any offsetting savings in its IRC, or otherwise provide information demonstrating reasons why offsetting savings could not be realized by laying off non-science teachers.

Furthermore, the SCO maintains that:

> [T]he amendment to section 44955 authorizes school boards to lay off teachers when state law requires modification of the curriculum…. [¶] A reasonable conclusion is that the Legislature intended and contemplated that school districts would exercise this lay off authority whenever possible to minimize or meet the costs of hiring additional science teachers.[131]

An indication of legislative intent was communicated in a memo to the Commission from the SDE, dated May 5, 1986, which stated:

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[130] Based on SCO's response to Stockton Unified School District's IRC.

[131] Based on SCO's response to Stockton Unified School District's IRC.

> The Department does not support the portion of the claim for teacher salaries because the addition of science classes should have resulted in a corresponding reduction of classes other than science.[132]

Therefore, the SCO explained that if a school district has the authority to lay-off a non-science teacher to meet the salary of a new science teacher, then the district is not "required" to incur increased costs under the mandate. The SCO does not dispute the fact that a school board is not required to lay-off teachers to achieve offsetting savings, but by not electing to lay-off the non-science teacher, the district is voluntarily assuming the salary cost of the new teacher. Accordingly, the SCO contends that the increased cost could have been avoided by exercising its statutory lay-off authority.

Thus, the SCO reduced the reimbursement claims by the entire amount claimed for science teachers' salaries.

Department of Finance's Position

The DOF did not comment on the adjustments made for the cost of leasing portable classrooms.
The DOF did file comments, dated December 20, 1993, in response to SDUSD's IRC on the issue of science teachers' salaries. The DOF supports the SCO's position by stating:

> [T]he Parameters and Guidelines and Claiming Instructions clearly state that any offsetting savings must be deducted from the amounts claimed. It appears reasonable to us that the claimant must document the "increased costs" resulting from the mandate and that such documentation of the marginal cost increases resulting from such a mandate would logically exclude such savings.
>
> [The test claim legislation] does not require that school districts offer the new science class in addition to all previously offered classes and, therefore, the choice of any school district to continue to offer un-mandated classes should not be funded through the mandate process. It has long been our position that it is entirely appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation [under mandates law]. [The Legislature through the test claim legislation] has deemed the second science class to be of higher priority than other courses which are not mandated as a prerequisite to graduation from high school.

State Department of Education's Position

The SDE did not comment on the adjustments made for the cost of leasing portable classrooms.

The SDE did file comments, dated January 21,1994, in response to SDUSD's IRC on the issue of science teachers' salaries. The SDE maintains that SDUSD's claim was not incorrectly reduced and supports the SCO's position by stating:

[132] Based on SCO's response to Stockton Unified School District's IRC.

> [I]t is our position that claimant should have had savings to offset any costs related to additional required instruction in science by reducing other non-mandated classes. Claimant should have adjusted its teaching staff in such a way as to result in no net cost to the district for teaching staff.

COMMISSION FINDINGS

Part 1. Leasing Portable Classrooms

Issue: Did the SCO incorrectly reduce Clovis' claims for the cost of leasing portable science classrooms?

The SCO reduced Clovis' reimbursement claims for the cost of leasing portable classrooms by $72,034 for fiscal years 1994-95 through 1995-96. The SCO reduced the reimbursement claims because the claimant did not provide documentation evidencing board certification, as required by Section IX. C. of the Parameters and Guidelines, "Supporting Data for Claims."

In response, the claimant argues that the declaration of Roger Oraze, Assistant Superintendent of Clovis Unified School District – Facility Services, satisfies the requirement of board certification. The Parameters and Guidelines for this program authorizes reimbursement for the acquisition of additional space necessary for conducting the new science class required by the test claim legislation (Section V., "Reimbursable Costs"). Acquisition of additional space includes leasing portable classrooms. Since 1988, Section IX. C. of the Parameters and Guidelines has required eligible claimants to submit the following documentation in support of a claim for reimbursement of costs associated with acquiring additional space:

> *Certification by the Board* that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code section 51225.3. To reasonably accommodate includes:
>
> a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.
>
> b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school. (Emphasis added.)

