

**ITEM 4**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Education Code Section 51225.3

Statutes 1983, Chapter 498

*Graduation Requirements*

Fiscal Years 2008-2009 and 2009-2010

16-4435-I-56

Grossmont Union High School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences, beginning in the 1986-1987 school year.

The Controller found that of the \$21,221,594 of increased costs incurred during the audit period, only \$5,645,762 is allowable (minus a \$10,000 late-filing penalty).<sup>1</sup> The claimant challenges the reduction of costs claimed for acquisition of additional space for new science classrooms and laboratories (Finding 1), and for materials and supplies relating to the additional science course (Finding 2). The claimant also disputes the Controller's finding that local school-construction bond funds should have been identified and deducted from the claims as offsetting revenues (Finding 4).

Staff recommends that the Commission deny this IRC.

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<sup>1</sup> Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only \$14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, for a net of \$21,221,594 in costs incurred. See Exhibit A, page 48.

## **Procedural History**

The Legislature appropriated \$1,000 in the Budget Act for the *Graduation Requirements* program on July 28, 2009.<sup>2</sup> The claimant signed the reimbursement claim for fiscal year 2008-2009 on February 2, 2010.<sup>3</sup> The claimant signed the amended reimbursement claim for fiscal year 2008-2009 on January 11, 2011.<sup>4</sup> The claimant signed the reimbursement claim for fiscal year 2009-2010 on January 19, 2011.<sup>5</sup> The Controller paid the claimant \$10 toward its fiscal year 2009-2010 claim on November 29, 2011.<sup>6</sup> The claimant signed the amended reimbursement claim for fiscal year 2009-2010 on January 9, 2012.<sup>7</sup> The Controller's audit entrance conference letter was dated January 6, 2015.<sup>8</sup> The Final Audit Report cover letter was dated June 21, 2016.<sup>9</sup> The claimant filed the IRC on June 8, 2017.<sup>10</sup> The Controller filed late comments on the IRC on September 20, 2017.<sup>11</sup> The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on August 28, 2019.<sup>12</sup> The Controller filed comments on the Draft Proposed Decision on August 30, 2019.<sup>13</sup> The claimant filed a request for an extension of the time to file comments and postponement of hearing on September 9, 2019, which was granted. The claimant filed comments on the Draft Proposed Decision on October 18, 2019.<sup>14</sup>

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<sup>2</sup> Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5).

<sup>3</sup> Exhibit A, IRC, page 1404 (2008-2009 Reimbursement Claim).

<sup>4</sup> Exhibit A, IRC, page 1485 (2008-2009 Amended Reimbursement Claim).

<sup>5</sup> Exhibit A, IRC, page 2592 (2009-2010 Reimbursement Claim).

<sup>6</sup> Exhibit A, IRC, page 83 (payment check).

<sup>7</sup> Exhibit A, IRC, page 2601 (2009-2010 Amended Reimbursement Claim).

<sup>8</sup> Exhibit A, IRC, pages 11, 77 (Audit Entrance Conference Letter).

<sup>9</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>10</sup> Exhibit A, IRC, page 1.

<sup>11</sup> Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Draft Proposed Decision.

<sup>12</sup> Exhibit C, Draft Proposed Decision.

<sup>13</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>14</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision.

## **Commission Responsibilities**

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

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>15</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>16</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>17</sup>

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>18</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>19</sup>

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<sup>15</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>16</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>17</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>18</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>19</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

## Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

| <b>Issue</b>   | <b>Description</b>   | <b>Staff Recommendation</b>   |
|--|--|---|
| Did the claimant timely file the IRC?  | At the time the Final Audit Report was issued, section 1185.1 of the Commission's regulations required IRCs to be filed no later than three years after the Controller's final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).  | <i>The IRC was timely filed</i> – The Final Audit Report of June 21, 2016, complies with the notice provision in Government Code section 17558.5(c). The IRC was filed on June 8, 2017, less than three years from the date of the Final Audit Report, and is therefore timely filed.   |
| Did the Controller timely initiate the audit of the fiscal year 2009-2010 <i>amended</i> reimbursement claim, and timely complete the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5? | Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, whichever is later, but if no funds are appropriated or no payment is made to a claimant for the fiscal year's claim, the Controller has three years from the date of initial payment of the claim. <sup>20</sup> Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.<br><br>The claimant argues that the audit of the fiscal year 2009-2010 reimbursement claim was not timely initiated | <i>The audit was timely initiated and completed</i> – The Legislature deferred payment for the <i>Graduation Requirements</i> program in fiscal year 2009-2010 by making a nominal appropriation of \$1,000 in the State Budget Act for the program. <sup>23</sup> From that appropriation, the Controller paid the claimant \$10 for the <i>Graduation Requirements</i> program for fiscal year 2009-2010 on November 29, 2011. <sup>24</sup> On January 26, 2012, the claimant filed an amended claim for fiscal year 2009-2010. <sup>25</sup> The Courts have held that a nominal \$1,000 appropriation is not |

<sup>20</sup> Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

<sup>23</sup> Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5), effective July 28, 2009.

<sup>24</sup> Exhibit A, IRC, page 83 (Payment Check).

<sup>25</sup> Exhibit A, IRC, page 48, fn. 3 (Final Audit Report) and page 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010); Exhibit B, Controller's Late Comments on the IRC, page 12.

| Issue | Description  | Staff Recommendation   |
|-------|--|--|
|       | <p>because the Controller paid \$10 to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, on January 6, 2015.<sup>21</sup></p> <p>The Controller argues that the audit was timely because it was commenced within three years of the amended claim filing on January 26, 2012, and the audit notification letter was dated January 6, 2015.<sup>22</sup></p> | <p>constitutionally sufficient to fund the program and essentially amounts to a \$0 payment.<sup>26</sup> Thus, a \$10 payment made under the authority of a nominal \$1,000 appropriation also amounts to no payment at all and thus, the sentence in section 17558.5, regarding the time to initiate an audit starting to run from the date of initial payment, does not apply. Rather, the first sentence in Government Code section 17558.5(a) controls and requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed <i>or last amended</i>.</p> <p>The claimant filed an amended fiscal year 2009-2010 claim on January 26, 2012, and the Controller audited the amended claim.<sup>27</sup> The audit notification letter was dated January 6, 2015, and acknowledged claimant contact about the audit on December 18, 2014.<sup>28</sup> Regardless of whether the audit was initiated on December 18, 2014, or January 6, 2015, the claimant</p> |

<sup>21</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

<sup>22</sup> Exhibit B, Controller's Late Comments on the IRC, page 12.

<sup>26</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

<sup>27</sup> Exhibit A, IRC, page 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010).

<sup>28</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

| Issue  | Description   | Staff Recommendation  |
|--|---|---|
|  |   | <p>received notice of the audit within three years of filing the amended reimbursement claim on January 24, 2012, so the audit was timely initiated for the 2009-2010 amended reimbursement claim.</p> <p>The audit was completed for all fiscal years' reimbursement claims when the final audit report was issued June 21, 2016,<sup>29</sup> well before the two-year deadline of either December 18, 2016 or January 6, 2017.</p>   |
| Is the Controller's reduction in Finding 1 of costs incurred to construct science classrooms and laboratories correct? | To claim costs for acquisition of additional space or construction of new science classrooms and laboratories, the Parameters and Guidelines require documentation showing the increased units of science course enrollments due to the mandate, certification by the Board finding that "no facilities existed to reasonably accommodate the increased enrollment for the additional science course required" by the test claim statute, and documents to show "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 | <p><i>Correct as a matter of law</i> – The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.<sup>34</sup></p> <p>The claimant's interpretation of the Parameters and Guidelines is not correct. The Parameters and Guidelines do not authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses</p> |

<sup>29</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>34</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

| Issue | Description  | Staff Recommendation  |
|-------|--|---|
|       | <p>would be more expensive, to acquire space by remodeling existing facilities.”<sup>30</sup> Only the costs actually incurred to implement the mandate are eligible for reimbursement.<sup>31</sup></p> <p>The Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required as a result of the test claim statute. This resulted in a reduction of all direct and related indirect costs for construction (\$29,633,952, plus related indirect costs).</p> <p>The claimant argues that the <i>Graduation Requirements</i> mandate has been in place since the 1980’s and it is reasonable to expect the need for upgrades and replacement due to deterioration of the facilities, and that curriculum needs around science instruction advance with time and the facilities needed to support this curriculum must also change.<sup>32</sup> Since the mandate increased the high school graduation requirements from one to two science courses, the claimant determined the increased</p> | <p>doubled as a result of the mandate.</p> <p>Although the record in this case shows that the claimant lacked appropriately configured and equipped space for its science courses, since the science facilities were old and deteriorated, the claimant did not provide the other documentation required by the Parameters and Guidelines showing that the costs claimed for construction were limited to the mandated <i>second</i> science course; that the units of <i>science course enrollment increased</i> because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment.</p> |

<sup>30</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>31</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>32</sup> Exhibit A, IRC, pages 21, 27; Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 10.

| Issue  | Description  | Staff Recommendation   |
|--|--|--|
|  | construction costs related to the mandate simply by reducing the total new science building costs incurred in fiscal year 2009-2010 by 50% (after reducing claims by 50% to account for state matching funds). <sup>33</sup>   |  |
| Is the Controller's reduction and recalculation of costs incurred for materials and supplies in Finding 2 correct? | <p>The Parameters and Guidelines authorize reimbursement for materials and supplies if the costs are supported by documentation of increased units of science course enrollments as a result of the mandate.<sup>35</sup></p> <p>The claimant incurred costs of \$860,978 plus related indirect costs for materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the science construction costs described in Finding 1. These costs were funded and claimed in the same manner as the construction costs.<sup>36</sup></p> <p>The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable because the claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute,</p> | <p><i>Correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – The reduction of \$860,978 plus related indirect costs for materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the construction costs is correct as a matter of law. The claimant did not comply with the Parameters and Guidelines because no documentation of increased units of science course enrollments was provided.</p> <p>Moreover, the reduction of \$56,208 for materials and supplies incurred for the audit period is correct as a matter of law. The Parameters and Guidelines do not authorize the use of a 50% increase in costs as a result of the mandate with no documentation to support the 50% figure, or documentation to show that its costs resulted from increased science course</p> |

<sup>33</sup> Exhibit A, IRC, pages 26, 49 (Final Audit Report).

<sup>35</sup> Exhibit A, IRC, pages 87, 88, 92 (Parameters and Guidelines).

<sup>36</sup> Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).



| Issue   | Description   | Staff Recommendation   |
|---|---|--|
|   | <p>as required by the Parameters and Guidelines.</p> <p>The Controller also reduced \$56,208 for materials and supplies incurred for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50%, without providing any documentation to support the 50% figure as required by the Parameters and Guidelines.</p> <p>Since the claimant provided no documentation to support the 50% incremental increase in enrollment, the Controller recalculated the claimant's increased costs by dividing the increased number of science classes identified by the total number of science class offerings for the fiscal year, which resulted in an incremental increase of 40.14% for 2008-2009 and 47% for 2009-2010.<sup>37</sup></p> | <p>enrollments as a result of the mandate.</p> <p>Finally, the claimant has submitted no evidence that the Controller's formula to calculate the increased costs to acquire materials and supplies for the additional science course is arbitrary, capricious, or entirely lacking in evidentiary support.</p>   |
| <p>Is the Controller's Finding 4, that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, correct?</p> | <p>Section IX. of the Parameters and Guidelines addresses offsetting revenues and states that "reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim."<sup>38</sup></p> <p>The Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction</p>   | <p><i>Correct as a matter of law</i> - Local bond funds used by the claimant are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 of the California Constitution requires the state to provide reimbursement only when a local government is mandated by the state to spend its proceeds</p> |

<sup>37</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

<sup>38</sup> Exhibit A, IRC, page 93 (Parameters and Guidelines).

| Issue | Description   | Staff Recommendation  |
|-------|---|---|
|       | <p>bond revenues received under Proposition H, which funded 50% of the total cost of construction and construction-related materials and supplies discussed in Findings 1 and 2. The other 50% was funded by state matching funds. This finding provided an alternative ground for the Controller's reduction of the construction-related costs.</p> <p>The claimant contends that the local bond funds are the district's proceeds of taxes and are not offsetting revenues, and that the reduction is contrary to the Parameters and Guidelines.<sup>39</sup></p> | <p>of taxes subject to the appropriations limit of article XIII B.<sup>40</sup> Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and repayment of those bonds is not "appropriations subject to limitation." School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>41</sup></p> |

### **Staff Analysis**

#### **A. The claimant timely filed the IRC within three years from the date the claimant received from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.**

At the time the Final Audit Report was issued, section 1185.1 of the Commission's regulations required IRCs to be filed no later than three years after the Controller's final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). The Final Audit Report, dated June 21, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments,<sup>42</sup> and thereby complies with the notice requirements in section 17558.5(c). Because the claimant filed the IRC on June 8, 2017,<sup>43</sup> within three years of date of the Final Audit Report, staff finds that the IRC was timely filed.

<sup>39</sup> Exhibit A, IRC, page 36; Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 16-17.

<sup>40</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

<sup>41</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

<sup>42</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>43</sup> Exhibit A, IRC, page 1.

**B. The Controller timely initiated the audit of the 2009-2010 amended reimbursement claim and timely completed the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5.**

Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, whichever is later, but 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.”<sup>44</sup> Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.<sup>45</sup>

The claimant argues that the audit of the 2009-2010 reimbursement claim was not timely initiated because the Controller made a \$10 payment to the claimant on November 29, 2011, following the filing of the original 2009-2010 reimbursement claim on January 29, 2011,<sup>46</sup> and the Controller initiated the audit more than three years later, on January 6, 2015.<sup>47</sup> The Controller argues that the audit was timely because it was commenced within three years of the *amended* claim filing on January 26, 2012.<sup>48</sup> Because the audit notification letter was dated January 6, 2015, the audit was initiated within the three-year deadline of Government Code section 17558.5.<sup>49</sup>

Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, *whichever is later*. Therefore, staff finds that the audit was timely initiated for 2009-2010 because it was commenced within three years of the claimant’s filing of an *amended* claim. In addition, the nominal \$1,000 appropriation for fiscal year 2009-2010, and the \$10 payment made under the authority of that nominal appropriation for the originally-filed claim, was not a constitutionally sufficient appropriation or payment to fund the program and essentially amounts to no appropriation or payment at all.<sup>50</sup>

The claimant then filed an amended claim for fiscal year 2009-2010 on January 26, 2012, and the Controller audited the amended claim.<sup>51</sup> The audit notification letter was dated January 6, 2015, and acknowledged that the claimant was contacted about the audit on December 18, 2014.<sup>52</sup>

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<sup>44</sup> Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

<sup>45</sup> Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

<sup>46</sup> Exhibit A, IRC, pages 2592-2593 (2009-2010 Reimbursement Claim).

<sup>47</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

<sup>48</sup> Exhibit A, IRC, page 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010); Exhibit B, Controller’s Late Comments on the IRC, page 12.

<sup>49</sup> Exhibit B, Controller’s Late Comments on the IRC, page 12.

<sup>50</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

<sup>51</sup> Exhibit A, IRC, pages 48, fn. 3 (Final Audit Report), 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010); Exhibit B, Controller’s Late Comments on the IRC, page 12.

<sup>52</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

Regardless of whether the audit initiation date was December 18, 2014, or January 6, 2015, the claimant received notice of the audit within three years of filing the amended claim on January 24, 2012, so staff finds that the audit was timely initiated for the fiscal year 2009-2010 reimbursement claim.

The audit was completed when the Final Audit Report was issued on June 21, 2016,<sup>53</sup> well before the two-year deadline of either December 18, 2016, or January 6, 2017, so staff also finds that the audit was timely completed.

**C. The Controller's reduction in Finding 1 of costs incurred to construct science classrooms and laboratories is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.**

The Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required as a result of the test claim statute. This resulted in a total reduction of all direct and related indirect costs for construction (\$29,633,952, plus related indirect costs).<sup>54</sup>

The claimant argues that the *Graduation Requirements* mandate has been in place since the 1980s and it is reasonable to expect the need for upgrades and replacement over time due to deterioration of the facilities. The claimant further asserts that it is illogical that one-time construction costs would vary directly with science classroom enrollment since facilities and equipment are used for many years and thus, such information should not be required.<sup>55</sup> Similarly, in comments on the Draft Proposed Decision, the claimant states that "it is illogical to suggest that once in existence, science classroom space will be sufficient to meet future requirements" because "[o]bviously, the curriculum needs around science instruction advance with time and the facilities needed to support this curriculum must also change."<sup>56</sup> Since the mandate increased the high school graduation requirements from one to two science courses, the claimant asserts that it was appropriate to determine the increased construction costs related to the mandate simply by reducing the total new science building costs incurred in fiscal year 2009-2010 by 50 percent (after reducing claims by 50 percent to account for state matching funds).<sup>57</sup>

Staff finds that the claimant's interpretation of the Parameters and Guidelines is not correct, and that the Controller's reduction of costs is correct as a matter of law.

