

## **Item 1**

### **Proposed Minutes**

#### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 25, 2013

Present: Member Pedro Reyes, Chairperson  
Representative of the Director of the Department of Finance  
Member Andre Rivera, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Scott Morgan  
Representative of Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Don Saylor  
County Supervisor

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Reyes called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

#### **ELECTION OF OFFICERS**

##### **Item 1      Staff Report**

Chairperson Reyes stated that the annual election of officers is the first order of business.

Member Chivaro nominated the Director of Finance. Member Morgan seconded. Director of Finance Ana Matosantos was elected chairperson by a vote of 7-0.

Chairperson Reyes asked for nominations for vice-chairperson. Member Rivera nominated the State Controller. With a second by Member Morgan, State Controller John Chiang was elected vice-chairperson by a vote of 7-0.

#### **APPROVAL OF MINUTES**

##### **Item 2      December 7, 2012**

Member Ramirez made a motion to adopt the minutes. With a second by Member Saylor, the December 7, 2012 hearing minutes were adopted by a vote of 5-0, Members Rivera and Morgan abstained from voting.

## CONSENT CALENDAR

*If there are no objections to any of the following action items designated by an asterisk (\*), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

### VI. HEARINGS AND DECISIONS ON TEST CLAIMS AND PARAMETERS AND GUIDELINES PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

#### PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 6\*      *Uniform Complaint Procedures (K-12), 03-TC-02*  
Education Code Sections 250, 251, 262.3  
Statutes 1982, Chapter 1117; Statutes 1988,  
Chapter 1514; Statutes 1998, Chapter 914  
California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631,  
and 4632 Register 92, Number 3; Register 93, Number 51  
Solana Beach School District, Claimant

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

#### A. STATEWIDE COST ESTIMATE

- Item 7\*      *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils, 96-358-03 et al.*  
Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48923, 48926  
As Amended by Statutes 1995, Chapters 972 and 974;  
Statutes 1996, Chapters 915, 937, and 1052; Statutes 1997, Chapter 637;  
Statutes 1998, Chapter 489; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147; Statutes 2001, Chapter 116  
San Juan Unified School District, Kern County Superintendent of Schools, Claimants  
Beginning Fiscal Year 2012-2013 Consolidated with  
*PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)*  
Education Code Section 48911, Subdivisions (b) and (e)  
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;  
Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134  
*PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)*  
Education Code Sections 48915, Subdivisions (a) and (b), 48915.1, 48915.2, 48916, and 48918  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622; Statutes 1987, Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters 1255, 1256, and 1257; Statutes 1994, Chapter 146  
*PUPIL EXPULSION APPEALS (CSM-4463)*

Education Code Sections 48919, 48921, 48924  
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978,  
Chapter 668;  
Statutes 1983, Chapter 498

Item 8\* *Voter Identification Procedures*, 03-TC-23

Elections Code Section 14310  
Statutes 2000, Chapter 260 (SB 414)

County of San Bernardino, Claimant

**B. ADOPTION OF PROPOSED RULEMAKING CALENDAR**

Item 9\* Proposed Rulemaking Calendar, 2013

Member Olsen made a motion to adopt the consent calendar. With a second by Member Rivera, the consent calendar was adopted by a vote of 7-0.

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

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND  
GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7  
(GOV. CODE, § 17551, 17557, and 17559) (action)**

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

**A. TEST CLAIMS**

Item 4 *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31

Education Code Sections 66010.2, 66010.7, 66721.5, 66731, 66732,  
66736, 66738, 66740, 66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1998,  
Chapter 365; and Statutes 2000, Chapter 187

California Code of Regulations, Title 5, Sections 53203, 53207, 55001,  
55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753,  
55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759,  
55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104,  
and 58106

Register 91, Number 23; Register 93, Number 25; Register 93, Number  
42; Register 94, Number 38; Register 98, Number 7; Register 2000,  
Number 50; Register 2002, Number 8; and Register 2003, Number 18.

Los Rios Community College District, Santa Monica Community  
College District, and West Kern Community College District, Co-  
Claimants

Item 4 was postponed to the April hearing.

Item 5      *Behavioral Intervention Plans (BIPs), CSM 4464*

Title 5, California Code of Regulations,  
Sections 3001 and 3052

(Register 93, No. 17; Register 96, No. 8; Register 96, No. 32.)