Thus, the claimant is entitled to reimbursement for the cost of acquiring additional space *if* the claimant has documentation evidencing that the governing board did the following:

1. Conducted an analysis of all appropriate science facilities within the district.
2. Determined that no such facilities existed to reasonably accommodate increased enrollment for the additionally required science classes.
3. Determined that the increase in enrollment in science courses was due to the enactment of Education Code section 51225.3.

4. Determined that an adjustment of attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the school district will not meet the increased enrollment.

5. Determined that taking advantage of other available secondary school science facilities within a secure walking distance will not meet the increased enrollment.

The claimant interprets Section IX. C. of the Parameters and Guidelines as follows: "[T]he Parameters and Guidelines do not require the board to conduct an analysis of all appropriate science facilities. Section IX. C. requires a certification by the board that an analysis was conducted." The claimant also states: "[T]he Parameters and Guidelines do not require the board to make a determination. Section IX. C. requires a certification by the board that a determination has been made."

The Commission disagrees with the claimant. Although it is appropriate under the Parameters and Guidelines for district staff to conduct the analysis and make recommendations to the governing board regarding the findings required by Section XI. C., the Parameters and Guidelines still require that the claimant submit documentation with the reimbursement claim that the governing board considered the staff recommendations and made the required findings before the expenditures were made. Evidence that satisfies this documentation requirement includes agenda items, a transcript, and/or the minutes of a governing board meeting.

Here, the only document submitted by the claimant to support the claim for the cost of leasing portable science classrooms is a declaration from Roger Oraze, Assistant Superintendent-Facility Services, dated April 30, 2001. As summarized below, this declaration does not demonstrate that the board considered an analysis of the science facilities within the district or made the necessary determinations required by Section IX. C. of the Parameters and Guidelines before the expenditures were made:

The declaration of Roger Oraze states the following:

3. Sometime prior to 1993, it was decided by the Governing Board of the District to remodel the science classrooms at Clovis High School. The decision to remodel was made as part of a school-wide modernization project. The District also built new science classrooms at Clovis High School and Clovis West High School.

4. The need for new science classrooms and remodeled science classrooms was the direct result of new increased graduation requirements. The additional classrooms required by increased student population were resolved by the building of a new high school (Buchanan High School).

5. In order to facilitate the remodeling process, the District made the decision to rent portable classrooms. By moving students to the portable classrooms, the regular rooms could be remodeled with a minimum interruption to regular classroom instruction. These portable classrooms were a temporary measure only and were removed from the schoolsite when the remodeling was completed.

6. At the time the decision was made to rent portable classrooms, there was a lack of appropriately configured and equipped space in existing facilities for the additional science courses.

7. At the time the decision was made to rent portable classrooms, there were only two regular high schools in the District, both of whom were over utilized and, therefore, it was not feasible to adjust attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities.

8. At the time the decision was made to rent portable science classrooms, there were no other available secondary school science facilities within a secure walking distance of the schools remodeled.

Mr. Oraze's declaration contains statements concluding that the existing science facilities at Clovis did not meet the increased enrollment in science courses and that the need for additional classrooms was a "direct result" of the test claim statute. These conclusions are not supported by any evidence that the board considered an analysis of all appropriate science facilities within the district or made the determinations regarding the district's facilities *before* the expenditures on the lease were made. Rather, Mr. Oraze's declaration was prepared *eight years after* Clovis filed its reimbursement claim for the cost of leasing portable science classrooms.[133]

Moreover, the Parameters and Guidelines have required that documentation evidencing the board's findings be filed with the reimbursement claim since 1988, five years before the claimant decided to remodel the science classrooms. The Parameters and Guidelines, including the supporting documentation requirement, were adopted on consent and the Commission has not received any requests to amend the Parameters and Guidelines to change the documentation requirement.