Section V.A. of the Parameters and Guidelines authorizes reimbursement for acquisition of additional space *only if* the claimant can show that the space would not have otherwise been 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.<sup>58</sup> Section VIII. of the Parameters and Guidelines further requires the claimant to support the costs

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<sup>53</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>54</sup> Exhibit A, IRC, page 49 (Final Audit Report).

<sup>55</sup> Exhibit A, IRC, pages 21, 27.

<sup>56</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

<sup>57</sup> Exhibit A, IRC, pages 26, 49 (Final Audit Report).

<sup>58</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines).

claimed with documentation showing the increased units of science course enrollments due to the mandate. The documentation must include a certification of the Board finding that “no facilities existed to reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.”<sup>59</sup> Only the costs required to be incurred as a result of the mandate are eligible for reimbursement.<sup>60</sup> The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.<sup>61</sup>

The Parameters and Guidelines that govern this IRC still include these provisions, and there has been no request filed to amend the Parameters and Guidelines to specifically address or clarify costs incurred due to the age of science classrooms used for the mandated second science course. Thus, even if construction or remodeling may be reasonably necessary because the mandate exists and science classrooms are now old, as asserted by the claimant, the Parameters and Guidelines do not authorize reimbursement for construction costs. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.

Although the record in this case shows that the claimant lacked appropriately configured and equipped space for the science courses offered by the claimant since the science facilities were old and deteriorated, the claimant did not provide the other documentation required by the Parameters and Guidelines showing that the costs claimed for construction was limited to the mandated *second* science course; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment.<sup>62</sup>

Accordingly, the reduction in Finding 1 is correct as a matter of law.

**D. The Controller’s reduction of costs incurred for materials and supplies in Finding 2 is correct as a matter of law, and the Controller’s recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.**

The Parameters and Guidelines authorize reimbursement for “the increased cost for supplying the new science class with science instructional materials (textbooks, materials, and supplies),” that the claimant is required to incur as a result of the mandate. The claimant must provide documentation of increased units of science course enrollments due to the test claim statute.<sup>63</sup> The claimant sought \$860,978 plus related indirect costs for materials and supplies to furnish and

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<sup>59</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>60</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>61</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>62</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>63</sup> Exhibit A, IRC, pages 87, 88, 92 (Parameters and Guidelines).

equip the new science classrooms in fiscal year 2009-2010 as part of the science construction costs described in Finding 1. These costs were funded and claimed in the same manner as the construction costs.<sup>64</sup> The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, are unallowable because the claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines.

The Controller also reduced an additional \$56,208 for costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. The claimant argues that because the mandate doubled the number of science courses by law, it calculated the increased costs for materials and supplies by reducing the unmatched cost by 50 percent to account for the preexisting requirement for science courses.<sup>65</sup>

Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction. The recalculation divides the increased number of science classes identified by the total number of science class offerings for the fiscal year, which resulted in an incremental increase of 40.14 percent for 2008-2009 and 47 percent for 2009-2010.<sup>66</sup>

Staff finds that the Controller's reduction of allowable increased costs for materials and supplies is correct as a matter of law and the Controller's recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.

The reduction of materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the construction costs is correct as a matter of law. The claimant did not comply with the documentation requirements in the Parameters and Guidelines because no documentation of increased units of science course enrollments was provided.

Moreover, the additional reduction of \$56,208 for costs incurred for materials and supplies for the audit period is correct as a matter of law. The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs due to the mandate, without any evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

Finally, the claimant submitted no evidence that the Controller's formula to calculate the increased costs to acquire materials and supplies for the additional science course is arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>64</sup> Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

<sup>65</sup> Exhibit A, IRC, pages 26-27, 50 and 58 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 19.

<sup>66</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

**E. The Controller’s Finding 4, that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law because reimbursement under article XIII B, section 6 of the California Constitution is not required for the expenditure of local bond proceeds.**

Section IX. of the Parameters and Guidelines addresses offsetting revenues and states that “reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim.”<sup>67</sup>

The Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues from Proposition H, which funded 50 percent of the total cost of construction and construction-related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds.<sup>68</sup> Thus, this finding provides an alternative ground for the reduction of the construction-related costs.

The claimant contends that the local bond funds are the district’s proceeds of taxes and are not offsetting revenues, and that the reduction is contrary to the Parameters and Guidelines.<sup>69</sup>

Staff finds that the reduction is correct as a matter of law. Local bond funds used by the claimant are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.<sup>70</sup> Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not “proceeds of taxes” as alleged by the claimant, and repayment of those bonds is not an “appropriation subject to limitation.” School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>71</sup>

**Conclusion**

Staff finds that the audit reductions are correct as a matter of law and the Controller’s recalculations not arbitrary, capricious, or entirely lacking in evidentiary support.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

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<sup>67</sup> Exhibit A, IRC, page 93 (Parameters and Guidelines).

<sup>68</sup> Exhibit A, IRC, pages 15, 30, 58 (Final Audit Report), and 64 (Final Audit Report).

<sup>69</sup> Exhibit A, IRC, page 36; Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 16-17.

<sup>70</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

<sup>71</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM**

Education Code Section 51225.3

Statutes 1983, Chapter 498

Fiscal Years 2008-2009 and 2009-2010

Filed on June 8, 2017

Grossmont Union High School District,  
Claimant

Case No.: 16-4435-I-56

*Graduation Requirements*

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

*(Adopted January 24, 2020)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 24, 2020. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

| <b>Member</b>   | <b>Vote</b> |
|---|-------------|
| Lee Adams, County Supervisor  |             |
| Mark Hariri, Representative of the State Treasurer  |             |
| Jeannie Lee, Representative of the Director of the Office of Planning and Research        |             |
| Gayle Miller, Representative of the Director of the Department of Finance,<br>Chairperson |             |
| Sarah Olsen, Public Member  |             |
| Carmen Ramirez, City Council Member   |             |
| Jacqueline Wong-Hernandez, Representative of the State Controller, Vice<br>Chairperson    |             |



## **Summary of the Findings**

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences, beginning in the 1986-1987 school year. Only the *second* science course is mandated by the state; prior law required one science course for high school graduation and preserved the right of a school district to specify and offer courses it required for high school graduation.<sup>72</sup>

The Controller found that of the \$21,221,594 of costs incurred during the audit period, only \$5,635,762 is allowable (minus a \$10,000 late-filing penalty).<sup>73</sup> The claimant challenges the reduction of costs claimed for acquisition of additional space for new science classrooms and laboratories (Finding 1), and for materials and supplies relating to the additional science course (Finding 2). The claimant also disputes the Controller's finding that local school-construction bond funds should have been identified and deducted from the claims as offsetting revenues (Finding 4).

The Commission finds that the IRC was timely filed pursuant to the Commission's regulations, and that the Controller timely initiated the audit for the fiscal year 2009-2010 *amended* claim and timely completed the audit for all fiscal years pursuant to Government Code section 17558.5.

The Commission also finds that the Controller's reduction of all costs for construction and renovation of science classrooms and laboratories in Finding 1 (totaling \$29,633,952 plus related indirect costs) is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. Section V. of the Parameters and Guidelines states that a reimbursable "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>74</sup> Section V.A. of the Parameters and Guidelines authorizes reimbursement for acquisition of additional space *only to the extent* that the claimant can show that the space would not have otherwise been 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.<sup>75</sup> Section VIII. of the Parameters and Guidelines further requires the claimant to support the costs claimed with documentation showing the increased units of science course enrollments due to the mandate. The documentation must include a certification of the Board finding that "no facilities existed to

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<sup>72</sup> Exhibit A, IRC, page 86 (Parameters and Guidelines).

<sup>73</sup> Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only \$14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, for a net of \$21,221,594 costs incurred. See Exhibit A, page 48.

<sup>74</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>75</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines). Emphasis added.

reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.”<sup>76</sup> The Parameters and Guidelines do *not* authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.<sup>77</sup> The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.<sup>78</sup>

Although the record in this case shows that the claimant lacked appropriately configured and equipped space for the science courses offered by the claimant because the science facilities were old and deteriorated, the claimant did not provide documentation required by the Parameters and Guidelines showing that the costs claimed for construction was limited to the mandated *second* science course; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment. Therefore, the Controller’s reduction is correct as a matter of law.

With respect to Finding 2, the Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable. The Commission finds that this reduction is correct as a matter of law. The claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines for these purchases.

The Controller also reduced \$56,208 of costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate without evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller’s reduction is correct as a matter of law.

The Commission further finds that the Controller’s recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the Controller recalculated the claimant’s increased costs using a formula to isolate costs for the mandated additional year of science instruction, which resulted in an incremental increase of 40.14 percent

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<sup>76</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>77</sup> Exhibit A, IRC, pages 21, 27; Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 10.

<sup>78</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

for 2008-2009 and 47 percent for 2009-2010.<sup>79</sup> The claimant provides no evidence or documentation to show that the Controller's recalculation of increased costs is incorrect or arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, in Finding 4, the Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50 percent of the total cost of construction and related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds. The Commission finds that the claimant's local bond funds are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's finding is correct as a matter of law. Article XIII B, section 6 of the California Constitution requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.<sup>80</sup> Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and repayment of those bonds is not an "appropriation subject to limitation." School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>81</sup>

Therefore, the Commission denies this IRC.

## COMMISSION FINDINGS

### I. Chronology

|            |  |
|------------|--|
| 07/28/2009 | Budget Act appropriation of \$1,000 for the Graduation Requirements Program <sup>82</sup>    |
| 02/02/2010 | The claimant signed the reimbursement claim for fiscal year 2008-2009. <sup>83</sup>         |
| 01/11/2011 | The claimant signed the amended reimbursement claim for fiscal year 2008-2009. <sup>84</sup> |
| 01/19/2011 | The claimant signed the reimbursement claim for fiscal year 2009-2010. <sup>85</sup>         |
| 11/29/2011 | The Controller paid the claimant \$10 for its fiscal year 2009-2010 claim. <sup>86</sup>     |

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<sup>79</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

<sup>80</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

<sup>81</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

<sup>82</sup> Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5).

<sup>83</sup> Exhibit A, IRC, page 1404.

<sup>84</sup> Exhibit A, IRC, page 1485.

<sup>85</sup> Exhibit A, IRC, page 2592 (2009-2010 Reimbursement Claim).

<sup>86</sup> Exhibit A, IRC, page 83 (Payment Check).

|            |  |
|------------|--|
| 01/09/2012 | The claimant signed the amended reimbursement claim for fiscal year 2009-2010. <sup>87</sup>     |
| 01/26/2012 | The Controller received the amended reimbursement claim for fiscal year 2009-2010. <sup>88</sup> |
| 01/06/2015 | The date of the Controller's Audit Entrance Conference Letter. <sup>89</sup>                     |
| 06/21/2016 | The Controller issued the Final Audit Report. <sup>90</sup>                                      |
| 06/08/2017 | The claimant filed the IRC. <sup>91</sup>  |
| 09/20/2017 | The Controller filed late comments on the IRC. <sup>92</sup>                                     |
| 08/28/2019 | Commission staff issued the Draft Proposed Decision. <sup>93</sup>                               |
| 08/30/2019 | The Controller filed comments on the Draft Proposed Decision. <sup>94</sup>                      |
| 09/09/2019 | The claimant requested an extension of time and postponement of hearing, which was granted.      |
| 10/18/2019 | The claimant filed comments on the Draft Proposed Decision. <sup>95</sup>                        |

## II. Background

### A. The Graduation Requirements Program

On January 22, 1987, the Commission adopted a statement of decision approving the *Graduation Requirements* test claim on Education Code section 51225.3, as added by Statutes 1983, chapter 498. This test claim statute increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences. The Commission determined that the test claim statute constitutes a reimbursable state-mandated program by

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<sup>87</sup> Exhibit A, IRC, page 2600 (2009-2010 Amended Claim).

<sup>88</sup> Exhibit B, Controller's Late Comments on the IRC, page 12.

<sup>89</sup> Exhibit A, IRC, page 77.

<sup>90</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>91</sup> Exhibit A, IRC, page 1.

<sup>92</sup> Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Draft Proposed Decision.

<sup>93</sup> Exhibit C, Draft Proposed Decision.

<sup>94</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>95</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision.

requiring students, beginning with the 1986-1987 school year, to complete at least one additional course in biological or physical science before receiving a high school diploma.

The Commission adopted the Parameters and Guidelines in March 1988, and has since amended the Parameters and Guidelines several times. The last amendment was adopted in November 2008 and corrected in December 2008 for costs incurred beginning January 1, 2005.<sup>96</sup> The Parameters and Guidelines adopted in 2008 govern the reimbursement claims at issue in this case, and authorize reimbursement for:

- A. Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space necessary for the mandated additional year of science instruction, providing that space is lacking in existing facilities. However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that the 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.<sup>97</sup>

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<sup>96</sup> Exhibit A, IRC, page 86 (Parameters and Guidelines). In 1991, the Commission amended the Parameters and Guidelines in accordance with Statutes 1990, chapter 459, section 4(a), which required the Commission to amend the Parameters and Guidelines with respect to the acquisition of additional space:

The Commission on State Mandates shall amend the parameters and guidelines for Chapter 498 of the Statutes of 1983 (graduation requirements) to specify that costs 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.

In 2005, the Commission amended the Parameters and Guidelines in accordance with Statutes 2004, chapter 895, section 17, to include, in the Offsetting Revenue paragraph, the following statutory language: “If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.” Exhibit F, Commission on State Mandates, Parameters and Guidelines Amendment, 04-PGA-30, December 9, 2005, page 1.

In 2008, the Commission amended the Parameters and Guidelines to add a reasonable reimbursement methodology for claiming teacher salary costs, and to clarify the offsetting savings and revenues relating to teacher salary costs (which are not at issue in this IRC). Exhibit A, IRC, page 86 (Parameters and Guidelines).

<sup>97</sup> This activity was amended by Statutes 1990, chapter 459, section 4(a).

- B. Acquisition (planning, purchasing, and placement) of additional equipment and furniture necessary for the mandated additional year of science instruction.
- C. Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction essential to maintaining a level of instruction sufficient to meet college admission requirements.
- D. Increased cost to school district for staffing the new science class mandated. Reimbursement for this activity is based on the reasonable reimbursement methodology identified in Section XII of these parameters and guidelines.  
*Reimbursement is not required for other (non-classroom teacher) science instruction personnel (e.g. laboratory assistants).*
- E. Increased costs for supplying the new science class mandated with science instructional materials (textbooks, materials, and supplies).<sup>98</sup>

Component A (acquisition of additional space, including building construction) and component E (materials and supplies) are at issue in this IRC.

Except for the increased costs for staffing the new science class (which is reimbursed under a reasonable reimbursement methodology), Section V. of the Parameters and Guidelines requires claimants to support all actual costs claimed with documentation:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.<sup>99</sup>

Section VIII. of the Parameters and Guidelines lists the record retention requirements and further defines supporting documentation that claimants are expected to retain when claiming actual costs:

For this program, supporting documentation shall include the following:

- 1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.
- 2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.

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<sup>98</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines).

