June 2, 2006

Mr. Arthur Palkowitz
Legislative Mandates Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: **Draft Staff Analysis and Hearing Date**
Proposed Parameters and Guidelines
Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses
San Diego Unified School District, Claimant
05-PGA-04 (CSM-4455)
Education Code Section 48915, subdivisions (a) and (b)
Statutes 1993, Chapters 1255 and 1256
-and-
Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

Dear Mr. Palkowitz:

The draft staff analysis and proposed parameters and guidelines for the above-entitled test claim are enclosed for your review and comment. The proposed parameters and guidelines are for the fiscal year 1993-94 through 2005-06 reimbursement periods and are based on San Diego's proposed reasonable reimbursement methodology for the additional hearing costs.

Written Comments

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by July 5, 2006. The Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. To request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

The proposed parameters and guidelines are tentatively set for hearing on Friday, July 28, 2006, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 14, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions on the above, please contact me at (916) 323-8210.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

Cc: Mr. Jose Gonzalez
Ms. Susan Oie
Ms. Diana McDonough

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ITEM ___

DRAFT STAFF ANALYSIS

PROPOSED PARAMETERS AND GUIDELINES

Education Code Section 48915, subdivisions (a) and (b)
Statutes 1993, Chapters 1255 (and 1256
Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses

05-PGA-04 (CSM-4455)

EXECUTIVE SUMMARY

These proposed parameters and guidelines are necessary to implement the Supreme Court Decision in the *Pupil Expulsions* case and to allow school districts to be reimbursed for additional hearing costs for mandated recommendations of expulsion. (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*).) See Exhibit A.

Since school districts have already filed reimbursement claims for actual costs incurred from October 11, 1993 through June 30, 2005, and estimated reimbursement claims for fiscal year 2005-2006, staff proposes adoption of a separate set of parameters and guidelines for claiming the *additional expulsion hearing costs from 1993-1994 through 2005-2006.* San Diego Unified School District proposed a *reasonable reimbursement methodology* which consists of uniform cost allowances for the additional hearing costs allowed by the Supreme Court decision. The cost allowance is based on claimant and Los Angeles Unified School District's actual expulsion hearing costs for 2005-2006. In order to determine cost allowances for the prior years, the 2005-2006 cost allowances are adjusted back to fiscal year 1993-1994 by the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance.[1] Adoption of this reasonable reimbursement methodology will allow school districts to claim and be reimbursed for additional hearing costs for mandated recommendations of expulsion.

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[1] Government Code section 17523.

Background

In March 1994, claimant San Diego Unified School District (Claimant) filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. After hearings in 1996 and 1997, the Commission adopted its Statement of Decision in May 1997, and on August 10, 1998, issued a corrected Statement of Decision. Among other things, the Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion. The Commission further determined that no subvention was required for costs of voluntary expulsions. The reimbursable activities were included in consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals,* adopted on August 20, 1998.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

> "We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a 'higher level of service' under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.
>
> "We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section *48918* constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate." (Emphasis in original.)

(*San Diego Unified School District, supra,* 33 Cal.4th 859, 867)[2]

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[2] See Exhibit A.

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*. The Supreme Court decision requires the state to reimburse school districts for "all resulting hearing costs —even those costs attributable to procedures required by federal law" for mandated "recommendations of expulsion for certain offenses," back to the initial reimbursement period for the *Expulsions* test claim (1993).

On May 26, 2005, the Commission on State Mandates ("Commission") adopted its Amended Statement of Decision consistent with the Supreme Court's ruling in *San Diego Unified School District.*[3]

On July 27, 2005, Commission staff convened a pre-hearing conference to establish the schedule for adoption of the parameters and guidelines to implement the Amended Statement of Decision.

On October 3, 2005, the claimant submitted proposed amendments to the Parameters and Guidelines on this consolidated mandated program.[4] On October 13, 2005, this proposal was mailed to interested parties for review and comment. Written comments were received from the State Controller's Office on November 18, 2005.[5] The Department of Finance requested and was granted an extension of time to file comments on January 13, 2006. However, no comments were filed.