Finally, the declarant states that the board decided to lease the portable classrooms in order to facilitate the remodeling process. The remodeling process was part of the *school-wide modernization project*. Thus, this evidence suggests that the need for leasing portable classrooms may not be due to the additional science course mandated by the test claim statute.

Accordingly, the Commission finds that the declaration from Mr. Oraze, dated April 30, 2001, does not satisfy Section XI. C. of the Parameters and Guidelines.

Conclusion for Part 1

The claimant has not provided documentation evidencing that the board considered an analysis of all appropriate science facilities or made the determinations regarding science facilities, as required by Section XI. C. of the Parameters and Guidelines.

Accordingly, the Commission finds that the SCO did not incorrectly reduce the costs claimed for leasing portable science classrooms.

<u>Part 2. Science Teachers' Salaries</u>

The claimant incorporated by reference the arguments raised in SDUSD's IRC. Thus, the Commission must consider the following five issues:

[133] The reimbursement claim seeking reimbursement for leasing portable classrooms was filed in November 1996.

Issue 1: Did the SCO exercise its audit authority in accordance with state law when it reduced the claimant's reimbursement claims?

Issue 2: Did the SCO establish a standard of general application without the benefits of law or the due process of rulemaking?

Issue 3: Did the SCO reduce the claimant's reimbursement claim based on Commission's Parameters and Guidelines, and the Claiming Instructions?

Issue 4: Does the SCO's payment of teachers' salaries on 38 other claims have a bearing on this IRC?

Issue 5: Does the SCO have the burden of proof to show a legal basis for the adjustments?

These issues are addressed below.

Issue 1: Did the SCO exercise its audit authority in accordance with state law when it reduced the claimant's reimbursement claims?[134]

The claimant contends that the SCO lacked the authority to eliminate, audit, and reduce the claimant's cost reimbursement claims. The claimant maintains that neither Statutes of 1983, chapter 498, Government Code section 17561, nor the Commission's regulations grant SCO this authority.

The SCO's authority to audit and make adjustments rests in the California Constitution and California Government Code. Article XVI, section 7, grants the SCO implicit constitutional authority to audit all disbursements from the State Treasury to ensure the Controller's concurrence in the expenditure of state funds. Government Code section 12410 provides, in relevant part, that:

> [T]he Controller shall superintend the fiscal concerns of the state. The Controller . . . may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

In addition, Government Code section 17561, subdivision (d), and Government Code section 17564, subdivision (c), delegate authority to the SCO to audit and reduce any mandated reimbursement claim, "which the Controller determines is excessive or unreasonable." Accordingly, the Commission finds that the SCO has statutory authority to audit and reduce the claimant's reimbursement claim.

The claimant also contends that the SCO performed an improper audit of its cost reimbursement claims by reducing the costs claimed for teachers' salaries in violation of Government Code section 17561. The claimant asserts that the adjustments were arbitrary and procedurally incorrect. The claimant states:

> It appears that since the District did not report offsetting savings of the nature anticipated by the Controller all reported science teacher costs were eliminated. The Controller did not request additional data in response to its new rule regarding 'remuneration differentials.' The Controller did not inform claimants in the claiming instructions that failure to report speculative cost savings would result in a 100% penalty to reported costs. The Controller did not declare to claimants that there was a new rebuttable presumption that there would be a

[134] Issue 1 addresses claimant's issues 1 and 7.

> person-for-person and dollar-for-dollar staffing reduction for every new science teacher hired and that claimants were burdened with the duty to somehow prove otherwise, or were to suffer the consequences.

Government Code section 17561 establishes procedures for the SCO to reimburse local agencies and school districts for costs mandated by the state. Section 17561 authorizes the SCO to: 1) *audit* the records of any local agency or school district to verify the actual amount of the mandated costs, and 2) to *reduce* any claim that the SCO determines is excessive or unreasonable. There is nothing in this section that defines the scope of the SCO's audit, or the manner in which the audit may be conducted. Nor is there anything in section 17561 that requires the SCO to request additional information from the claimant or to review other additional documentation.