<sup>99</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

3. 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.
4. 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 increase in high school enrollment.
5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.<sup>100</sup>

Commencing in fiscal year 2012-2013, the claimant elected to participate in the block grant program pursuant to Government Code section 17581.6, instead of filing annual reimbursement claims for mandated programs included in the block grant. The *Graduation Requirements* program was included in the block grant program beginning in fiscal year 2013-2014.<sup>101</sup>

#### **B. The Graduation Requirements Litigation**

In September 2003, the claimant and several other school districts filed a petition for a writ of mandate against the Controller and the Commission over disputed IRCs under the *Graduate Requirements* program. The claimant alleged that the Controller erred in reducing reimbursement claims for fiscal years 1994-1995 and 1995-1996 for costs claimed to construct and remodel science laboratory classrooms at four of its schools. The court upheld the Commission's decision, which found that the Controller's reductions were correct because the claimant's documentation did not comply with the Parameters and Guidelines.<sup>102</sup> The court said:

As the Commission found, Grossmont's documentation does not satisfy the certification requirement of Section IX.C of the parameters and guidelines. The documents submitted by Grossmont, other than the declaration of Christina Becker [Grossmont's Director of Facilities Planning], do not support a finding that, before approving science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont's science facilities and a determination that the facilities could not reasonably accommodate increased enrollment for the additional science course required by Education Code section

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<sup>100</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines). The last two sentences (#4 and #5) were added to comply with Statutes 1990, chapter 459.

<sup>101</sup> Exhibit A, IRC, pages 52, 65 (Final Audit Report). The *Graduation Requirements* mandate was added to the block grant by Statutes 2013, chapter 48.

<sup>102</sup> Exhibit F, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter).

51225.3. The declaration of Ms. Becker attempts to conduct the required analysis and make the required determination four to five years after the science laboratory classroom construction and remodeling was completed. In addition, if the Grossmont board could properly delegate its certification obligation to Ms. Becker (a matter seriously in doubt), Grossmont has provided no evidence that its board made such a delegation.<sup>103</sup>

### **C. The Controller's Audit and Summary of the Issues**

The Controller states that it commenced the audit of fiscal years 2008-2009 and 2009-2010 (the audit period) on January 6, 2015, the date of the audit notification letter.<sup>104</sup> The audit concludes that of the \$21,221,594 of costs incurred for the audit period, \$5,645,762 is allowable (minus a \$10,000 late-filing penalty).<sup>105</sup>

The Final Audit Report consists of four main findings, three of which are contested by the claimant. The dispute involves the Controller's finding that the claimant claimed unallowable costs for construction of science classrooms and laboratories (Finding 1), did not provide documentation compliant with the Parameters and Guidelines for the costs claimed for textbooks, materials, and supplies (Finding 2), and did not report offsetting revenues from local school-construction bond proceeds (Finding 4).<sup>106</sup>

#### **1. Finding 1, unallowable costs for acquiring additional space for science classrooms**

The District claimed costs to acquire additional space by constructing science classrooms and laboratories under Section V.A. of the Parameters and Guidelines. According to the audit, the acquisition of science classroom and laboratory space was funded by a local school construction bond and state matching funds, totaling \$29,633,952, plus related indirect costs.<sup>107</sup> The claimant did not claim all of these costs.<sup>108</sup> Rather, the claimant first separated for each school site the science-related acquisition costs from the total project costs (that included non-science facilities

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<sup>103</sup> Exhibit F, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter, pages 24-25).

<sup>104</sup> Exhibit B, Controller's Late Comments on the IRC, page 12; Exhibit A, IRC, page 11.

<sup>105</sup> Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). The gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, or \$21,221,594 in net costs incurred. See Exhibit A, page 48.

<sup>106</sup> The claimant does not dispute the following findings of the Controller: understated teacher salary costs (Finding 3); ineligible construction costs for non-science classrooms (part of Finding 1); and a reduction of \$1,101 for textbooks, materials and supplies (part of Finding 2). (Exhibit A, IRC, pages 29-30, 32). These findings are not analyzed in this Decision.

<sup>107</sup> Exhibit A, IRC, pages 49 (Final Audit Report).

<sup>108</sup> Exhibit A, IRC, pages 18-19. The claimant states it claimed \$14,816,975 for the audit period and "the audit report doubles the claimed amounts for purposes of applying an 'incremental increased costs' calculation . . . ."



financed by the same funds). The science classroom and laboratory construction costs were then reduced by 50 percent to account for the state matching funds. According to the claimant, “since the mandate doubled the number of science courses, the district . . . reduced the unmatched amount by another 50% to account for the preexisting requirement for science courses.”<sup>109</sup> The claimant states that it requested reimbursement for about 25 percent of the total construction costs, which allegedly represents the incremental increase in science course enrollment resulting from the additional year of science mandated by the test claim statute.<sup>110</sup>

The Controller determined that the claimant did not correctly separately identify the total science and laboratory construction costs and the local school construction bond funds (which the Controller found to be offsetting revenue in Finding 4) in its reimbursement claims.<sup>111</sup> Thus, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, the Controller first identified total costs for science and laboratory construction costs.<sup>112</sup> The Controller reduced the total costs of \$29,633,952, plus related indirect costs, for science classroom and laboratory construction on several grounds.<sup>113</sup>

First, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required because of the test claim statute. This resulted in a reduction of *all* direct and related indirect costs incurred for construction (\$29,633,952, plus related indirect costs).<sup>114</sup> Specifically, the Controller found that the claimant did not provide documentation “showing that it analyzed all science facilities and determined, based on that analysis, that no facility existed that could reasonably accommodate the increased enrollment for the additional science class.”<sup>115</sup> The Controller also found that the claimant did not provide the specific documentation required by the Parameters and Guidelines to support the costs claimed to construct new science classrooms, since there is no showing that the space would not otherwise have been acquired due to the increase in high school enrollment.<sup>116</sup>

In addition, the Controller found that the claimant did not provide any documentation to support its calculation of the incremental increase in science course enrollments *as a result* of the mandate. As stated above, the claimant used 50 percent to account for the incremental increase in science course enrollments.<sup>117</sup> Due to the claimant’s lack of documentation, the Controller recalculated the percentage using the “One-Quarter Class Load” formula, in which the increased

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<sup>109</sup> Exhibit A, IRC, page 26.

<sup>110</sup> Exhibit A, IRC, pages 18, 26, 49 (Final Audit Report).

<sup>111</sup> Exhibit A, IRC, page 55 (Final Audit Report).

<sup>112</sup> Exhibit A, IRC, page 55 (Final Audit Report).

<sup>113</sup> Exhibit A, IRC, page 49 (Final Audit Report).

<sup>114</sup> Exhibit A, IRC, page 49 (Final Audit Report).

<sup>115</sup> Exhibit A, IRC, page 50 (Final Audit Report).

<sup>116</sup> Exhibit A, IRC, page 50 (Final Audit Report).

<sup>117</sup> Exhibit A, IRC, pages 25-26.

number of science classes identified is divided by the total number of science class offerings for the fiscal year. Thus, the Controller calculated the incremental increase related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010. These adjustments resulted in a reduction of \$2,959,887 (out of the total costs of \$29,633,952 for construction).<sup>118</sup>

Finally, the District incurred almost \$4.8 million for science classroom construction at its Helix Charter High School. The Controller found that these costs are not reimbursable because charter schools are not eligible claimants under the Parameters and Guidelines.<sup>119</sup> This finding alone resulted in a reduction of \$4,798,802 (out of the total costs of \$29,633,952 for construction).<sup>120</sup>

## **2. Finding 2, overstated costs for textbooks, materials and supplies**

For fiscal year 2009-2010, \$860,978 of costs were incurred for materials and supplies to furnish and equip the new science classrooms. These costs were incurred as part of the science construction costs described in Finding 1 and were funded in the same manner.<sup>121</sup> The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable.<sup>122</sup> Consistent with Finding 1, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support these material and supply costs.

In addition, the Controller found that the claimant used an unsupported percentage to represent the incremental increase in enrollment resulting from the mandate (50 percent) to determine the costs for materials and supplies for fiscal years 2008-2009 and 2009-2010. As in Finding 1, the Controller recalculated the incremental increase in enrollment due to the mandate by using the “One-Quarter Class Load” formula, in which the increased number of science classes identified is divided by the total number of science class offerings for the fiscal year. Using this formula, the Controller calculated the incremental increase in enrollment related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010, for an additional reduction of \$56,208.<sup>123</sup>

## **3. Finding 4, unreported offsetting revenues**

As a separate ground to reduce costs for science classroom construction in Finding 1, and materials and supplies in Finding 2, the Controller found that the claimant failed to report and deduct offsetting revenues from Proposition H, a local school-construction bond approved by the

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<sup>118</sup> Exhibit A, IRC, pages 49, 50, 58 (Final Audit Report).

<sup>119</sup> Exhibit A, IRC, page 51 (Final Audit Report).

<sup>120</sup> The Final Audit Report makes it clear that the total adjustments were limited to the total amount of construction costs incurred; \$29,633,952 (only half of which was actually claimed in the reimbursement claims) plus related indirect costs. (Exhibit A, IRC, page 49, fn. 1.)

<sup>121</sup> Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

<sup>122</sup> Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was \$869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

<sup>123</sup> Exhibit A, IRC, page 58 (Final Audit Report).

District’s voters in 2004 to authorize up to \$274 million in general obligation bonds for school construction, including science classrooms.<sup>124</sup> Fifty percent of the incurred costs (\$14,816,975 for construction, and \$430,489 for materials and supplies, for a total of \$15,247,465) were funded by the Proposition H bonds, and 50 percent by state matching funds.<sup>125</sup> The reimbursement claim included the costs already funded by the Proposition H bonds.<sup>126</sup> The Controller concluded that the costs claimed and funded by the Proposition H bonds (\$15,247,465) during the audit period should have been fully offset against the total costs incurred (\$30,494,930).<sup>127</sup> Thus, “[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A (\$14,816,975) and a portion of Component E (\$430,489) are still zero, as the remainder was fully funded with local restricted [Proposition H bond] funds.”<sup>128</sup>

### III. Positions of the Parties

#### A. Grossmont Union High School District

The claimant contends that the Controller incorrectly reduced the costs claimed and requests that the Commission direct the Controller to reinstate the costs reduced.

The claimant first asserts that the audit of the reimbursement claim for fiscal year 2009-2010 was not timely because the Controller made a \$10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.<sup>129</sup> The claimant argues that “no payment was made for the original or amended FY 2009-10 claim in the fiscal year for which the claim was made” so the audit findings for 2009-2010 are void for lack of jurisdiction.<sup>130</sup> And the claimant notes, the application of “initial” payments to both an original and amended claim may be an issue of first impression for the Commission.<sup>131</sup> In comments on the Draft Proposed Decision, the claimant argues that the Controller’s reliance on the *California School Boards Assoc. v. State of California*<sup>132</sup> case (*CSBA II*, which held that the Legislature’s nominal appropriation of \$1,000 was not in compliance with article XIII B, section 6 and, therefore unconstitutional) is “disingenuous” because the decision became final only shortly before the November 29, 2011 payment, so the Controller was not applying *CSBA II* when making the \$10 payment. The

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<sup>124</sup> Exhibit A, IRC, pages 1142 (Governing Board Resolution 2003-148), Exhibit B, Controller’s Late Comments on the IRC, pages 15, 31-43 (Proposition H materials), 617 (Governing Board Agenda Item).

<sup>125</sup> Exhibit A, IRC, page 64 (Final Audit Report).

<sup>126</sup> Exhibit A, IRC, pages 34, 64 (Final Audit Report)

<sup>127</sup> Exhibit A, IRC, page 64 (Final Audit Report).

<sup>128</sup> Exhibit A, IRC, page 64 (Final Audit Report).

<sup>129</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

<sup>130</sup> Exhibit A, IRC, page 11.

<sup>131</sup> Exhibit A, IRC, page 11.

<sup>132</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

claimant also asserts that the *CSBA II* decision considered only the Legislature's \$1,000 budget appropriation and not the Controller's \$10 payment.<sup>133</sup>

The claimant also argues that the Controller either used the wrong standard for the audit or has misconstrued the actual nature and scope of the audit because the Controller did not conduct a performance audit, and the findings were not based on the legal standard of reasonableness of the costs claimed. Government Code section 17561(d) authorizes the Controller to reduce claims the Controller deems unreasonable or excessive. Adjustments based on lack of documentation are not adjustments based on excessive or unreasonable costs. The standard in Government Code section 12410 describes the Controller's duties generally and is not specific to audits of mandate reimbursement claims. And the claimant asserts, if Government Code section 12410 is the standard, the Controller has not shown that the audit adjustments were made in accordance with this standard. As to Generally Accepted Government Auditing (or Yellow Book) standards, the Controller does not cite any law, agreement or policy that makes these standards applicable to audits of state-mandated costs, and the audit report makes no findings based on Yellow Book criteria. Rather, the Controller conducted a documentation audit.<sup>134</sup>

The claimant also states that the Controller should have specified in the audit report the type of corroborated contemporaneous documentation that would have met the evidentiary standard and may be missing here. The audit report does not identify how the specific documentation the district provided does not comply with the Parameters and Guidelines standards, and does not cite any other legally enforceable standards.<sup>135</sup>

Regarding audit Finding 1, the claimant asserts that the audit report misstates the amounts actually claimed. According to the claimant, its amended claims totaled \$4,307,034 for fiscal year 2008-2009 and \$10,509,941 for fiscal year 2009-2010, but the audit report incorrectly reports about \$15 million never claimed by the District.<sup>136</sup> Second, the claimant disputes the finding that the submitted documentation is insufficient to support the costs claimed for constructing or remodeling science classrooms because the "claimed costs are supported by thousands of pages of documentation included in the attached copy of the annual claims ... that meet the requirements for reporting costs of the parameters and guidelines."<sup>137</sup>

Regarding the documentation demonstrating the claimant's outdated facilities, the claimant states that the mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time. Even if the costs were perceived to be just for upgrades or replacement, the costs would still be subject to mandate reimbursement because the increased requirement for science courses is a continuing and not a one-time mandate. Further, the documentation relevant to whether the costs are related to the increased science curriculum were submitted in Exhibit E with the IRC, which are corroborated contemporaneous business records required by the Parameters and Guidelines. The claimant also states that whether remodeling

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<sup>133</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision,

<sup>134</sup> Exhibit A, IRC, pages 12-16.

<sup>135</sup> Exhibit A, IRC, pages 16-17.

<sup>136</sup> Exhibit A, IRC, pages 18-19.

<sup>137</sup> Exhibit A, IRC, page 20.

existing facilities was feasible or less expensive than constructing additional space is answered in the facility study of each campus. In the absence of government standards regarding its documentation, the claimant must retroactively rely on documents produced in the regular course of business.<sup>138</sup>

The claimant also objects to the Controller's formula to determine the increased incremental cost of the mandate, which the claimant set at 50 percent. The claimant states that there is no legal requirement to use the Controller's formula, nor is it in the Parameters and Guidelines or claiming instructions for this mandate. The claimant argues that if the Controller applies this methodology to this audit, it "would constitute a standard of general application without appropriate state agency rulemaking and is therefore unenforceable."<sup>139</sup> The claimant calls its claiming method a "double reduction to total costs." Construction costs were funded by a local bond that were matched by state funds. The claimant determined reimbursable costs by first separating in each school site the science-related costs from the total project costs. The costs were then reduced by 50 percent to eliminate the costs that would be matched by state funds. Since the mandate doubled the number of science courses, the claimant reduced the unmatched amount by another 50 percent to account for the preexisting requirement for science courses.<sup>140</sup> The claimant further states that the formula the Controller used is not supported by fact and is contrary to the Parameters and Guidelines because the annual claims report construction and acquisition costs in the year incurred, but the facilities and equipment are used for many years.<sup>141</sup>

In comments on the Draft Proposed Decision, the claimant argues that the documentation in the IRC shows a link between the claimed costs and the mandate, in that the claimant studied and found that part of its needs included facilities for additional adequate science instruction. The claimant points to planning documents in the record that considered facilities to meet instructional and curriculum needs. The claimant also alleges that it "submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction."<sup>142</sup>

According to the claimant, the Parameters and Guidelines "do not exclude the cost of complying with the mandate simply because those costs were incurred as part of larger construction projects which addressed multiple needs."<sup>143</sup> The claimant cites a lack of evidence that it would have incurred the same costs in the absence of the mandated science courses. Rather, the evidence in the record indicates that the additional instructional requirements were incorporated in the claimant's overall needs assessment. The claimant also cites a lack of authority that would prohibit claiming costs for acquisition and remodeling as part of larger projects to address increased enrollment, degraded facilities or other instructional needs, and argues that claimants

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<sup>138</sup> Exhibit A, IRC, pages 23-24.

<sup>139</sup> Exhibit A, IRC, page 25.

<sup>140</sup> Exhibit A, IRC, page 26.

<sup>141</sup> Exhibit A, IRC, page 27.