Butte County Office of Education, San Diego Unified School District,  
San Joaquin County Office of Education, Claimants

These parameters and guidelines address the implementing regulations involved in special education services for children with disabilities. The regulations require an Individualized Education Program (IEP) team to develop a behavioral intervention plan whenever an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP.

Commission Counsel Matt Jones presented this item. He proposed two possible options and recommended that the Commission adopt the proposed statement of decision and the parameters and guidelines approving Option A which included a Reasonable Reimbursement Methodology (RRM) for reimbursement for mandated costs.

Parties were represented as follows: Diana McDonough, representing the claimants; Dr. Sandy Kludt, Mr. Mike Lenahan, and Ms. Mary Bevernick, witnesses for the claimants; Susan Geanacou and Jillian Kisse representing the Department of Finance.

There was considerable discussion among the Commission members, staff, and interested parties. Following that discussion and clarification from Chief Counsel Camille Shelton, Member Saylor made a motion directing staff to bring a modified statement of decision and parameters and guidelines before the Commission on April 19, 2013 that would: 1) include the RRM proposed in Option A but applying only to the initial filing period through the current fiscal year ; and 2) apply parameters and guidelines for claiming actual costs going forward. With a second by Member Olsen, the motion was adopted by a vote of 7-0.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)**

Item 10      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

*Note: This item will only be taken up if an application is filed.*

No applications were filed.

**STAFF REPORTS**

Item 11      Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

Item 12      Executive Director's Report

Executive Director Heather Halsey presented this item.

**PUBLIC COMMENT**

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).**

A.      PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et al. (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [*Discharge of Stormwater Runoff*, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. *California School Board Association (CSBA) v. State of California* et al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et al (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730) [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 12:19 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

## **PERSONNEL (action)**

- Item 13      Salary Adjustment: Attorney to the Commission/Chief Legal Counsel (CEA IV), pursuant to Government Code Section 17529

Assistant Executive Director Jason Hone presented this item. He explained that Item 13 is a salary adjustment for the Chief Legal Counsel.

Member Olson moved to increase the Chief Legal Counsel's salary by 5 percent effective March 1, 2013. With a second by Member Rivera, the motion passed with a vote of 7-0.

- Item 14      Salary Adjustment: Executive Director, pursuant to Government Code Section 17530

Assistant Executive Director Jason Hone presented this item. He explained that Item 14 is a salary adjustment for the Executive Director.

Member Olson moved to increase the Executive Director's salary by 5 percent effective March 23, 2013. With a second by Member Rivera, the motion passed with a vote of 7-0.

## **ADJOURNMENT**

Hearing no further business, Chairperson Reyes adjourned the meeting at 12:21 p.m.

Heather Halsey  
Executive Director

**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.  
**DATE:** Friday, January 25, 2013  
**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

PEDRO REYES  
(*Commission Chair*)  
Representative for ANA MATOSANTOS, Director  
State Department of Finance

SCOTT MORGAN  
Representative for KEN ALEX, Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

ANDRÉ RIVERA  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY  
Executive Director  
(Items 3, 10, and 12)

JASON HONE  
Assistant Executive Director  
(Items 13 and 14)



A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 11)

MATT JONES  
Commission Counsel  
(Item 5)



PUBLIC TESTIMONY

**Appearing Re Item 5:**

For Claimants San Diego Unified School District,  
San Joaquin County Office of Education, Butte County  
Office of Education:

DIANA McDONOUGH  
Fagen Friedman & Fulfrost LLP  
70 Washington Street, Suite 205  
Oakland, California 94607

SANDRA KLUDT  
Representative for  
San Joaquin County Office of Education  
Retired SELPA Director and Assistant Superintendant  
for Special Education, San Joaquin County Office of  
Education

R. MICHAEL LENAHAN  
Retired Chief Business Official

MARY BEVERNICK  
SELPA Director, Irvine Unified School Director  
Chair, Coalition for Adequate Funding for  
Special Education

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:**

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

JILLIAN KISSEE  
Education Appeals Audit Panel, Special Education,  
State Special Schools  
Education Systems  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Public Comment:**

ALLAN BURDICK  
CSAC SB-90 Service  
2001 P Street, Suite 200  
Sacramento, California 95811



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**Commission on State Mandates – January 25, 2013**

1 BE IT REMEMBERED that on Friday, January 25,  
2 2013, commencing at the hour of 10:00 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR REYES: We will call the January 25<sup>th</sup>  
8 Commission on State Mandates to order, please.