The record reveals that the SCO ultimately reviewed all documentation submitted and made available by the claimant. The Commission finds that if the claimant deemed additional documentation critical to the outcome of the SCO's audit, it had an opportunity to submit such documentation in response to the SCO's letter of June 26, 1996.

Therefore, the Commission concludes that the SCO exercised its audit authority in accordance with state law when it reduced the claimant's reimbursement claims.

Issue 2: Did the SCO establish a standard of general application without the benefit of law or the due process of rulemaking?[135]

The claimant contends that the salary differential standard used by the SCO in determining the submitted cost of teachers' salaries were not reimbursable, is arbitrary, fundamentally flawed and established without the benefits of law or due process of rulemaking. Specifically, the claimant states:

> [I]t was the determination of the State Controller that reimbursement for the increased staffing [costs] would be limited 'to salary and other remuneration differentials, if any.' Without stating how the 'differentials' were calculated….
>
> The Controller's new cost accounting rule does not appear in Chapter 498/83, Education Code section 51225.3, the Government Code, the California Code of Regulations, the Parameters and Guidelines, or the Claiming Instructions. By applying the rule to the claims, the Controller is creating a standard of general application without the benefit of law or due process of rulemaking.

Government Code section 17500, et seq., authorizes the Commission to hear and decide Test Claims and IRCs, adopt Parameters and Guidelines and Statewide Cost Estimates, and review Claiming Instructions, relating to article XIII B, section 6 of the Constitution. The Commission is also authorized to hear county applications for a Finding of Significant Financial Distress. However, the Commission does not have specific or implied authority to determine whether a procedure constitutes a correctly adopted regulation. Rather, the Legislature has given the Office of Administrative Law the specific authority to hear and decide issues relating to whether a standard of general application is required to be adopted and approved under the Administrative Procedures Act.

Under the current constitutional and statutory scheme, the Commission finds that it does not have specific or implied authority to determine whether the SCO created a standard of general

[135] Issue 2 addresses claimant's issue 4.

application without benefit of law or due process of rulemaking. Accordingly, the Commission finds that it is prohibited from determining whether the SCO established a standard of general application without the benefit of law and the due process of rulemaking.[136]

[136]The Parameters and Guidelines require reimbursement for "increased cost . . . to staff . . . new science classes," minus "any savings experienced by reductions in non-science classes resulting from an increase in required science classes . . ." The Commission finds the salary differential is consistent with the Parameters and Guidelines.

Issue 3: Did the SCO reduce the claimant's reimbursement claim based on the Commission's Parameters and Guidelines and the Claiming Instructions?[137]

The claimant contends that the District's claim was in accord with the Parameters and Guidelines and Claiming Instructions, and that the increased staffing costs and absence of offsetting savings were properly reported. The claimant asserts that the SCO did not cite its own Claiming Instructions, nor the Commission's Parameters and Guidelines for its policy decision to disallow reimbursement for increased science teacher costs. Instead the claimant argues that the SCO improperly relied on Education Code section 44955, and the assumptions of the DOF and SDE to reduce the claim. The SCO adjusted the claim because the claimant did not report any offsetting savings due to a corresponding reduction of non-science classes.

For the reasons provided below, the Commission finds that the SCO reduced the claimant's reimbursement claim based on the Commission's Parameters and Guidelines and the SCO's Claiming Instructions, as authorized by state law.

Section V. of the Parameters and Guidelines, entitled "Reimbursable Costs," provides that the following activities are eligible for reimbursement:

A. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities.
B. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
C. *Increased cost to school district for staffing* and supplying the new science classes mandated. (Emphasis added.)

Section VI. of the Parameters and Guidelines, entitled "Offsetting Savings and Other Reimbursement," identifies offsetting savings that apply against reimbursement for the cost of hiring new science teachers:

Any savings the claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes . . . shall be identified and deducted from this claim.* (Emphasis added.)