<sup>142</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

<sup>143</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

who do so would be penalized under the approach of the Controller and the Draft Proposed Decision.<sup>144</sup>

According to the claimant, at the time the funds were spent it made clear (in its Resolution 2009-14, 2008 Long Range Plan, and 2008 Demographic Study) that the costs were incurred to comply with the mandate. The 2008 Study showed decreased enrollment projected until 2017, so there was no enrollment growth need for facility expenditures. In short, the 2008 documents specifically identify the claimant's needs and reasons for the expenditures made at that time.<sup>145</sup>

The claimant also notes that the Parameters and Guidelines authorize reimbursement to acquire and remodel space, and that the Controller's reading of the allowable costs is too narrow. According to the claimant, "where a school district can show that existing space is not usable to meet the additional mandated science instruction requirements (as the District has done here), the cost of acquiring additional space is subject to reimbursement." The claimant also states that where classrooms are insufficient to meet current instructional needs, they cannot be considered "existing" space. And the claimant argues that "upgraded" facilities are not disqualified from reimbursement under the Parameters and Guidelines' Category C (remodeling), which is not conditioned on documentation that the remodel would not have been otherwise required by increases in overall enrollment.<sup>146</sup> Regarding audit Finding 2, the claimant again objects to the presentation of the claimed amounts, stating that it actually claimed \$20,349 for fiscal year 2008-2009 and \$439,429 for fiscal year 2009-2010, but the audit report doubles the amount claimed for 2009-2010 in order to apply the offsetting savings in audit Finding 4. The claimed costs were for fixtures to equip the additional science classrooms and labs, but were disallowed for the same reasons in Finding 1, because the claimant's documentation does not comply with the Parameters and Guidelines. So the claimant's response is the same as for Finding 1.<sup>147</sup> And as with Finding 1, the claimant characterizes its claims as a "double reduction to total costs" and argues that there is no legal requirement to use the Controller's formula or incremental rate method, which the claimant calls unnecessary and irrelevant.<sup>148</sup> In comments on the Draft Proposed Decision, the claimant incorporates the same arguments it makes against Finding 1, and notes, "the 2002 Plan and 2003 Bond are even less relevant to these expenditures [for materials and supplies] as they were not facilities and not necessarily paid for with facilities funds. [Rather,] ... the 2008 Resolution is the proper document for establishing the need for these expenditures."<sup>149</sup>

Regarding the Controller's \$4.8 million reduction for costs related to the Helix Charter School, the claimant states that the District "is the owner of Site and facilities at issue, and it is the District, not Helix Charter High School, claiming reimbursement."<sup>150</sup>

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<sup>144</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 7-8.

<sup>145</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 8-9.

<sup>146</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 9-10.

<sup>147</sup> Exhibit A, IRC, pages 30-31.

<sup>148</sup> Exhibit A, IRC, pages 31-32.

<sup>149</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

<sup>150</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 11.

For Finding 4, the claimant objects to the Controller's finding of unreported offsetting revenue of over \$15 million because the new science classrooms and labs were constructed or remodeled using local restricted funds, which were from the proceeds of voter-approved Proposition H general obligation bonds for school construction. The claimant states the local bonds were accounted for by the District as required by state school accounting requirements, but the audit report does not indicate how local bond revenue is mandate reimbursement. The claimant argues that local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses), and that the Draft Audit Report does not state a legal difference.<sup>151</sup>

The claimant also argues that the Controller's finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following reasons: First, the local bond revenue is not offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but not local bond funds. Third, the local bond fund revenue does not fall into the other categories of offsetting revenue enumerated in the Parameters and Guidelines, such as federal or state block grant, a state restricted funding source for science classrooms or labs, etc. Fourth, local bond fund revenue is not "reimbursement from any source" because it has to be repaid through local property taxes and a reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.<sup>152</sup>

In comments on the Draft Proposed Decision, the claimant reiterates its argument that the Controller may not offset mandated costs with local bond funds because such funds are "proceeds of taxes intended by the voters for local capital projects." According to the claimant:

To claim that proceeds from a local bond measure are an available source of funds to satisfy the State's obligation to provide subvention would have the Controller replace the will of the voters in a local bond election with the State's will (i.e., a mandated cost), and renders meaningless the Article XIII B, section 6, requirement for mandate reimbursement through subvention.<sup>153</sup>

The claimant further asserts that offsetting local bond funds from its reimbursement claims is contrary to the Parameters and Guidelines, and that it leads to absurd results because:

[The] use of local bond proceeds . . . or any other financing vehicle the claimant might use, to offset subvention obligations, would allow the State to essentially clear out any obligation once the Claimant proceeds to comply with the mandate [because claimants would] always be in the position of using its available resources, whether general fund, local bonds, or other available financing

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<sup>151</sup> Exhibit A, IRC, page 66 (Final Audit Report).

<sup>152</sup> Exhibit A, IRC, pages 36-37.

<sup>153</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 13.

solutions, to comply with the mandate, in anticipation of receiving the subvention funds later.<sup>154</sup>

The claimant also argues that the local bond funds are “proceeds of taxes” restricted to capital projects approved by the electorate, stating:

. . . Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. (*Cal. School Boards Assn. v. State of California* (2018) (“CSBA III”) 19 Cal.App.5th 566, 582, review granted.) In its findings, the Commission stated that “such an interpretation [i.e., use of proceeds of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.’ ” (*CSBA III*, supra, 19 Cal.App.5th at 582, quoting Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.) While the *CSBA III* court disagreed with claimant’s position vis-à-vis use of State funds as offsetting revenue, it did not consider the use of local bond funds for such purpose.<sup>155</sup>

The claimant states that the Education Code does not allow tax revenue to be used for any purpose other than retirement of local bonds and “the State Constitution does not permit the bonds to be ultimately spent on anything other than the capital projects approved by the voters within the local tax base.”<sup>156</sup> The claimant concludes: “the State would effectively be allowed to abscond with local bond proceeds in lieu of paying its mandate reimbursement obligations if the Draft Proposed Decision is adopted by the Commission.”<sup>157</sup>

#### **B. State Controller’s Office**

The Controller maintains that the audit reductions are correct and that the IRC should be denied.

The Controller states that the audit was timely because it was commenced within three years of the claimant’s submission of an amended claim on January 24, 2012, that the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the Controller argues that the audit was timely initiated within the three-year deadline of Government Code section 17558.5.<sup>158</sup>

The Controller disagrees that it used an incorrect standard or misconstrued the nature and scope of the audit. The Controller conducted a performance audit in accordance with generally

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<sup>154</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 16.

<sup>155</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 17.

<sup>156</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 18.

<sup>157</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 18.

<sup>158</sup> Exhibit B, Controller’s Late Comments on the IRC, page 12.



accepted government audit standards, and appropriately stated that neither the efficiency or effectiveness of program operations were audited, nor were the claimant's financial statements. The Controller conducted a program audit to assess the eligibility of program costs and whether the costs claimed comply with the program's Parameters and Guidelines.

The Controller also disagrees that specific documentation standards for the program have not been identified. Rather, the Controller asserts, they are found in Section V. and Section VIII. of the Parameters and Guidelines.

Regarding the presentation of the audit findings, the Controller states that the claimant's methodology reverses the order of the claiming instructions by reducing costs by revenues first, and then determining the incremental increase related to the mandate, so that costs funded by state bonds are not reported on the claim forms. The Controller states that the separate identification of costs and revenues has no impact on total claimed costs. "We believe that our revised presentation accurately reflects net costs and does not mislead the public."<sup>159</sup>

The disputed audit findings (Findings 1, 2, and 4) are summarized above in the Background and are more fully analyzed in the Discussion below. The Controller stands by its audit findings, and supports the conclusion and recommendation of the Draft Proposed Decision.<sup>160</sup>

#### **IV. Discussion**

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

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>161</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>162</sup>

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<sup>159</sup> Exhibit B, Controller's Late Comments on the IRC, page 13.

<sup>160</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>161</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>162</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>163</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>164</sup>

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>165</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>166</sup>

**A. The Claimant Timely Filed the IRC Within Three Years from the Date the Claimant Received from the Controller a Final Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.**

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558.5(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant may then file an IRC with the Commission "pursuant to regulations adopted by the Commission" contending that the Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.<sup>167</sup>

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<sup>163</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>164</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>165</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>166</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5

<sup>167</sup> Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

In this case, the Final Audit Report, dated June 21, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).<sup>168</sup>

At the time the Final Audit Report was issued, the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.<sup>169</sup> Because the claimant filed the IRC on June 8, 2017,<sup>170</sup> within three years of date of the Final Audit Report, the IRC was timely filed.

**B. The Controller Timely Initiated the Audit of the 2009-2010 Amended Reimbursement Claim and Timely Completed the Audit of All Claims by Meeting the Statutory Deadlines Imposed by Government Code Section 17558.5.**

Government Code section 17558.5(a) requires the Controller to initiate an audit no later than three years after the date the reimbursement claim is filed or last amended, whichever is later. However, section 17558.5 also provides that 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."<sup>171</sup> Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.<sup>172</sup>

**1. The audit of the 2009-2010 amended reimbursement claim was timely initiated.**

The claimant argues that the audit of the 2009-2010 reimbursement claim was not timely initiated and is therefore void because the Controller made a \$10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.<sup>173</sup>

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<sup>168</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>169</sup> Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

<sup>170</sup> Exhibit A, IRC, page 1.

<sup>171</sup> Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

<sup>172</sup> Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

<sup>173</sup> Exhibit A, IRC, pages 11 and 77 (Audit Entrance Conference Letter).

The Controller acknowledges the \$10 payment in the Final Audit Report,<sup>174</sup> but asserts that the audit was timely because it was commenced within three years of the claimant's later submission of an amended reimbursement claim, which the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the Controller argues that the audit of the 2009-2010 amended claim was timely initiated within the three-year deadline of when the amended claim was filed pursuant to Government Code section 17558.5(a).<sup>175</sup>

The Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

It is undisputed that a claim for fiscal year 2009-2010, requesting reimbursement to staff the new science course in the amount of \$2,560,930, was signed on January 19, 2011,<sup>176</sup> and submitted to the Controller "by the due date in Government Code section 17560," or by February 15, 2011.<sup>177</sup> The claimant states that the reimbursement claim was filed on January 26, 2011.<sup>178</sup> The Legislature appropriated \$1,000 in the State Budget Act for fiscal year 2009-2010 to all school districts for the *Graduation Requirements* program and deferred the appropriation of the remaining amount.<sup>179</sup> From that \$1,000 appropriation, the Controller paid the claimant \$10 for the *Graduation Requirements* program for fiscal year 2009-2010 on November 29, 2011, with a "prorated balance due of \$2,560,920.00" (\$10 less than the reimbursement claim filed).<sup>180</sup> Thereafter, on January 9, 2012, the claimant signed an *amended* reimbursement claim for fiscal year 2009-2010, which added a claim for the costs of acquiring additional space and substantially increased the claim for reimbursement to \$13,997,548.<sup>181</sup> The amended claim was mailed to the Controller by certified mail on January 24, 2012, and received by the Controller on January 26, 2012.<sup>182</sup> The audit of the amended 2009-2010 reimbursement claim was initiated on either December 18, 2014, or January 6, 2015.<sup>183</sup> The audit notification letter is dated

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<sup>174</sup> Exhibit A, IRC, page 41, 44, 46 (Final Audit Report).

<sup>175</sup> Exhibit B, Controller's Late Comments on the IRC, page 12.

<sup>176</sup> Exhibit A, IRC, pages 2591-2593 (2009-2010 Reimbursement Claim).

<sup>177</sup> Exhibit A, IRC, page 48 (Final Audit Report, page 5, fn. 3); Exhibit B, Controller's Late Comments on the IRC, page 3, footnote 2. Government Code section 17560(a) states: "Reimbursement for state-mandated costs may be claimed as follows: (a) A local agency or school district may, by February 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."

<sup>178</sup> Exhibit A, IRC, page 11.

<sup>179</sup> Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5), effective July 28, 2009.

<sup>180</sup> Exhibit A, IRC, page 83 (Payment Check).

<sup>181</sup> Exhibit A, IRC, pages 48, fn. 3 (Final Audit Report), 2600 (Amended Reimbursement Claim for Fiscal Year 2009-2010).

<sup>182</sup> Exhibit A, IRC, page 2600; Exhibit B, Controller's Late Comments on the IRC, page 12.

<sup>183</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 4; Exhibit B, Controller's Late Comments on the IRC, page 12.

January 6, 2015, and the letter acknowledges that an auditor contacted the claimant regarding the audit on December 18, 2014.<sup>184</sup> Thus, the claimant was on notice of the audit as early as December 18, 2014, although the official audit notification is dated January 6, 2015.

Government Code section 17558.5(a), as last amended in 2004, states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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 this fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed no later than two years after the date that the audit is commenced.

The first sentence of section 17558.5(a) requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed or last amended, *whichever is later*. The second sentence has generally been understood to toll the time for the Controller to initiate the audit when no funds are appropriated for the program in the fiscal year in which the claim was filed and requires the Controller to initiate the audit based on the date the initial payment is actually made on the claim, rather than when the reimbursement claim was filed. The claimant relies on the second sentence of Government Code 17558.5(a) and insists that the period to initiate the audit began to accrue when the Controller made the \$10 payment on the 2009-2010 claim on November 29, 2011, which would make the deadline to initiate the audit November 29, 2014.

The Commission finds, however, that the first sentence of Government Code section 17558.5(a) is controlling and that the Controller timely initiated the audit of the 2009-2010 *amended* reimbursement claim within three years after the date the amended claim was filed.

In 2011, the Fourth District Court of Appeal in *California School Boards Assoc. v. State of California*, concluded that “the Legislature’s practice of nominal funding of state mandates [by appropriating \$1,000 to all school districts] with the intention to pay the mandate in full with interest at an unspecified time *does not constitute a funded mandate* under the applicable constitutional and statutory provisions.”<sup>185</sup> Thus, the \$1,000 appropriation was not considered a constitutionally sufficient appropriation to fund the program and essentially amounts to no appropriation by the Legislature and no funds to be disbursed by the Controller pursuant to Government Code section 17561(d).

The claimant contends that the Commission should not rely on the *California School Boards Assoc.* case, since it did not address payments made by the Controller in the context of a timely audit under Government Code section 17558.5, and it is undisputed that the Controller, in fact, made a payment on November 29, 2011.<sup>186</sup>

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<sup>184</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

<sup>185</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791. Emphasis added.

<sup>186</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 3-5.

The Commission disagrees with the claimant. The court in the *California School Boards Assoc.* case specifically held that a nominal appropriation of \$1,000 for a mandated program, which amounted to an estimated appropriation of \$1 per school district if all school districts filed claims, violates article XIII B, section 6 *and* the Government Code statutes that implement the Constitution, including section 17561, which governs the payment of state-mandated costs by the Controller following an appropriation by the Legislature. The court recognized that Government Code section 17561 “is the primary code section that sets forth the State’s duties once a mandate is determined by the Commission.” Section 17561(a) provides that the state shall reimburse each local agency and school district for *all* costs mandated by the state. Section 17561(b) states that “For the initial fiscal year during which costs are incurred . . . any statute mandating these costs shall provide an appropriation therefor.” Section 17561(b) further states “In subsequent fiscal years appropriations for these costs shall be included in the annual Governor’s Budget and in the accompanying budget bill.” Section 17561(c) provides that “The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.”<sup>187</sup> And, when mandate program funds are appropriated, Government Code section 17561(d) requires the Controller to pay any eligible claim by October 15, or 60 days after the date the appropriation for the claim is effective, whichever is later. The court held that the purpose of article XIII B, section 6 and these implementing statutes is to:

. . . require each branch of government to live within its means, and to prohibit the entity having superior authority (the State) from circumventing this restriction by forcing local agencies . . . to bear the State’s costs, even for a limited time period. By imposing on local school districts the financial obligation to provide state-mandated programs on an indeterminate and open-ended basis, the State is requiring school districts to use their own revenues to fund programs or services imposed by the state. Under this deferral practice, *the State* has exercised its authority to order many new programs and services, but *has declined to pay* for them until some indefinite time in the future. This essentially is a compelled loan and directly contradicts the language and the intent of article XIII B, section 6 and the implementing statutes.<sup>188</sup>

Accordingly, the court upheld the finding that the state’s practice of paying only a nominal amount for a mandated program while deferring the balance of the cost “constitutes *a failure to provide a subvention of funds* for the mandates as required by article XIII B, section 6 and violates the constitutional rights conferred by that provision and the specific procedures set forth at sections 17500 et seq.”<sup>189</sup> Therefore, in fiscal year 2009-2010, the Controller could not have made a payment under Government Code section 17561(d) sufficient to trigger the initiation of

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<sup>187</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 786-787, emphasis added.