On March 27, 2006, the claimant resubmitted the proposed amendments to the Parameters and Guidelines to make technical corrections. On April 4, 2006, claimant's resubmission was deemed complete, as a replacement for the original proposal. In order to expedite this proceeding, staff requested that parties and interested parties defer filing comments until the draft staff analysis and proposed amendments are issued for review and comment.

<u>State Controller's Office Comments</u>

On November 18, 2005, the State Controller's Office (SCO) filed comments on the original proposed amendments to the consolidated parameters and guidelines.

> Title Page. The SCO recommends that Statutes 2002, Chapter 492 be added to the description of *Pupil Suspensions from School* – CSM-4456 and Statutes 2001, Chapter 116, be added to the description of the *Pupil Expulsions from School* - CSM-4455.
>
> Section I. Summary of the Mandates. The SCO recommends that the section title be modified to conform to current parameters and guidelines and recommends changes to sections A and B.
>
> A. *Pupil Suspensions from School.*
>
> SCO also recommends the addition of a new paragraph on amendments made to Education Code section 48911 by Statutes 2002, chapter 492.

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[3] See Exhibit B.

[4] See Exhibit C.

[5] See Exhibit D.

B. *Pupil Expulsions*

SCO recommends deleting reference to test claim statutes (Chapters 1255 and 1256, Statutes 1993) and inserting text of Education Code section 48915, as amended by Statutes 2001, chapter 116, section 2.

Section IV. Period of Reimbursement. The SCO recommends technical amendments to the first paragraph and the second paragraph. SCO recommends the addition of a new third paragraph, as follows:

> All mandated cost claims that were submitted to the SCO through September 29, 2002, including amendments thereof, only have to meet the threshold of being in excess of $200. Beginning on September 30, 2002, any mandated cost claims submitted to SCO must be in excess of $1,000 according to GC § 17564 subdivision (a).

Section V. Reimbursable Activities. The SCO recommends the following amendments:

C. Recommendation of Expulsion. SCO recommends deletion of "firearm," "explosive", "sale of any controlled substance," and the addition of "possession of any controlled substance," and "assault or battery … upon any school employee" from offenses that require preparation of a report to the school district governing board concerning the principal's or superintendent's recommendation to expel a pupil.

D. Expulsion Hearing Procedural Requirements. The SCO recommends adding a specific reference to offenses listed in Section V. subsection C.

H. Application by Expelled Pupil to Attend New District. SCO proposes replacing list of offenses occurring from July 1, 1993 to December 31, 1993 with a reference to Section I. Summary and Source of the Mandate, B. *Pupil Expulsions*.

Section X. Remedies before the Commission. The SCO recommends changing a citation for requests to amend parameters and guidelines from Government Code section 17557, subdivision (d), to subdivision (a).

Staff reviewed State Controller's comments on claimant's original proposed amendments to the consolidated parameters and guidelines. In this analysis, staff will consider and respond only to those recommendations that are applicable to these proposed parameters and guidelines for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.* The SCO comments and recommendations will also be addressed in the Staff Analysis and Proposed Amendments to the Consolidated Parameters and Guidelines for *Pupil Suspensions, Pupil Expulsions from School, and Expulsion Appeals. (CSM-4455, 4456, and 4463).*

Since school districts have already filed reimbursement claims for actual costs incurred from October 11, 1993 through June 30, 2005, and estimated reimbursement claims for fiscal year 2005-2006, staff proposes adoption of two separate sets of parameters and guidelines for claiming the *additional expulsion hearing costs*. Each set of parameters and guidelines will be presented as a separate agenda item and staff analysis.

1. ***Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.*** (Reimbursement for fiscal years 1993-1994 through 2005-2006) School districts may claim additional hearing costs based on a reasonable reimbursement methodology proposed by the San Diego Unified School District. San Diego proposes uniform cost allowances for additional hearing costs

based on fiscal year 2005-2006 costs. Commission staff has applied the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance[6] to the 2005-2006 costs back to 1993.