In other words, the Parameters and Guidelines require reimbursement for the "increased cost...to staff and supply the new science classes," minus the cost savings associated with "any savings . . . experience[d by]...reductions in non-science classes resulting from the increase in required science classes . . . ." The SCO's Claiming Instructions mirrored the Commission's Parameters and Guidelines. Thus, the Commission finds, that based on the express language contained in the Parameters and Guidelines, the claimant is only entitled to reimbursement for the differential between the increased cost of hiring new science teachers and the savings from laying-off teachers of non-mandated subjects.

The Commission also finds that the SCO's reliance on Education Code section 44955, subdivision (b), and the positions of the DOF and the SDE to reduce the claimant's reimbursement claim is reasonable and not misplaced. As discussed below, Education Code section 44955 and the positions of the DOF and SDE are consistent with the Commission's

[137] Issue 3 addresses claimant's issues 2, 3, 5, and 6.

Parameters and Guidelines and the SCO's Claiming Instructions, and require reimbursement only when a claimant can show *increased costs mandated by the state* for complying with the program.

Education Code section 44955, subdivision (b), was amended in the *same* legislative act as the graduation requirement mandate (Statutes of 1983, chapter 498). As amended, that section authorizes local governing school boards to lay off teachers and reduce non-mandated courses when the Legislature changes mandated curriculum. Education Code section 44955, subdivision (b), provides in pertinent part the following:

> [W]henever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district . . . at the close of the school year.

Since Education Code section 44955, subdivision (b), was amended in the same legislative act as the graduation requirement mandate, staff agrees with the SCO that the Legislature offered the option to school districts to exercise the lay-off authority to minimize the costs of hiring additional science teachers.

The Commission further agrees with the SCO that if a school district chooses not to trigger the provisions of Education Code section 44955, it does so at its own option. Thus, any additional costs incurred by a claimant, *without* corresponding offsetting savings as a result of Education Code section 44955 or documentation supporting teachers' salaries, are optional and do not result in costs mandated by the state.

The DOF's interpretation of the relationship between the test claim statute and Education Code section 44955 is also consistent with the Parameters and Guidelines and Claiming Instructions. The DOF, in preparation of the final statewide cost estimate, determined the following:

> 1) *Except where demonstrated otherwise*, any cost of hiring science teachers if fully offset by reductions of non-science teaching staff not needed for addressing the changes in the curriculum, 2) Education Code section 44955, subdivision (b), was amended in the same legislation (Chapter 498/83) that added the additional science course and authorized districts to lay off teachers in response to legislative changes in the curriculum . . . 3) The science course curriculum change did not require lengthening the instructional day or year, 4) The additional hiring of teachers caused by a district's enrollment growth is not reimbursable under this program, 5) Only very small high schools might have to hire additional staff, but larger schools, because of the layoff provisions of Education Code section 44955, would experience no net increases in staff costs and might even have decreases where new teachers start at lower salary than existing teachers, and 6) The *burden of proof is upon the districts to demonstrate that any additional costs have resulted from this program*. (Emphasis added.)

Furthermore, the SDE, in response to the test claim on *Graduation Requirements*, made the following statement: "The Department does not support the portion of the claim for teacher salaries because the addition of science classes would have resulted in a corresponding reduction of classes other than science. [The claimant] should have adjusted their teaching staff accordingly, resulting in no net cost to the district." The Commission finds that the SDE's

position is also consistent with the Parameters and Guidelines and Claiming Instructions, in that they require a claimant to show increased costs mandated by the state.

Here, the SCO audited the claimant's reimbursement claim in accordance with the Parameters and Guidelines, the Claiming Instructions, and Education Code section 44955. As indicated above, the Parameters and Guidelines and Claiming Instructions require that the claimant identify offsetting savings, "e.g., reductions in non-science classes resulting from increase in required science
classes . . . ." Thus, the SCO anticipated that the cost of hiring new science teachers would be offset by the savings authorized by Education Code section 44955, or in the alternative, that the claimant would provide supporting documentation to support its claim for teachers' salaries. The claimant, however, did not identify any offsetting savings or provide documentation to support its claim for teachers' salaries.