<sup>188</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 787, emphasis added.

<sup>189</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 790-791, emphasis added.

an audit because the Legislature failed to provide a subvention of funds under Government Code section 17561(c).

Even if a court were to agree with the claimant that a \$10 payment is sufficient to trigger the deadline to initiate the audit, the claimant is still wrong. The \$10 payment was made on the original filed reimbursement claim, and not on the later-filed *amended* claim, which was the only claim audited by the Controller for that fiscal year.<sup>190</sup> Government Code section 17561(d) states that the Controller shall pay any “eligible claim.” The original filed claim (totaling \$2,560,930) was timely filed on January 26, 2011, and therefore, constitutes an “eligible claim” under Government Code section 17561.<sup>191</sup> The \$10 check issued by the Controller on November 29, 2011, indicates that it was for the *Graduation Requirements* program for fiscal year 2009-2010, with a “prorated balance due of \$2,560,920.00” (\$10 less than the reimbursement claim originally filed).<sup>192</sup> At the time the \$10 check was issued, the only “eligible claim” filed was the original claim requesting reimbursement of \$2,560,930. Had the original claim been the only claim filed for fiscal year 2009-2010, then, under the claimant’s theory, the Controller would have had to start the audit of that claim within three years of payment, or by November 29, 2014.

However, that is not what happened. The claimant later filed an *amended* 2009-2010 reimbursement claim to take the place of the original claim on January 26, 2012, adding additional claims for reimbursement.<sup>193</sup> Government Code section 17561(d)(3) allows the filing of an amended claim as long as it is filed within a year of the filing deadline. The amended claim for fiscal year 2009-2010 was timely filed and was, therefore, an eligible claim. But no payment was made on the amended claim after it was filed, and the amended claim was the *only* claim for that fiscal year that was audited by the Controller.<sup>194</sup>

Thus, in this case, the time to audit the amended reimbursement claim was triggered by the first sentence in section 17558.5(a), requiring the Controller to initiate the audit “no later than three years after the date that the actual reimbursement claim is filed or last amended, *whichever is later.*” With the filing of the amended claim on January 26, 2012, the Controller had until January 26, 2015 to initiate the audit. The Controller timely initiated the audit on either December 14, 2014, or January 6, 2015, before the deadline.<sup>195</sup>

This conclusion is consistent with how statutes of limitation are generally interpreted. The general rule for defining when a cause of action accrues is the time when the cause of action is complete with all of its elements. In other words, the statute of limitations begins to run upon the

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<sup>190</sup> Exhibit A, IRC, page 48, fn. 3 (Final Audit Report).

<sup>191</sup> Exhibit A, IRC, pages 11, 48, fn. 3 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 3, footnote 2.

<sup>192</sup> Exhibit A, IRC, page 83 (Payment Check).

<sup>193</sup> Exhibit A, IRC, pages 48, fn. 3 (Final Audit Report), 2600-2602 (Amended Reimbursement Claim for Fiscal Year 2009-2010); Exhibit B, Controller’s Late Comments on the IRC, page 12.

<sup>194</sup> Exhibit A, IRC, page 47 (Final Audit Report).

<sup>195</sup> Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

occurrence of the last element essential to the cause of action.<sup>196</sup> Here, Government Code 17561(d)(3) allows the timely filing of an amended reimbursement claim, which was the last essential element in this case to trigger the Controller's authority to audit the claim. The filing of the amended reimbursement claim started the three-year time period in which to initiate an audit under Government Code section 17558.5(a).

Accordingly, the Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

## **2. The audit of all claims was timely completed.**

Government Code section 17558.5(a) also provides that an audit must be completed "not later than two years after the date that the audit is commenced."<sup>197</sup> As indicated above, the audit was initiated on either December 18, 2014, when the claimant was first contacted regarding the audit, or on January 6, 2015, the date of the audit notification letter. Regardless of which is considered the audit initiation date, the audit was timely completed.

An audit is completed when the Controller issues the final audit report to the claimant, which constitutes the Controller's final determination on the claims and provides the claimant with written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment.<sup>198</sup> This notice enables the claimant to file an IRC. Here, the Final Audit Report, which includes these components, is dated June 21, 2016,<sup>199</sup> well before a two-year completion deadline of either December 18, 2016, or January 6, 2017. Therefore, the Commission finds that the Controller's audit of the reimbursement claims in the audit period was timely completed in accordance with Government Code section 17558.5.

### **C. The Controller's Reduction in Finding 1 of Costs Incurred To Construct Science Classrooms and Laboratories Is Correct as a Matter of Law Because the Claimant Did Not Comply with the Documentation Requirements in the Parameters and Guidelines.**

Finding 1 of the audit report states that costs of \$29,633,952 were incurred for the audit period to construct new science classrooms and laboratory space.<sup>200</sup> The Controller found the entire amount was unallowable because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. According to the Controller, the claimant did not provide documentation that it analyzed the existing science facilities and determined that no facility existed to reasonably accommodate the increased units of science course enrollments due to the mandate, as required by the Parameters and Guidelines. Instead, the claimant simply asserted that the mandate doubled the number of science courses by law. Thus, the claimant determined the increased construction costs related to the mandate by reducing the total new

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<sup>196</sup> *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.

<sup>197</sup> Government Code section 17558.5, (as last amended by Stats. 2004, ch. 890).

<sup>198</sup> Government Code section 17558(c).

<sup>199</sup> Exhibit A, IRC, page 41 (Final Audit Report).

<sup>200</sup> Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 14.



science building costs by 50 percent (after reducing claims by 50 percent to account for state matching funds). Moreover, the Controller found that the claimant's documentation indicates that the construction was due to the buildings being old, the need for more modern science facilities, and overcrowding at several of the school sites due to new residential areas in the claimant's attendance boundaries.<sup>201</sup> Based on the claimant's documents, the Controller found that the costs for construction of science classrooms and laboratories were not incurred as a result of the mandate.

The claimant asserts that the Controller's reduction is incorrect because:

The mandate doubled the requirement for science labs and classrooms, but the audit report findings necessarily presume, without foundation, that at that time of the new law the District could have had 200% capacity for all science courses. The audit findings would also assume that other existing (non-science) classrooms at each campus would already have been appropriately configured and equipped space for the new courses. Since the District is high school grades only, all sites are similarly configured and there is no presumption of "under-utilized" facilities. Historical boundaries are based on matching enrollment to existing facilities, so there is no reasonable presumption that any campus is under-utilized in a manner that could be relieved by adjusting attendance borders. Enrollment did not double at the time of the new mandate, or any year since, so normal enrollment growth is not a factor to the need to increase the number of classrooms and labs.<sup>202</sup>

The claimant also states: "[w]hile it is arguable that the number of science teachers and consumable supplies would vary directly with science classroom enrollment, it is not necessarily logical that one-time construction costs and the cost of equipment would vary directly with science classroom enrollment" since facilities and equipment are used for many years.<sup>203</sup>

The claimant further argues that the costs are supported by thousands of pages of documentation included in the annual claims, and that the documentation meets the requirements of the Parameters and Guidelines.<sup>204</sup>

Finally, the claimant asserts that costs for upgrades and replacement should be reimbursable because facilities age and deteriorate:

The mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time either due to deterioration of the facilities or otherwise by the state-defined curriculum. This does not invalidate these costs for mandate reimbursement. Even if it is perceived that the costs are just upgrades to or replacement of existing facilities, these costs would still be subject to mandate reimbursement because of the increased requirement for science courses which is not a one-time requirement, but a continuing mandate. This is

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<sup>201</sup> Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, pages 14-15.

<sup>202</sup> Exhibit A, IRC, page 23.

<sup>203</sup> Exhibit A, IRC, page 27.

<sup>204</sup> Exhibit A, IRC, page 20.

the same reason that increased science teacher staffing costs continue to be reimbursable.<sup>205</sup>

The Commission finds that the Controller's reduction of costs for construction in Finding 1 is correct as a matter of law.

- 1. The Parameters and Guidelines require school districts to submit documentation to show that the costs claimed were incurred as a direct result of the mandate; that units of science course enrollment increased because of the test claim statute; that space for science classroom and labs would not have otherwise been acquired due to an increase in high school enrollment; and that no facilities existed to reasonably accommodate the increased enrollment for the additional mandated science course.**

The claimant argues that the *Graduation Requirements* mandate has been in place since the 1980s and it is reasonable to expect the need for upgrades and replacement over time due to deterioration of the facilities. The claimant further asserts that it is illogical that one-time construction costs would vary directly with science classroom enrollment since facilities and equipment are used for many years and thus, such information should not be required.<sup>206</sup> Similarly, in comments on the Draft Proposed Decision, the claimant further states that "it is illogical to suggest that once in existence, science classroom space will be sufficient to meet future requirements" because "[o]bviously, the curriculum needs around science instruction advance with time and the facilities needed to support this curriculum must also change."<sup>207</sup> The claimant's comments imply that construction costs for new science classrooms should be reimbursable simply because the mandate exists, and since the mandate increased the high school graduation requirements from one science course to two science courses, it was appropriate to determine the increased construction costs related to the mandate simply by reducing the total new science building costs incurred in fiscal year 2009-2010 by 50 percent (after reducing claims by 50 percent to account for state matching funds).<sup>208</sup> The claimant's interpretation of the Parameters and Guidelines is not correct.

The Commission adopted the Parameters and Guidelines in 1988. At that time, the test claimant was primarily seeking reimbursement for the construction of two new science laboratories and the renovation of a third science laboratory based on allegations of lacking adequate space to comply with the mandated second science course, which requirement became effective in the 1986-1987 school year.<sup>209</sup> Education Code section 51225.3 as added by the test claim statute, only mandated a *second* science course for high school graduation in either biological or physical science. Under prior law, former section 51225 had already required other course offerings for high school graduation, including one science course required for high school graduation, and

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<sup>205</sup> Exhibit A, IRC, page 21.

<sup>206</sup> Exhibit A, IRC, pages 21, 27.

<sup>207</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

<sup>208</sup> Exhibit A, IRC, pages 26, 49 (Final Audit Report).

<sup>209</sup> Exhibit F, Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, November 20, 1986, page 3.

preserved the right of a school district to specify and offer courses it required for high school graduation, so those requirements were not found to be reimbursable since they were not new.<sup>210</sup>

The Commission approved reimbursement for the acquisition of additional space, but included language in the Parameters and Guidelines to ensure that the costs claimed were incurred only as a direct result of the mandated *second* science course. Thus, Section V. of the Parameters and Guidelines states that a reimbursable “[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.”<sup>211</sup> Section V.A. of the Parameters and Guidelines authorizes reimbursement for the acquisition of additional space “*only to the extent* that districts can document that the 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.”<sup>212</sup> The Legislature, then enacted a statute which required the Commission to amend the Parameters and Guidelines to include this limiting language, and the amendment was adopted in 1991.<sup>213</sup>

Section VIII. of the Parameters and Guidelines further requires the claimant to provide the following documentation supporting the costs claimed:

For this program, supporting documentation shall include the following:

1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.
2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.
3. 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.
4. 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 increase in high school enrollment.

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<sup>210</sup> Exhibit F, Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, November 20, 1986, pages 2-3.

<sup>211</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>212</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines). Emphasis added.

<sup>213</sup> Statutes 1990, chapter 459, section 4(a). The Commission amended the Parameters and Guidelines on January 24, 1991.

5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.<sup>214</sup>

The current Parameters and Guidelines as last amended in 2008 govern this IRC and still include these provisions. There has been no request filed to amend the Parameters and Guidelines to specifically address or authorize costs incurred due to the age of science classrooms used for the mandated second science course. Thus, the Parameters and Guidelines do not authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.

Rather, in order for construction costs of science classroom space to be reimbursable, a claimant is required to show that:

- The costs claimed were required as a result of the mandate;<sup>215</sup>
- The governing board conducted an analysis of all science facilities, and determined (with the adoption of a certification) that no science facilities exist to reasonably accommodate the increased enrollment for the additional science course mandated by the test claim statute;<sup>216</sup> and
- Provide documentation showing the:
  - Increased units of science course enrollments due to the mandate.
  - Lack of appropriately configured and equipped space in existing facilities for the new science course mandated by the state.
  - Space would not have otherwise been acquired due to an increase in high school enrollment.
  - Remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.<sup>217</sup>

The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.<sup>218</sup> In addition, the claimant has the burden to show that it has incurred increased costs mandated by the test claim statute and that any reduction made by the Controller is incorrect.<sup>219</sup>

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<sup>214</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>215</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>216</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>217</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>218</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>219</sup> Evidence Code section 500 states: “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for

The claimant has not provided documentation required by the Parameters and Guidelines showing that the costs claimed for construction of new science classrooms were incurred as a direct result of the mandate. Thus, the Controller's reduction is correct as a matter of law.

Based on this record, and as described below, the Commission finds that the claimant did not provide documentation required by the Parameters and Guidelines showing that the costs claimed for construction were limited to the mandate; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment. Therefore, the Controller's reduction is correct as a matter of law. The relevant documents in the record are summarized or quoted below.

In 2002, the District adopted a Long Range Facilities Master Plan, which indicates that District facilities needed to be modernized and renovated.<sup>220</sup> The Master Plan states that most of the District's schools were built over 40 years ago. "They are old," "[t]hey are undersized and do not meet CDE minimum essential facilities," and "[t]hey are out of date for the current educational programs and the needs of the community."<sup>221</sup> The Master Plan notes that the District's facilities do not have the room for the overall increased enrollment in the District and that renovations and upgrades are needed for science and technology, as follows:

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relief or defense that he is asserting." See also, *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24, where the court recognized that "the general principle of Evidence Code 500 is that a party who seeks a court's action in his favor bears the burden of persuasion thereon." This burden of proof is recognized throughout the architecture of the mandates statutes and regulations. Government Code section 17551(a) requires the Commission to hear and decide a claim filed by a local agency or school district that it is entitled to reimbursement under article XIII B, section 6. Section 17551(d) requires the Commission to hear and decide a claim by a local agency or school district that the Controller has incorrectly reduced payments to the local agency or school district. In these claims, the claimant must show that it has incurred increased costs mandated by the state. (Gov. Code, §§ 17514 [defining "costs mandated by the state"], 17560(a) ["A local agency or school district may . . . file an annual reimbursement claim that details the costs actually incurred for that fiscal year."]; 17561 [providing that the issuance of the Controller's claiming instructions constitutes a notice of the right of local agencies and school districts to file reimbursement claims based upon the parameters and guidelines, and authorizing the Controller to audit the records of any local agency or school district to "verify the actual amount of the mandated costs."]; 17558.7(a) ["If the Controller reduces a claim approved by the commission, the claimant may file with the commission an incorrect reduction claim pursuant to regulations adopted by the commission."]). By statute, only the local agency or school district may bring these claims, and the local entity must present and prove its claim that it is entitled to reimbursement. (See also, Cal. Code Regs., tit. 2, §§ 1185.1, et seq., which requires that the IRC contain a narrative that describes the alleged incorrect reductions, and be signed under penalty of perjury.)

<sup>220</sup> Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

<sup>221</sup> Exhibit A, IRC, page 156 (2002 Long Range Facilities Master Plan).

The District will not be able to meet the proposed California state standards for science and technology without some major renovations and upgrades of support facilities as well as classrooms. Students will have difficulty achieving the same level of academic skill as students who attend schools where they can plug in computers without blowing circuits, where there is running water for science experiments and where the teacher has the ability to enhance the lessons with a variety of teaching materials.