2. ***Consolidated Parameters and Guidelines for Suspensions, Expulsions, and Expulsion Appeals***. (Reimbursement begins for fiscal year 2006-2007 claims) Amendments would include new reimbursable activities based on Supreme Court Decision and amended Statement of Decision, claimant's proposed reasonable reimbursement methodology for expulsion hearing costs, and updated language in recently adopted parameters and guidelines.

This agenda item addresses the proposed amendments for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.*

Staff reviewed claimant's original and resubmitted proposals, the modified statement of decision, and the State Controller's comments on the original proposed amendments to the consolidated parameters and guidelines.

The following substantive changes have been made by staff to claimant's proposed parameters and guidelines in order to develop these parameters and guidelines for *Additional Hearing Costs*, as described above.

Title Page

The parameters and guidelines to implement the amended Statement of Decision are entitled: "*Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.*"

Since claimant's proposed parameters and guidelines address reimbursement for additional hearing costs resulting from the Supreme Court Decision, citations are made to the relevant Education Code sections and test claim statutes instead of all statutes included in the consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals.*

Section I. Summary of the Mandate

This section describes the Supreme Court's ruling in *San Diego Unified School District.* The Supreme Court decision requires the state to reimburse school districts for increased hearing costs incurred for mandatory recommendations of expulsion for specified offenses.

Section III. Period of Reimbursement

This section clearly specifies that the proposed parameters and guidelines apply to the specified reimbursement period of October 11, 1993 through June 30, 2006.

Section IV. Reimbursable Activities

Substantive language on filing actual cost reimbursement claims is deleted from claimant's proposed parameters and guidelines because it is not relevant to reimbursement based on a *reasonable reimbursement methodology*. A *reasonable reimbursement methodology* is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs pursuant to Government Code sections 17518.5 and 17557.

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[6] Government Code section 17523.

Only one technical change is made to the description of additional reimbursable activities, as proposed by claimant, as explained below in footnote 7.

Staff reviewed each of the additional activities proposed by claimant and finds that the following additional reimbursable activities are consistent with the Supreme Court Decision; the Commission's modified Statement of Decision, and the test claim statutes. Therefore, staff finds that these activities are state-mandated and reasonably necessary to comply with the state-mandated expulsions hearings pursuant to Education Code section 48918.

Expulsion Hearings

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.

Then the following additional activities are reimbursable:

1. Preparation for Expulsion Hearing
   - Preparing and reviewing documents to be used during the expulsion hearing.
   - Arranging hearing dates and assigning panel members and translators as needed.
2. Conducting Expulsion Hearing
   - Attendance of the hearing officer or review panel and other district employees required to attend the expulsion hearing.[7]
3. Hearing Officer or Panel's Expulsion Recommendation to the Governing Board
   - Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.
4. Record of Hearing
   - Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceeding to be made.

[7] Staff added "hearing officer or" to this reimbursable activity. This addition makes the activity consistent with Education Code section 48918, which authorizes use of hearing officers or panels to hold due process expulsion hearings.

Section V. Claim Preparation: Reasonable Reimbursement Methodology

Substantive language on filing actual cost reimbursement claims is deleted because reimbursement for the additional expulsions hearing costs is based on a *reasonable reimbursement methodology* in lieu of payments of total actual costs incurred.

This section includes language for adoption of a reasonable reimbursement methodology and clarification of the unit cost allowances. Most of this language is excerpted from the statutory definition and was previously adopted by the Commission in the *Annual Parent Notification* Parameters and Guidelines Amendments (05-PGA-12 (CSM-4461, 4445, 4453, 4462, 4474, 4488, 97-TC-24, 99-TC-09, and 00-TC-12)).

According to claimant, the uniform cost allowance is based on cost data collected by Los Angeles Unified School District and San Diego Unified School District that accounted for 20% of the statewide mandatory recommendations for expulsion in fiscal year 2003-2004.