Accordingly, the Commission finds that the SCO reduced the claimant's reimbursement claims based on the Parameters and Guidelines and Claiming Instructions, as authorized by state law.

Issue 4: Does the SCO's payment of teachers' salaries on 38 other claims have a bearing on this IRC?[138]

Like SDUSD, the claimant here contends that the SCO arbitrarily denied payment of teachers' salaries on its claim, while approving payment of teachers' salaries on similar claims filed by 38 other school districts.

The Commission finds that the claimant's argument is misplaced. First, the 38 claims referenced by the claimant are not before the Commission. Thus, the Commission cannot make a determination that the payment of teachers' salaries in the 38 claims was appropriate.

Moreover, as discussed in Issue 3, the SCO properly reduced the claimant's reimbursement claims based on the Parameters and Guidelines and Claiming Instructions, as authorized by state law, since there is no evidence that the additional costs incurred by the claimant for teachers' salaries resulted in costs mandated by the state. The claimant did not identify offsetting savings for the reduction of non-science courses, and did not submit documentation supporting its claim that the additional costs for teachers' salaries were mandated by the state.

Accordingly, the SCO's payment of teachers' salaries on claims filed by 38 other school districts has no bearing on this IRC.

Issue 5: Does the SCO have the burden of proof to show a legal basis for the adjustments?[139]

The claimant contends that the SCO has the burden of proof to show a legal basis for the adjustments. The claimant maintains that it fully complied with the SCO's Claiming Instructions and supplied all the documentation requested by the SCO's Claiming Instructions.

In response, the SCO maintains that its authority to adjust claims is provided in Government Code sections 17561, subdivision (d), and 17564, subdivision (c).

As indicated in the findings for Issues 1 and 3, the SCO does have a legal basis for the adjustments made in this case.

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[138] Issue 4 addresses claimant's issue 8.

[139] Issue 5 addresses claimant's issue 9.

Conclusion for Part 2

The SCO did not incorrectly reduce the claimant's reimbursement claims for teachers' salaries based on the following findings:

- The SCO exercised its audit authority in accordance with state law when it reduced the claimant's reimbursement claims.
- The Commission does not have specific or implied authority to determine whether the SCO created a standard of general application without the benefit of law or due process of rulemaking. The Commission is prohibited from deciding the rulemaking issue raised by the claimant.
- The SCO performed the reductions in accordance with the Claiming Instructions and the Parameters and Guidelines. The claim was reduced because the claimant did not include offsetting savings and claim salary differentials in its claim, or provide documentation to support its claim for teachers' salaries.
- The SCO's payment of teachers' salaries on claims filed by 38 other school districts has no bearing on this IRC.
- The SCO has a legal basis for making the adjustments in this case.

CONCLUSION

Based on the above, the Commission denied the *Graduation Requirements* IRC filed by Clovis Unified School District.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 51225.3, as added by Statutes 1983, Chapter 498, and Filed on August 16, 1999, to include Fiscal Years 1994-95 through 1996-97; By Grossmont Union High School District, Claimant.	NO. CSM 4435-I-35 *Graduation Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on January 24, 2002)

STATEMENT OF DECISION

On December 12, 2001, the Commission on State Mandates (Commission) heard this incorrect reduction claim during a regularly scheduled hearing. Mr. Keith Petersen and Mr. Leo Shaw of SixTen and Associates appeared for Grossmont Union High School District. Ms. Carol Berg appeared for Education Mandated Cost Network. Mr. Shawn Silva and Ms. Ginny Brummels appeared for the State Controller's Office (SCO). Mr. Michael Wilkening and Mr. Mohammed Wardak appeared for the Department of Finance (DOF).

At the hearing, oral and documentary evidence was introduced, the incorrect reduction claim was submitted, and the vote was taken.

The Commission is required to hear and decide a claim by a local agency or school district that the SCO has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (b). The law applicable to the Commission's determination of reimbursable state mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission, by a vote of 5 to 1, denied this incorrect reduction claim.

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