. . . The District's 11 schools were originally built to hold approximately 20,000 students. The current enrollment (October 2001) is 23,639. Not only does the District not have enough permanent classrooms, there are not enough support facilities in toilet rooms, drinking fountains, libraries, science labs or parking for the population at every school. The District also loses valuable outdoor athletic space at each school as existing blacktops and fields are covered with portable classrooms.<sup>222</sup>

The Master Plan further states that the "enrollment increase has resulted in overcrowding at 80% of the schools. As a result, many schools lack . . . science labs, restrooms, classrooms and support facilities."<sup>223</sup> The Master Plan explains that during the recession in the early 1990's, the governing board decided to spend its limited dollars on the immediate needs of the classroom, and that bonds were depleted and state matching funds were limited to keep up with the District's "Deferred Maintenance Program."<sup>224</sup> Thus, "in order to satisfy the facility needs of Grossmont Union High School District's expanding student enrollment along with its aging facilities, the Governing Board has decided to implement a Long Range Facilities Master Plan," which "includes a comprehensive inventory of the repairs, upgrades and future construction needs at all campuses over the next 10 years."<sup>225</sup> The plan states that one of the most critical priorities is new and upgraded science labs.<sup>226</sup> Site surveys were conducted for each campus of the district, and "science lab upgrade or improvements" or "science room renovation" were listed as "priorities" or "typical improvement issues" for Grossmont High School, El Cajon High

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<sup>222</sup> Exhibit A, IRC, page 156 (2002 Long Range Facilities Master Plan).

<sup>223</sup> Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

<sup>224</sup> Exhibit A, IRC, page 159 (2002 Long Range Facilities Master Plan). The Deferred Maintenance Program is a state grant program that allows school districts to seek state matching funds to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board. As a condition of participating in the program, school districts are required to comply with certain program and accounting requirements. (See Exhibit F, Commission on State Mandates, Statement of Decision, *Deferred Maintenance Program*, 02-TC-44, October 27, 2011.)

<sup>225</sup> Exhibit A, IRC, page 160 (2002 Long Range Facilities Master Plan).

<sup>226</sup> Exhibit A, IRC, pages 160, 243 (2002 Long Range Facilities Master Plan).

School, El Capitan High School, Granite Hills High School, Monte Vista High School, Valhalla High School, and Chaparral High School.<sup>227</sup>

In October 2003, the governing board passed a resolution to call for an election on whether \$297 million in general obligation bonds should be issued and sold for the “improvement, renovation, reconstruction and rehabilitation of the District’s existing schools . . . .”<sup>228</sup> The resolution states that school facilities are 40 to 60 years old and have outdated science labs and classrooms; and that the growth in student enrollment in the District increased “resulting in severely overcrowded conditions in the existing school facilities thereby creating the need to construct a new high school to serve students in the Alpine/Blossom Valley region of the District and to thereby relieve overcrowding in the District’s existing school facilities.”<sup>229</sup> The resolution also addresses the accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added school-bond accountability requirements, such as a citizen’s oversight committee, annual financial and performance audits, and identification of construction projects.<sup>230</sup> Thus, the resolution includes a list of projects to be funded with the proceeds of the proposed bond, which includes the expansion and upgrade of science labs at the following high schools: Grossmont, Helix Charter, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, Valhalla, and West Hills.<sup>231</sup> The resolution further states the use of the bond proceeds is restricted to construction, rehabilitation, or replacement of school facilities, including furnishing and equipping school facilities, and not for any other purpose.<sup>232</sup> In addition, the ballot measure for the bond cited the need to comply with the Americans with Disabilities Act.<sup>233</sup>

Based on this resolution, a local school bond measure, Proposition H, was put on the ballot in March 2004, to authorize \$274 million “for critically needed repairs and upgrades to our local high schools” and “will allow the High School District to . . . renovate outdated classrooms,

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<sup>227</sup> Exhibit A, IRC, pages 245, 248, 253, 256, 263-264, 266, 268-269, 271, 273-274, 276, 278, 283, 285, 286, 293 (2002 Long Range Facilities Master Plan). One new science lab was recommended for Mt. Miguel High School on page 261, but it was not listed as a typical improvement or priority. No science-related upgrades were mentioned for Steele Canyon High School (pp. 290-292), the Homestead/Frontier Facility (p. 296), the Viking Center, or the Work Training Center (pp. 299-305).

<sup>228</sup> Exhibit A, IRC, page 1142 (District Resolution 2003-148).

<sup>229</sup> Exhibit A, IRC, pages 1141-1142 (District Resolution 2003-148).

<sup>230</sup> California Constitution, article XVI, section 18. Exhibit A, IRC, page 1141 (District Resolution 2003-148).

<sup>231</sup> Exhibit A, IRC, pages 1146-1149 (Ballot Measure for District Resolution 2003-148). Although upgrades were listed for Mount Miguel and Steele Canyon High Schools, there was no mention of science classrooms or laboratories in the Ballot Measure.

<sup>232</sup> Exhibit A, IRC, page 1143 (District Resolution 2003-148).

<sup>233</sup> Exhibit A, IRC, pages 1146-1149, 1152-1154 (Bond Ballot Measure).

science labs and school facilities . . . .”<sup>234</sup> The voters were told that bond funds were needed because:

Local high school facilities are aging. After 30-50 years of constant use, most high schools in our community are old and deteriorated, some are overcrowded, and virtually all need repair and renovation. After the unsuccessful attempt to pass Proposition T in 2002, the High School District reexamined the facility needs of each school. Based on need and the input of parents, teachers, staff and community, a specific plan to rehabilitate aging schools and relieve overcrowding was developed. Proposition H was placed on the ballot to authorize implementation of the plan to renovate and upgrade all of our high schools.<sup>235</sup>

The construction and needed repairs are identified in the ballot measure, and include the expansion and upgrade of outdated science labs at Grossmont, El Cajon Valley, El Capitan, Granite Hills, Santana, Valhalla, High Schools; and for Monte Vista High School, the measure states “consolidate and upgrade outdated science classrooms.”<sup>236</sup> Proposition H was passed by the District’s voters in March 2004.<sup>237</sup>

In late 2006 and early 2007, members of the Governing Board and the public were dissatisfied with the progress of the improvements, as well as the expenditure of Proposition H funds, and the overall management of Proposition H.<sup>238</sup> In February 2007, the District created a Bond Advisory Commission to make recommendations to the governing board regarding the renovations and repairs to the existing schools in satisfaction of Proposition H.<sup>239</sup> The Bond Advisory Commission reported that available Proposition H money (\$274 million) and state matching funds (\$140 million) fell well-below estimated construction costs of \$600 million for all desired renovations because of the rate of inflation for construction materials soared.<sup>240</sup> In

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<sup>234</sup> Exhibit B, Controller’s Late Comments on the IRC, page 31 (“Yes on H For Our Local High Schools”).

<sup>235</sup> Exhibit B, Controller’s Late Comments on the IRC, page 31 (“Yes on H For Our Local High Schools”).

<sup>236</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 36-41 (“Yes on H For Our Local High Schools”). There is no specific mention in the ballot measure of upgrading or expanding science classrooms or laboratories at other facilities, such as Helix Charter, Mount Miguel, West Hills, Steele Canyon, or Chaparral High Schools, or the Viking Center, Homestead/Frontier School, or the Work Training Center.

<sup>237</sup> Exhibit A, IRC, pages 1142 (Governing Board Resolution 2003-148), Exhibit B, Controller’s Late Comments on the IRC, pages 15, 31-43 (Proposition H materials), 617 (Governing Board Agenda Item).

<sup>238</sup> Exhibit B, Controller’s Late Comments on the IRC, page 166 (Bond Advisory Commission Final Report).

<sup>239</sup> Exhibit B, Controller’s Late Comments on the IRC, page 15, 49 (Bond Advisory Commission Final Report).

<sup>240</sup> Exhibit B, Controller’s Late Comments on the IRC, page 50 (Bond Advisory Commission Final Report).



addition, the “Repair and Renovation Subcommittee,” one of four subcommittees formed by the Bond Advisory Commission, recommended building new science buildings instead of renovating existing science classrooms:

We found that science classrooms are nothing more than a regular classroom with one sink. These classrooms appear beyond renovation to get them up to a modern science facility. We strongly recommend the existing science classrooms be converted to regular classrooms, the antiquated portables be scrapped and classes moved to the converted science classrooms, and that new science buildings be constructed.<sup>241</sup>

The subcommittee’s recommendation further states:

We saw portable structures originally intended to be temporary, that were old and deteriorated. Some portables were over 20 years old.

Additionally, we observed “science” classrooms that were no more than a classroom with a sink.

Therefore, we strongly recommend that this three-part improvement:

- A. Construct a new science building with dedicated, modern science classrooms.
- B. Convert existing “science” classrooms to regular, up to date classrooms.
- C. Eliminate older portable classrooms as much as possible within state requirements.

This three-part improvement should be done at these campuses:

1. Grossmont High School
2. Helix Charter High School
3. El Cajon Valley High School
4. El Capitan High School
5. Granite Hills High School
6. Monte Vista High School
7. Santana High School
8. Valhalla High School.
9. Chaparral High School<sup>242</sup>

The report also noted that “With the planned new science labs (Phase 3A) approximately \$18,000,000 of new construction match money will be used.”<sup>243</sup>

On June 14, 2007, the Governing Board accepted the final report of the Bond Advisory Commission and acknowledged that “the BAC [Bond Advisory Commission] has presented a

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<sup>241</sup> Exhibit B, Controller’s Late Comments on the IRC, page 171 (Bond Advisory Commission Final Report).

<sup>242</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 173-174 (Bond Advisory Commission Final Report).

<sup>243</sup> Exhibit B, Controller’s Late Comments on the IRC, page 96 (Bond Advisory Commission Final Report).

comprehensive approach and roadmap for satisfying all of the Prop H promises relating to repairs and renovation of existing schools, ADA compliance, and construction of a 12<sup>th</sup> high school.”<sup>244</sup>

On August 29, 2007, the Citizens’ Bond Oversight Committee recommended the construction of new science classrooms. The summary of their meeting states that “The District will be moving forward with building new science classrooms, although this is a deviation from the bond language which specified that the classrooms would be modernized.” The summary further states that building new science classrooms “will have a beneficial effect on State Matching Funds generated; the District will receive another \$10M of state dollars from new construction.”<sup>245</sup>

On June 20, 2008, the District adopted a revised Long Range Facilities Master Plan to determine “[m]odernization work completed or expected to be completed utilizing Proposition H funds; [m]odernization work needed to complete the modernization of all campus facilities not originally anticipated for completion under Proposition H; [and] [m]odernization work needed to bring all campuses up to a common standard or ‘parity’.”<sup>246</sup> The revised Plan contains a list of goals, which includes the goal to “[i]dentify and maximize the potential for State matching funds for modernization and new construction,” and to “[d]evelop funding options and proposed strategies for creating the resources upon which the district can execute phases of the Plan.”<sup>247</sup> The revised Plan further states that “[o]n many campuses, newly constructed facilities were assumed to replace heavily deteriorated facilities where demolition and reconstruction made more sense.”<sup>248</sup>

On July 31, 2008, the governing board adopted Resolution No. 2009-14, to address, for the first time, the test claim statute and identify the claimant’s compliance with “California Education Code Section 51225.3, Graduation Requirements for Science.”<sup>249</sup> The staff analysis and recommendation to adopt the resolution states in relevant part:

**Issue:**

On January 22, 1987, the Commission on State Mandates adopted a Statement of Decision finding that the Graduation Requirements test claim 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. Under prior law, the Education Code only

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<sup>244</sup> Exhibit B, Controller’s Late Comments on the IRC, page 232 (Minutes of Governing Board Meeting, June 14, 2007).

<sup>245</sup> Exhibit A, IRC, page 620, 624 (Citizens’ Bond Oversight Committee, Summary of Meeting, August 29, 2007.)

<sup>246</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 234, 236.

<sup>247</sup> Exhibit B, Controller’s Late Comments on the IRC, page 237.

<sup>248</sup> Exhibit B, Controller’s Late Comments on the IRC, page 240.

<sup>249</sup> Exhibit B, Controller’s Late Comments on the IRC, page 613 (District staff recommendation to adopt Resolution 2009-14).

required the completion of one science course. In accordance with Government Code section 17519, a school district that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

**Plan:**

The Proposition H Bond Measure calls for construction of new science classrooms at seven (7) school sites. The expansion of the science program meets the graduation requirements mandated by the State of California. This resolution finds that the Grossmont Union High School District has inadequate facilities to meet the graduation requirements, which, therefore, necessitates construction of new facilities.

**Fiscal Impact:**

There is no fiscal impact as a result of the adoption of this resolution.

**Recommended Action:**

Adoption of Resolution (2009-14) identifying Grossmont Union High School District's Compliance with California Education Code Section 51225.3, Graduation Requirements for Science.<sup>250</sup>

Accordingly, Resolution No. 2009-14 states that the test claim statute "has caused the District's existing science facilities to fail to accommodate the current needs of the District;" that sufficient, appropriately configured and equipped science classroom facilities do not currently exist; that adjusting district boundaries or using other facilities are not a viable options; and that constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate, as follows:

WHEREAS, Section 51225.3 of the California Education Code as added by Chapter 498, Statutes of 1983, requires school districts to provide an additional high school science course thereby increasing student graduation requirements; and

WHEREAS, the Grossmont Union High School District did in Fiscal Years 2007 and 2008 and continues to experience a lack of appropriate high school science classroom facilities, the District has performed the following:

1. A study of existing appropriately configured and equipped science classroom facilities;
2. An analysis of existing science facilities throughout the District; and
3. A cost analysis of new facilities versus remodeling existing facilities.<sup>251</sup>

The Resolution further declares that:

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<sup>250</sup> Exhibit B, Controller's Late Comments on the IRC, page 613 (District staff recommendation to adopt Resolution 2009-14).

<sup>251</sup> Exhibit B, Controller's Late Comments on the IRC, page 614 (District Resolution 2009-14).

1. Sufficient, appropriately configured and equipped science classroom facilities do not currently exist;
2. Adjusting attendance boundaries, or utilizing other secondary science facilities within a secure walking distance are not a viable means of mitigating the District's lack of appropriate high school science classroom facilities;
3. Remodeling existing facilities . . . is . . . significantly less expensive than acquiring new facilities;
4. Constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate; and
5. It is necessary to lease or otherwise obtain temporary classroom facilities during the period of remodeling or new construction.

NOW THEREFORE, BE IT RESOLVED that Chapter 498, Statutes of 1983, has caused the District's existing science facilities to fail to accommodate the current needs of the District and the Grossmont Union High School District has therefore approved new construction, remodeling, equipment purchase, and or temporary student classroom lease proposals as described in contemporaneous governing board agendas and related documentation.<sup>252</sup>

Also on July 31, 2008, the claimant's staff recommended that the governing board adopt a second resolution (Resolution 2009-17) to determine that inadequate science facilities continue to exist, and to construct new science classrooms to meet the State's graduation requirements for science.<sup>253</sup> The staff recommendation for this resolution states in relevant part:

**Topic:**

Resolution (2009-17) Determining that Inadequate Science Facilities Exist

**Issue:**

On December 3, 2003, the Grossmont Union High School District Governing Board, by a unanimous vote, approved the placement of Proposition H on the ballot. The measure passed on March 2, 2004. By adopting Resolution No. 2003-148, the Board made a finding that the physical conditions of the existing school facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities.

**Plan:**

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<sup>252</sup> Exhibit B, Controller's Late Comments on the IRC, pages 614-615 (District Resolution 2009-14).

<sup>253</sup> Exhibit B, Controller's Late Comments on the IRC, pages 617-618 (Agenda Item and District Resolution 2009-17).

Construct new science classrooms at Grossmont, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools to meet the State graduation requirements for science.

**Fiscal Impact:**

There is no fiscal impact as a result of the adoption of this resolution.

**Recommended Action:**

Adoption of Resolution (2009-17) Determining that Inadequate Science Facilities Exist<sup>254</sup>

Resolution 2009-17 adopted July 31, 2008, itself states:

WHEREAS, prior to the Proposition H Bond measure, the Grossmont Union High School District conducted a facilities needs study and determined that the existing school facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities; and

WHEREAS, the Grossmont Union High School District adopted Resolution No. 2003-148 making said finding and approving placement of the bond measure on the ballot; and

WHEREAS, the District has on a regular basis presented reports to the Governing Board and the Citizen's Bond Oversight Committee regarding the status of Proposition H and the science classrooms; and

NOW THEREFORE, BE IT RESOLVED that the Governing Board of the Grossmont Union High School District hereby determines *that the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements.*<sup>255</sup>

In 2009, the Citizens' Bond Oversight Committee issued its Annual Report, which reported on the status of the Proposition H work, noting that science building construction was underway at eight of the District's high schools, with the first to be open in February 2010. According to the report:

Prop H work is at full speed with active construction on ten high school campuses. In total, Prop H will modernize 291 classrooms and provide 87 new classrooms. To date, 264 classrooms have been modernized and eight new

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<sup>254</sup> Exhibit B, Controller's Late Comments on the IRC, page 617 (Agenda Item for District Resolution 2009-17).