School districts annually report to the Department of Education how many students were recommended for expulsion, expelled, "mandatorily" expelled, and whose orders were suspended. Statewide, county, and district totals are available on the CDE website for the period from 2000-2001 through 2003-04.[8]

The claimant originally proposed uniform cost allowances in October 2005. The comment period was extended to January 13, 2006 at the request of the Department of Finance. However, no comments on the cost allowances were filed by any state agency or interested party.

Staff reviewed these allowances and compared them to the costs of due process hearings held by a state agency. A comparison to state agency costs is relevant because Education Code section 48918, subdivision (d) authorizes governing boards to contract with the county hearing officer or with the State Office of Administrative Hearings for a hearing officer to conduct expulsions hearings. State agencies in the Department of Consumer Affairs contract with the State Office of Administrative Hearings for a hearing officer to conduct license revocation hearings under the Administrative Procedure Act.

For fiscal year 2005-2006, state agencies are charged the following rates for due process hearings for professional license revocations:

State Attorney General			
Deputy Attorney General	$146/hour	Paralegal	$ 92/hour
State Office of Administrative Hearings			
Hearing Officer	$176/hour	Staff Counsel	$102/hour
Filing Fee	$ 66/case		

[8] http://data1.cde.ca.gov/dataquest/Expulsion. See Exhibit E for 2001-02 Expulsion Information Reporting Form for San Diego City Unified School District.

The total amount proposed by claimants for the direct and indirect costs of all reimbursable components is $587.16. For a due process hearing held by a state agency, approximately the same amount ($594.50) would pay for the following state services:

CLAIMANT'S PROPOSED New Reimbursable Activities/Cost Allowance Fiscal Year 2005-2006	STAFF'S COMPARISON State Agency Costs For Due Process Hearing
IV. A.1 Preparation for Expulsion Hearing • Preparing and reviewing documents to be used during the expulsion hearing. • Arranging hearing dates and assigning panel members and translators as needed. Allowance: $157.	Deputy Attorney General for .75 hour Paralegal .50 hour Total - $ 155.50
IV. A.2. Conducting Expulsion Hearing • Attendance of the hearing officer or review panel and other district employees required to attend the expulsion hearing. Allowance: $196.16	30-Minute Hearing Deputy Attorney General .50 hour Paralegal - .50 hour Administrative Law Judge .50 hour Total: $207.
IV. A.3 Hearing Officer or Panel's Expulsion Recommendation to the Governing Board • Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. Allowance: $232.00	Administrative Law Judge - 1.3 hours Or Staff Counsel 2.2 hours Total: $232
IV. A.4 Record of Hearing Allowance: $2.00	
Total $587.16	$594.50

Based on this review of comparable costs and activities for state agency due process hearings, with administrative law judge recommendations being made to state professional licensing boards, staff finds that claimant's proposed uniform cost allowances for the additional hearing activities for mandated recommendations of expulsions are reasonable and should be adopted.

Sections VI - IX

The remaining sections are updated to make the language consistent with adopting a reasonable reimbursement methodology and language in recently adopted parameters and guidelines.

Section X. Legal and Factual Basis

The following new language has been developed to conform to the facts of this case:

> The Statement of Decision, as modified pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, is legally binding on all parties with respect to statutes claimed and determined by the Commission on State Mandates and provides the legal and factual basis for the parameters and guidelines. However, the amended Statement of Decision does not address subsequent amendments to the test claim statutes. The support for the legal and factual findings is found in the administrative record for the test claim and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.

Staff Recommendation

Staff recommends that the Commission adopt staff's proposed parameters and guidelines for the *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses.* (Reimbursement Period October 11, 1993 through June 30, 2006.)

Staff also recommends the Commission authorize staff to make necessary technical changes or corrections.