<sup>255</sup> Exhibit B, Controller's Late Comments on the IRC, page 618 (District Resolution 2009-17). Emphasis added.

classrooms will be opened in February 2010. Work was divided into several phases:

[¶]...[¶]

Phase 3A: Science building construction is underway at Grossmont, Helix, El Cajon Valley, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools. The science building at El Cajon Valley will be the first to open in February 2010.<sup>256</sup>

Finally, the claimant's IRC contains documentation, including invoices, supporting the total costs incurred for construction.<sup>257</sup>

The claimant contends that these documents fully support the reimbursement claim for the acquisition of additional space. The claimant argues that the documentation shows a link between the claimed costs and the mandate, in that the claimant studied and understood that part of its facility needs included adequate science classrooms to allow for the additional science course mandated by the state.<sup>258</sup> The claimant points to the 2002 Master Plan, which mentioned that "The District will not be able to meet the proposed California State standards for science and technology without some major renovations and upgrades" and that "There are not enough . . . science labs . . . at every school."<sup>259</sup> The claimant also relies on the 2003 Board Resolution, which stated that "current facilities do not satisfy the . . . curriculum standards of the District."<sup>260</sup> In addition the 2008 Long Range Facilities Plan, which considered "key instructional priorities and facilities [sic] needs, . . . the need to 'continue to provide a quality learning environment . . . consistent with the Education Code'," and the need for "classrooms, libraries and science labs . . . to meet the high school curriculum."<sup>261</sup>

The claimant further argues that the Parameters and Guidelines "do not exclude the cost of complying with the mandate simply because those costs were incurred as part of larger construction projects which addressed multiple needs."<sup>262</sup> The claimant further argues that denying reimbursement to a school district that acquired additional space to provide the mandated class as part of a larger facilities plan or project would penalize claimants:

[A]dopting the Draft Proposed Decision's approach would penalize school districts which acquired the necessary facilities to provide the mandated additional science instruction as part of larger plans or projects. It would suggest that school districts must entirely separate these projects in order to meet

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<sup>256</sup> Exhibit B, Controller's Late Comments on the IRC, page 677 (Citizen's Bond Oversight Committee 2009 Annual Report).

<sup>257</sup> Exhibit A, IRC, pages 3141-4210.

<sup>258</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, pages 6-7.

<sup>259</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 6.

<sup>260</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 6.

<sup>261</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

<sup>262</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

“documentation” requirements. This could substantially increase the monetary cost and administrative burden of such projects – and ultimately the reimbursable costs. The Parameters and Guidelines do not impose this requirement and the Commission should not create it by disallowing the costs necessary to acquire and remodel space to provide the mandated additional science instruction.<sup>263</sup>

In addition, “[w]hile the 2002 Plan and 2003 Bond resolution outlined a broad facilities plan,” the claimant urges the Commission to focus on the 2008 documents “which specifically identify the District’s needs and reasons for the expenditures made at that time.”<sup>264</sup> The claimant also states that a 2008 Study projected dropping enrollment until 2017, so there was no need for facility expenditures due to high school enrollment growth.<sup>265</sup> The claimant also asserts that the 2008 Resolution, which states that the District “‘continues to experience a lack of appropriate high school science classroom facilities,’ that it had studied ‘existing appropriately configured and equipped science classrooms [sic] facilities,’ and based on this analysis concluded that ‘Sufficient, appropriately configured and equipped classroom science classroom facilities do not currently exist . . . .’”<sup>266</sup>

Finally, the claimant addresses the issue of science course enrollment by stating that “[w]hile it is arguable that the number of science teachers and consumable supplies would vary directly with science classroom enrollment, it is not necessarily logical that one-time construction costs and the cost of equipment would vary directly with science classroom enrollment” since facilities and equipment are used for many years.<sup>267</sup> In comments on the Draft Proposed Decision, the claimant alleges that it “submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction.”<sup>268</sup>

The Parameters and Guidelines require the claimants to:

- Show that the costs claimed were required as a result of the mandate;
- Show that the governing board conducted an analysis of all science facilities, and determined (with the adoption of a certification) that no science facilities exist to reasonably accommodate the *increased enrollment for the additional science course* mandated by the test claim statute; and
- Provide documentation showing the:
  - Increased units of science course enrollments due to the mandate.
  - Lack of appropriately configured and equipped space in existing facilities for the new science course mandated by the state.

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<sup>263</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 7-8.

<sup>264</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 9.

<sup>265</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 9.

<sup>266</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 8-9.

<sup>267</sup> Exhibit A, IRC, page 27.

<sup>268</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 7.

- The new classroom space would not have otherwise been acquired due to an increase in high school enrollment.
- Remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.<sup>269</sup>

Here, the evidence in the record (the Resolutions adopted in 2008) show a lack of appropriately configured and equipped space in existing science facilities at seven school sites, and that remodeling was not feasible or would have been more expensive than acquiring additional space. Resolution 2009-14 states that “the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements.”<sup>270</sup> The 2002 facility study completed prior to the Bond measure showed that science classrooms were old, deteriorated, and inadequate because they were not “modernized” in accordance with the claimant’s deferred maintenance plan.<sup>271</sup> Resolution 2009-17 also includes a finding that the facility study completed prior to the Bond measure as it relates to science classrooms remains current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements.<sup>272</sup> This is supported by the 2007 report by the Bond Advisory Commission, which found that the claimant’s science classrooms “appear beyond renovation to get them up to a modern science facility,” and, thus, the claimant decided to construct new science classrooms, which was approved by the Bond Oversight Committee.<sup>273</sup> The finding is also supported by the 2008 revised Long Range Facilities Master Plan, which continued to focus on “modernization” of school facilities and noted that “[o]n many campuses, newly constructed facilities were assumed to replace heavily deteriorated facilities where demolition and reconstruction made more sense.”<sup>274</sup> Thus, there is evidence in the record showing a lack of appropriately configured and equipped space in existing science facilities for the claimant’s science courses at seven of its high schools, including the second science course mandated by the state.

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<sup>269</sup> Exhibit A, IRC, page 87-92 (Parameters and Guidelines).

<sup>270</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 614-615 (District Resolution 2009-14).

<sup>271</sup> Exhibit A, IRC, page 156-160 (2002 Long Range Facilities Master Plan), 1141-1142 (District Resolution 2003-148).

<sup>272</sup> Exhibit B, Controller’s Late Comments on the IRC, page 618 (District Resolution 2009-17). Emphasis added.

<sup>273</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 173-174 (Bond Advisory Commission Final Report), page 232 (Minutes of Governing Board Meeting, June 14, 2007); Exhibit A, IRC, page 620, 624 (Citizens’ Bond Oversight Committee, Summary of Meeting, August 29, 2007).

<sup>274</sup> Exhibit B, Controller’s Late Comments on the IRC, page 240.



However, these documents also show inadequate facilities to meet *all* of the science classes offered by the claimant. There is no distinction in the record between the science class required by prior law and any other science classes offered at the discretion of the claimant, and the second science course mandated by the state. The record shows that some of the claimant's school sites offered nine different science courses during the audit period including Biology, Chemistry, Physical Science, Physics, Conceptual Physics, Earth Science, Coordinated/Integrated Science, "Science Projects," Oceanography, Anatomy and Physiology, and "Other."<sup>275</sup> As indicated above, the claimant calculated the increased construction costs related to the mandate simply by reducing the total new science building costs for fiscal year 2009-2010 by 50 percent (after reducing claims by 50 percent to account for state matching funds).<sup>276</sup> That calculation, based on the assumption of a 50-percent increase in science course enrollment, is not consistent with the Parameters and Guidelines and thus, there is no evidence that the costs claimed were limited to the mandate.

Moreover, there is no "[d]ocumentation of *increased units of science course enrollments* due to the enactment of Education Code Section 51225.3 necessitating such an increase," as required by the Parameters and Guidelines.<sup>277</sup> In comments on the Draft Proposed Decision, the claimant alleges, without citation to the record, that it "submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction."<sup>278</sup> However, the information submitted with the claims consists of total high school enrollment by school for both fiscal years, and the course enrollment for each science class offered by the claimant's schools in 2008-2009.<sup>279</sup> The claimant has not submitted documentation of any increased units of science course enrollments as a direct result of the *second* science course mandated by the state and thus, did not comply with the Parameters and Guidelines.

In addition, there is no documentation showing that the new science classrooms would not have otherwise been acquired due to an increase in high school enrollment. The 2002 Long Range Facilities Master Plan states that the "enrollment increase has resulted in overcrowding at 80% of the schools," and "[a]s a result, many schools lack . . . *science labs*, restrooms, classrooms and support facilities."<sup>280</sup> In 2004, the voters of Proposition H were told that bond funds were needed "rehabilitate aging school and *relieve overcrowding*."<sup>281</sup> Nevertheless, in comments on

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<sup>275</sup> See, e.g., Exhibit A, IRC, pages 2568, 2570, 2574, 2578 (science course offerings in 2008-2009 for El Cajon Valley High School, El Capitan High School, Granite Hills High school, Monte Vista High School).

<sup>276</sup> Exhibit A, IRC, pages 26, 49 (Final Audit Report).

<sup>277</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines). Emphasis added.

<sup>278</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 7.

<sup>279</sup> Exhibit A, IRC, pages 1408-1424, 2565-2587 (total high school enrollment by school and course enrollment information by school for 2008-2009), and 2607 (total high school enrollment for 2009-2010).

<sup>280</sup> Exhibit A, IRC, page 157 (2002 Long Range Facilities Master Plan).

<sup>281</sup> Exhibit B, Controller's Late Comments on the IRC, page 31 ("Yes on H For Our Local High Schools").

the Draft Proposed Decision, the claimant asserts that a 2008 study showed that dropping enrollment was projected until 2017 and, thus, there was no need for facility expenditures due to enrollment growth.<sup>282</sup> The claimant, however, does not provide a citation to the document relied on, and the record before the Commission does not contain a “2008 study.” However, the 2007 Final Report from the Proposition H Bond Advisory Commission contains a discussion about whether the district should build a new school as originally planned, based on the belief that “future high school enrollments . . . [would be] flat or slowly declining.”<sup>283</sup> The report states, however, that the “demographic projections [of declining enrollment] may be incorrect, and that the “far East County is likely to experience growth in student population.”<sup>284</sup> The Report further states that the “real problem, acknowledged in Prop H, is school overcrowding in several of our high schools;” that “three of the District’s high school campuses are deemed ‘extremely overcrowded’ with students packed into portables or other ‘temporary’ facilities;” and that “[e]ven with a slowing or flat demographic trend these schools will remain overcrowded for many years.”<sup>285</sup> Thus, the evidence does not support the claimant’s assertion that the expenditures for new facilities were not due to overall high school enrollment.

Based on this record, the Commission finds that the Controller’s reduction of all costs claimed for acquiring additional space for science classrooms is correct as a matter of law.

Because the Controller’s finding on the claimant’s lack of documentation reduced the claims for acquiring new classroom space to zero, the Commission makes no findings on the other disputed reductions in Finding 1; namely, the Controller’s methodology to determine the increased science course enrollment as a result of the mandate, or the reduction of science classroom construction at the Helix Charter High School.<sup>286</sup>

**D. The Controller’s Reduction of Costs Incurred for Materials and Supplies in Finding 2 Is Correct as a Matter of Law, and the Controller’s Recalculation Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support Because the Claimant Did Not Comply with the Documentation Requirements in the Parameters and Guidelines.**

Section V.E. of the Parameters and Guidelines authorizes reimbursement for “the increased cost for supplying the new science class with science instructional materials (textbooks, materials, and supplies),” if the costs are supported by specified documentation.<sup>287</sup> Section V. also states that reimbursement is only required for the “increased costs that the claimant is required to incur

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<sup>282</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 8-9.

<sup>283</sup> Exhibit B, Controller’s Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

<sup>284</sup> Exhibit B, Controller’s Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

<sup>285</sup> Exhibit B, Controller’s Late Comments on the IRC, page 51 (Bond Advisory Commission Final Report).

<sup>286</sup> Exhibit A, IRC, pp 50-51, 58 (Final Audit Report).

<sup>287</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines).

as a result of the mandate.”<sup>288</sup> And Section VIII. requires that the costs be supported with documentation showing the “increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.”<sup>289</sup>

In fiscal year 2009-2010, the District incurred \$860,978 in costs for materials and supplies to furnish and equip the new science buildings. These costs were part of the science classroom and lab construction costs discussed in Finding 1 and were funded and claimed in the same manner.<sup>290</sup> The Controller reduced the entire amount because the District’s documentation did not comply with the documentation requirements in the Parameters and Guidelines.<sup>291</sup>

The Controller also reduced \$56,208 during the audit period because the claimant overstated its costs for textbooks, materials, and supplies by using a 50 percent incremental increase in science course enrollment as a result of the mandate without having documentation, as required by the Parameters and Guidelines, to support the 50-percent figure. The Controller recalculated the increased enrollment as a result of the additional year of science instruction mandated by the test claim statute using a One-Quarter Class Load formula (a method similar to the reasonable reimbursement methodology in the Parameters and Guidelines to determine teacher salary costs). Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase in enrollment of 40.14 percent (167/416) for 2008-2009 and at 47 percent (154.7/329) for 2009-2010, for a reduction of \$56,208 during the audit period.<sup>292</sup>

The claimant argues that the Controller’s method is “unnecessary and irrelevant” because there is no legal requirement to use the Controller’s incremental increase cost formula, and there are no incremental costs to be deducted because the District did not claim any incremental increased costs.<sup>293</sup> The claimant states that since the mandate doubled the number of science courses by law, it reduced the unmatched amount claimed by 50 percent to account for the preexisting requirement for science courses.<sup>294</sup>

The Commission finds that the reduction of costs for materials and supplies is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>288</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>289</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>290</sup> Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

<sup>291</sup> Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was \$869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

<sup>292</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

<sup>293</sup> Exhibit A, IRC, pages 31-32.

<sup>294</sup> Exhibit A, IRC, page 26; Exhibit B, Controller’s Late Comments on the IRC, page 19.

**1. The reduction of \$860,978 for materials and supplies for the newly constructed science classrooms is correct as a matter of law.**

The District incurred costs for materials and supplies in fiscal year 2009-2010 to furnish and equip the new classrooms, and the costs were expensed as part of the new science classrooms in the District's accounting records.<sup>295</sup> The claimant states that the costs were claimed for fixtures to equip the additional science classrooms.<sup>296</sup> The Controller reduced the costs claimed because the claimant did not meet the specific documentation requirements in the Parameters and Guidelines to support that the costs resulted from the mandate.<sup>297</sup> According to the Controller:

[A] portion of the materials and supplies costs in the district's claims were charged against restricted resources (Proposition H) as part of the science construction costs. The OPSC [state Office of Public School Construction] provides matching funds for the construction of new buildings, including classroom furniture and fixtures. School districts are allowed to purchase necessary items including, but not limited to, desks, chairs, and supplies to equip the new buildings. The district disputes the reduction related to the portion of materials and supplies charged against the construction projects.

We disagree with the district's contention that specific documentation requirements are unclear. ...[T]he district did not provide documentation of increased science course enrollments due to the implementation of E[ducation] C[ode] section 51225.3 as required by the parameters and guidelines. It is also our contention that the district did not provide documentation to meet the remaining specific documentation requirements outlined in the parameters and guidelines . . . . The documentation provided does not support that alternatives were considered in the context of the mandate program, that the space would not have otherwise been acquired due to an increase in high school enrollment, or that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space. The analysis and subsequent board resolution provide support for passage of Proposition H . . . , authorizing the issuance of bonds to fund various construction projects.

The provided information for the time period subsequent to the bond issuance does not support the need for facilities to implement the mandate; however, it does illustrate the need for the district to comply with the requirements of the Proposition H and the district's desire to maximize state matching funds in the process.

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<sup>295</sup> Exhibit A, IRC, page 58 (Final Audit Report).

<sup>296</sup> Exhibit A, IRC, pages 30-31. Acquisition of "additional equipment and furniture" is in component V.B. of the Parameters and Guidelines, but the record indicates that the Controller reduced claims for "materials and supplies" in component V.E. Exhibit A, IRC, page 88 (Parameters and Guidelines).

<sup>297</sup> Exhibit A, IRC, page 58 (Final Audit Report). Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

Although not disputed in its response, the district's space acquisition and related materials and supplies costs are identified as Proposition H expenditures in its records, charged against restricted resources, and reported as such to external oversight entities.<sup>298</sup>

The claimant disputes the reduction on the same grounds as the Controller's reduction in Finding 1 for construction costs for the additional science classroom space; i.e., that the provided documents support the costs claimed and that school districts are entitled to reimbursement for upgrades and replacement costs due to deterioration of the facilities or otherwise by the state-defined curriculum.<sup>299</sup>

The Commission finds that the Controller's reduction is correct as a matter of law. The Parameters and Guidelines do not authorize reimbursement for upgrades and replacement costs due to deterioration of the facilities, as asserted by the claimant. Rather, the plain language of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the school district has documentation of increased units of science course enrollments that are due to the mandate.<sup>300</sup> The record does not contain any supporting documentation of increased units of science course enrollments due to the mandate. Rather, the claimant simply asserts that the test claim statute doubled the number of science courses by law.<sup>301</sup>

Moreover, as described above, the evidence in the record shows that the claimant constructed new science classrooms and laboratories and equipped those new classrooms with materials and supplies because its existing facilities were aging and outdated (including outdated science labs) and needed to be modernized in accordance with its deferred maintenance plan.<sup>302</sup> The record does not show that the costs for materials and supplies were incurred as a result of the mandate, as required by the Parameters and Guidelines.<sup>303</sup>

Accordingly, because the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support its costs for materials and supplies, the Commission finds that the Controller's reduction is correct as a matter of law.

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<sup>298</sup> Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

<sup>299</sup> Exhibit A, IRC, pages 21 and 31; Exhibit E, Claimant's Comments on the Draft Proposed Decision, page 10.

<sup>300</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>301</sup> Exhibit A, IRC, page 26. Exhibit B, Controller's Late Comments on the IRC, page 19.

<sup>302</sup> Exhibit A, IRC, page 1141 (District Resolution 2003-148). As the Controller notes, the governing board resolution addresses accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added accountability requirements, such as the citizen's oversight committee, annual financial and performance audits, authorization to raise revenue through additional property taxes, and identification of construction projects. Exhibit B, Controller's Late Comments on the IRC, pages 14, 25-29.

<sup>303</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

**2. The reduction of \$56,208 for the incremental increase in material and supply costs is correct as a matter of law and the recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.**

The Controller also reduced \$56,208 of costs incurred during the audit period because the claimant overstated costs for materials and supplies by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure. The claimant states that because the mandate doubled the number of science courses by law, it calculated the increased costs for materials and supplies by reducing the unmatched cost by 50 percent to account for the preexisting requirement for science courses.<sup>304</sup>

The Commission finds that the Controller's reduction is correct as a matter of law. Section V. of the Parameters and Guidelines states that "only actual costs may be claimed" and "claimant is only allowed to claim and be reimbursed for increased costs" that are "limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>305</sup> In addition, Section VIII. of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the claimant has documentation of increased units of science course enrollments due to the mandated additional science course.<sup>306</sup> The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate, or a "double reduction of costs" as the claimant calls it. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

The Commission also finds that the Controller's recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support its cost claiming methodology for materials and supplies, the Controller could have reduced those costs to \$0 because the claimant did not comply with the Parameters and Guidelines. Instead, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction (a method similar to the reasonable reimbursement methodology authorized in the Parameters and Guidelines to determine teacher salary costs).<sup>307</sup> Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase of 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010.<sup>308</sup>

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<sup>304</sup> Exhibit A, IRC, pages 26-27, 50 and 58 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 19.

<sup>305</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

<sup>306</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>307</sup> Exhibit A, IRC, page 91 (Section VII. of the Parameters and Guidelines, Reasonable Reimbursement Methodology to claim teacher salary costs, which isolates the increased enrollment resulting from the additional year of science instruction by dividing the total number of pupils in grades 9-12 by the number four, and then dividing that number by an average class size.)

<sup>308</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

The claimant provides no evidence or documentation to show that the Controller's calculation of increased costs is incorrect or arbitrary or capricious. Instead, the claimant argues that the Controller's methodology "constitute[s] a standard of general application without appropriate state agency rulemaking and is therefore unenforceable."<sup>309</sup>

The Commission disagrees. The claimant has not demonstrated that the Controller's formula for determining increased costs as a result of the mandate is an unenforceable underground regulation because there is no indication that the Controller intended its formula, or any other audit method it used, to be a rule that applies generally to a class of cases. The California Supreme Court has held that interpretations that arise in the course of case-specific adjudications are not regulations.<sup>310</sup>

It is notable that the claimant admits in the IRC that "it is arguable that ... consumable supplies would vary directly with science classroom enrollment."<sup>311</sup> The Controller's formula for determining the costs of the incremental increase for materials and supplies (dividing the increased number of science classes by the total number of science offerings for the year) accounts for variations in science classroom enrollment, but claimant's "double reduction" or "50-percent reduction" claiming method does not account for enrollment variations.

In sum, the Commission finds that the Controller's reduction of \$56,208 related to the incremental increase in costs for materials and supplies as a result of the mandate is correct as a matter of law and the Controller's recalculation of the costs is not arbitrary, capricious, or entirely lacking in evidentiary support.

**E. The Controller's Finding 4, that the Local Bond Funds Used To Construct the Science Classrooms Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law Because Reimbursement Under Article XIII B, Section 6 of the California Constitution Is Not Required for the Expenditure of Local Bond Proceeds.**

As indicated above in the discussion of Findings 1 and 2, the Controller reduced all costs for construction of science classrooms and laboratories (\$29,633,952), and all costs for construction-related materials and supplies to furnish and equip the new science classrooms (\$860,978), because the claimant did not support its claims with documentation required by the Parameters and Guidelines. Fifty percent of these costs were funded by local school construction bonds approved by the District's voters in 2004 (Proposition H), and 50 percent by state bond matching funds (that were not claimed).<sup>312</sup>

As a separate ground for reducing these costs, the Controller found that the claimant failed to identify and deduct from its claims offsetting revenue from the local school-construction bonds received under Proposition H. The Controller concluded that the 50 percent funded by local restricted bond funds and incurred during the audit period (\$14,816,976 for construction, and \$430,489 for materials and supplies, for a total of \$15,247,465) should have been fully offset

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<sup>309</sup> Exhibit A, IRC, page 25.

<sup>310</sup> *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

<sup>311</sup> Exhibit A, IRC, page 27.

<sup>312</sup> Exhibit A, IRC, page 64 (Final Audit Report).

against the total costs incurred for these expenses (\$30,494,930).<sup>313</sup> Thus, “[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A (\$14,816,975) and a portion of Component E (\$430,489) are still zero, as the remainder was fully funded with local restricted funds.”<sup>314</sup> In other words, the Controller found that none of the costs claimed for construction and related materials and supplies are subject to reimbursement under article XIII B, section 6.

The claimant argues that “local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses),” and thus, there are no offsetting revenues.<sup>315</sup> According to the claimant:

The local bond revenue is not otherwise “reimbursement for this mandate from any source” because, unlike state bond revenue, it must be repaid by the District tax base. A “reimbursement” that has to be repaid is not reimbursement. Local bond obligations are retired by local property taxes. Local property taxes also fund a portion of the District general fund annual operating costs but are not mandate reimbursement.<sup>316</sup>

The claimant further asserts that offsetting the bond revenue leads to absurd results because:

[The] use of local bond proceeds . . . or any other financing vehicle the claimant might use, to offset subvention obligations, would allow the State to essentially clear out any obligation once the Claimant proceeds to comply with the mandate [because claimants would] always be in the position of using its available resources, whether general fund, local bonds, or other available financing solutions, to comply with the mandate, in anticipation of receiving the subvention funds later.<sup>317</sup>

The claimant contends that the local bond funds should be protected “proceeds of taxes,” similar to the unrestricted school district funding under Proposition 98, which was at issue in the recent case of *California School Boards Assoc., et al. v. State of California*, California Supreme Court, Case No. S247266:

. . . Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. (*Cal. School Boards Assn. v. State of California* (2018) (“CSBA III”) 19 Cal.App.5th 566, 582, review granted.) In its findings, the Commission stated that “such an interpretation [i.e., use of proceeds

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<sup>313</sup> Exhibit A, IRC, page 65 (Final Audit Report).

<sup>314</sup> Exhibit A, IRC, page 64 (Final Audit Report).

<sup>315</sup> Exhibit A, IRC, pages 66 (Final Audit Report).

<sup>316</sup> Exhibit A, IRC, page 36.

<sup>317</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 16.



of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.’ ” (*CSBA III*, supra, 19 Cal.App.5th at 582, quoting Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.) While the *CSBA III* court disagreed with claimant’s position vis-à-vis use of State funds as offsetting revenue, it did not consider the use of local bond funds for such purpose.<sup>318, 319</sup>

Finally, the claimant argues that the Controller’s finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following five reasons: First, the local bond revenue is not offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but do not mention local bond funds. Third, the local bond fund revenue does not fall into the other sources enumerated in the Parameters and Guidelines, such as a federal or state block grant, or a state restricted funding source for science classrooms or labs. Fourth, the claimant asserts that local bond fund revenue is not “reimbursement from any source” because it has to be repaid through local property taxes. A reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.<sup>320</sup>

The Commission finds that the Controller’s conclusion, that local school-construction bonds are offsetting revenue that is required to be identified and deducted from the reimbursement claim for construction-related costs, is correct as a matter of law.

Section IX. of the Parameters and Guidelines addresses offsetting revenues as follows:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed.

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<sup>318</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 17.

<sup>319</sup> 2019 WL 6904534 (The issue decided by the California Supreme Court in the *CSBA* case was that the state does not violate article XIII B, section 6, of the California Constitution when it identifies general education funding it already provides to school districts and county offices of education as “offsetting revenue” for the purpose of reimbursing state mandates.) Therefore, the *CSBA* case cited by the claimant, which does not address bond funding issues, is not relevant to this IRC.

<sup>320</sup> Exhibit A, IRC, pages 36-37.

Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, § 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; and other state funds, shall be identified and deducted from this claim. The State Controller’s Office (SCO) will adjust the claims for any prior reimbursements received from the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.

If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.<sup>321</sup>

Although the Parameters and Guidelines do not expressly require that local school construction bonds be identified as offsetting revenue, they do state that “reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim.”<sup>322</sup> Local bond proceeds are included as “any source” of reimbursement.<sup>323</sup> Thus, the Commission disagrees with the claimant’s argument that offsetting revenue is limited to state and Federal funds. The Parameters and Guidelines make no such restriction.

More importantly, the Parameters and Guidelines must be interpreted in a manner consistent with the California Constitution,<sup>324</sup> and harmonized with principles of mandates law.<sup>325</sup> As explained below, costs that are funded by local school construction bonds are excluded from mandate reimbursement under article XIII B of the California Constitution.

The courts have made it clear that the reimbursement requirement in article XIII B, section 6 of the California Constitution must be interpreted in the context of articles XIII A and XIII B, which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”<sup>326</sup>

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<sup>321</sup> Exhibit A, IRC, page 93 (Parameters and Guidelines).

<sup>322</sup> Exhibit A, IRC, page 93 (Parameters and Guidelines).

<sup>323</sup> The phrase “including but not limited to is a term of enlargement, and signals the ... intent that [a statute] applies to items not specifically listed in the provision.” *In Re. D. O.* (2016) 247 Cal. App.4th 166, 175.

<sup>324</sup> See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

<sup>325</sup> *Clovis Unified School Dist. v. Chaing* (2010) 188 Cal.App.4th 794, 811-812.

<sup>326</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81].

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property,” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties...”<sup>327</sup> In addition to limiting the property tax, section 4 also restricts a local government’s ability to impose special taxes by requiring a two-thirds approval by voters.<sup>328</sup>

Article XIII B was adopted by the voters as Proposition 4 in 1979, less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.”<sup>329</sup> Unlike article XIII A “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.’”<sup>330</sup>

Article XIII B established an “appropriations limit,” or spending limit for each “entity of local government,” defined to include school districts, beginning in fiscal year 1980-1981.<sup>331</sup> Section 1 of article XIII B defines the appropriations limit as:

The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.<sup>332</sup>

No “appropriations subject to limitation” may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.<sup>333</sup>

Article XIII B does not limit the ability to spend government funds collected from *all sources*. The appropriations limit is based on “appropriations subject to limitation,” which means, “any authorization to expend during a fiscal year the *proceeds of taxes* levied by or for that entity.”<sup>334</sup> For local government, “proceeds of taxes” subject to the appropriations limit includes all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs

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<sup>327</sup> California Constitution, article XIII A, section 1 (adopted June 6, 1978).

<sup>328</sup> California Constitution, article XIII A, section 1 (adopted June 6, 1978).

<sup>329</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>330</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>331</sup> California Constitution, article XIII B, section 8(d), (h) (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

<sup>332</sup> See also Government Code section 7901(a) and (b).

<sup>333</sup> California Constitution, article XIII B, section 2 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

<sup>334</sup> California Constitution, article XIII B, section 8 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990). Emphasis added.

reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).<sup>335</sup> No limitation is placed on the expenditure of revenues that do not constitute “proceeds of taxes.”<sup>336</sup> According to Government Code section 53715, the constitutional definition of “proceeds of taxes” does not include proceeds from the sale of local bonds:

As used in Article XIII B of the California Constitution, the term “proceeds of taxes” *does not include the proceeds from the sale of bonds*, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.<sup>337</sup>

In addition, article XIII B, section 8(i) provides that “‘appropriations subject to limitation’ *do not include* local agency loan funds or indebtedness funds . . . .” Article XIII B, section 9(a) states that “appropriations subject to limitation” for each entity of government do not include “[a]ppropriations for debt service.” “Debt service” is defined in section 8(g) of article XIII B:

[A]ppropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, *or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.*<sup>338</sup>

And article XIII B, section 7 makes it clear that “[n]othing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bond indebtedness.”<sup>339</sup>

In 1991, the California Supreme Court in the *County of Fresno* case reiterated that article XIII B was not intended to reach beyond taxation and would not restrict the growth of appropriations financed from nontax sources, and specifically identified bond funds as nontax revenue:

Article XIII B of the Constitution, however, *was not intended to reach beyond taxation*. That fact is *apparent from the language of the measure*. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4

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<sup>335</sup> California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

<sup>336</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>337</sup> Emphasis added.

<sup>338</sup> Emphasis added.

<sup>339</sup> See also, *Bell v. Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32, where the court found that debt service on a proposed tax allocation bond was not an “appropriation subject to the limitation” as defined in article XIII B. Rather, tax allocation bonds constitute “bond indebtedness” exempt under article XIII B, section 7.

“would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, *bond funds*, traffic fines, user fees based on reasonable costs, and income from gifts.” (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)<sup>340</sup>

Thus, the claimant’s argument that the *County of Fresno* case “makes clear that the only locally-derived amounts permitted to be included in the calculus of offsetting revenues are where a local agency can levy assessments or fees,” is wrong.<sup>341</sup> The California Supreme Court expressly put “bond funds” in the category of “nontax revenue” that are not proceeds of taxes subject to the appropriations limit of article XIII B.

Section 6 was included in article XIII B to require that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...” Article XIII B, section 6 was specifically designed to protect the *tax revenues* of local governments from state mandates that would require expenditure of tax revenues:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>342</sup>

The California Supreme Court most recently recognized that the purpose of section 6 was to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose*.”<sup>343</sup>

Thus, article XIII B, section 6 must be read in light of the tax and spend limitations imposed by articles XIII A and XIII B, and requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations

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<sup>340</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis added.

<sup>341</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 17.

<sup>342</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis in original.

<sup>343</sup> *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

limit of article XIII B. Article XIII B, section 6 was designed to protect tax revenues, and not the receipt or repayment of local bonds.

In this case, article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not “proceeds of taxes,” and repayment of those bonds is not an “appropriation subject to limitation.” The claimant’s arguments ignore these authorities. School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>344</sup>

In sum, the state is not required to reimburse the claimant for local bond proceeds used to acquire science classrooms and laboratories and science class materials and supplies. Thus, the Controller’s Finding 4, that the claimant’s Proposition H bond funds are offsetting revenue that should have been identified and deducted from the claimant’s reimbursement claims, is correct as a matter of law.

## **V. Conclusion**

Based on the foregoing, the Commission denies this IRC.

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<sup>344</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.