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY COMMISSION STAFF

Education Code Section 48915
Statutes 1993, Chapters 1255 and 1256

Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

Pupil Expulsions from School:
Additional Hearing Costs for Mandatory Recommendations for Expulsion

05-PGA-04 (CSM-4455)
Period of Reimbursement: October 11, 2003- June 30, 2006

I. Summary of the Mandate

In March 1994, claimant San Diego Unified School District (Claimant) filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. After hearings in 1996 and 1997, the Commission adopted its statement of decision in May 1997, and on August 10, 1998, issued a corrected statement of decision. Among other things, the Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion. The Commission further determined that no subvention was required for costs of voluntary expulsions. The reimbursable activities were included in consolidated parameters and guidelines for *Suspensions, Expulsions, and Expulsion Appeals*, adopted on August 20, 1998.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

> "We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a 'higher level of service' under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.
>
> "We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the

> requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section *48918* constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate." (Emphasis in original.)

(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*).)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District.* The Supreme Court decision requires the state to reimburse school districts for "all resulting hearing costs —even those costs attributable to procedures required by federal law" for mandated "recommendations of expulsion for certain offenses," back to the initial reimbursement period for the *Expulsions* test claim. (1993)

On May 26, 2005, the Commission on State Mandates ("Commission") adopted its amended Statement of Decision consistent with the Supreme Court's ruling in *San Diego Unified School District.*

II. Eligible Claimants

Any "school district," as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.[9]

III. Period of Reimbursement

These parameters and guidelines are operative for initial reimbursement claims filed for increased costs beginning on October 11, 1993 through June 30, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

[9] Language proposed by claimant.

3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

The claimant is only allowed to claim and be reimbursed for increased costs of reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of a mandate.

For each eligible claimant, the following activities are reimbursable:

A. Expulsion Hearings

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;
- possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Seciton 1053) of Division 10 of Health and Safety Code, except for the first offense for the sale oof not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.

Then the following additional activities are reimbursable:

1. Preparation for Expulsion Hearing
    - Preparing and reviewing documents to be used during the expulsion hearing.
    - Arranging hearing dates and assigning panel members and translators as needed.
2. Conducting Expulsion Hearing
    - Attendance of the review panel and other district employees required to attend the expulsion hearing.
3. Hearing Officer or Panel's Expulsion Recommendation to the Governing Board
    - Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.
4. Record of Hearing
    - Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceeding to be made.

Costs for *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM-4456, 4455, 4463) that were claimed for fiscal years 1993-1994 through 2005-2006 pursuant to the State Controller's claiming instructions for Program 176 may not be claimed and are not reimbursable under these parameters and guidelines.

V. Claim Preparation: Reasonable Reimbursement Methodology

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV. above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

<u>Government Code Section 17518.5</u>

(a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

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

(b) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

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

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities A. 1-4, as described under Section IV, Reimbursable Activities, and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities, A. 1-4 are *as follows:*

Reimbursable Component	Uniform Cost Allowances Fiscal Year 2005-2006
IV. A.1 Preparation for Expulsion Hearing	$157.00
IV. A.2. Conducting Expulsion Hearing	$196.16
IV. A.3 Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	$232.00
IV. A.4 Record of Hearing	$2.00
Total	$587.16

Uniform cost allowances for Fiscal Years 1993-94 through 2004-2005, shall be determined by adjusting the uniform cost allowance for Fiscal Year 2005-2006 by the Implicit Price Deflator referenced in Government Code section 17523. See attachment for the uniform cost allowances for Fiscal Years 1993-94 through 2004-2005.

2. Formula

Reimbursement for Section IV A. 1-4 is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may still claim increased costs incurred for Section IV.A.1, Preparation for Expulsion Hearing.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs based on this reasonable reimbursement methodology filed by a local agency or school district pursuant to this chapter[10] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

School districts must retain documentation which supports the total number of mandatory expulsions initiated and hearings conducted during the period subject to audit.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision, as modified pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, is legally binding on all parties with respect to statutes claimed and determined by the Commission on State Mandates and provides the legal and factual basis for the parameters and guidelines. However, the Amended Statement of Decision does not address subsequent amendments to the test claim statutes. The support for the legal and factual findings is found in the administrative record for the test claim and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.