9 Thank you.

10 Would you please call the roll?

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Here.

13 MS. HALSEY: Ms. Olsen?

14 MEMBER OLSEN: Here.

15 MS. HALSEY: Mr. Morgan?

16 MEMBER MORGAN: Here.

17 MS. HALSEY: Ms. Ramirez?

18 MEMBER RAMIREZ: Here.

19 MS. HALSEY: Mr. Reyes?

20 CHAIR REYES: Present.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR REYES: Thank you.



**Commission on State Mandates – January 25, 2013**

1           The first order of business is election of  
2       officers.

3           We need to elect a chair.

4           Is there a motion? A nomination?

5           MEMBER CHIVARO: I'll nominate the Director of  
6       Finance as chair.

7           MEMBER MORGAN: Second.

8           CHAIR REYES: Any other nominations?

9           *(No response)*

10          CHAIR REYES: Any comments?

11          *(No response)*

12          CHAIR REYES: Seeing none, all in favor, say  
13       "aye."

14          *(A chorus of "ayes" was heard.)*

15          CHAIR REYES: Opposed?

16          *(No response)*

17          CHAIR REYES: Abstentions?

18          *(No response)*

19          CHAIR REYES: Thank you.

20          Nominations for Vice-Chair?

21          MEMBER RIVERA: I wish to nominate the State  
22       Controller's office, John Chiang.

23          MEMBER MORGAN: Second.

24          CHAIR REYES: Motion and a second.

25          MEMBER RAMIREZ: Second.

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1 CHAIR REYES: Any additional nominations?

2 *(No response)*

3 CHAIR REYES: Seeing none, any comments?

4 *(No response)*

5 CHAIR REYES: All in favor, say "aye."

6 *(A chorus of "ayes" was heard.)*

7 CHAIR REYES: Opposed?

8 *(No response)*

9 CHAIR REYES: Abstentions?

10 *(No response)*

11 CHAIR REYES: Congratulations.

12 Thank you.

13 Are there any corrections or objections to  
14 the minutes of December 7<sup>th</sup>?

15 *(No response)*

16 CHAIR REYES: Seeing none, any comments from  
17 the public on the December 7<sup>th</sup> minutes?

18 *(No response)*

19 CHAIR REYES: Seeing none, I had the privilege  
20 of discussing the minutes with the colleague who  
21 represented me, so I will be voting for that.

22 But I understand the Treasurer will be  
23 abstaining on that since he was not present.

24 MEMBER RIVERA: Correct.

25 CHAIR REYES: So all in favor -- or is there a

1 motion to approve the minutes?

2 MEMBER RAMIREZ: I so move.

3 MEMBER SAYLOR: Second.

4 CHAIR REYES: Moved and seconded.

5 Any comments?

6 *(No response)*

7 CHAIR REYES: Seeing none, all in favor, say  
8 "aye."

9 *(A chorus of "ayes" was heard.)*

10 MEMBER RIVERA: I abstain.

11 MEMBER MORGAN: I abstain.

12 CHAIR REYES: Two abstentions. We still have  
13 enough votes. Thank you.

14 MS. HALSEY: The next item is the proposed  
15 consent calendar, which consists of Items 6, 7, 8, and 9.

16 Are there any objections to the proposed  
17 consent calendar?

18 *(No response)*

19 MS. HALSEY: Is there a motion to adopt the  
20 proposed consent calendar?

21 MEMBER OLSEN: So moved.

22 MEMBER RIVERA: Second.

23 CHAIR REYES: So moved and seconded.

24 Any comments from the public?

25 *(No response)*

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1 CHAIR REYES: Seeing none, you guys don't want  
2 to add Item 5 to the consent, I see. Okay.

3 All in favor, say "aye."

4 *(A chorus of "ayes" was heard.)*

5 CHAIR REYES: Opposed?

6 *(No response)*

7 CHAIR REYES: Abstentions?

8 *(No response)*

9 CHAIR REYES: Thank you.

10 MS. HALSEY: Item 3 is reserved for appeals of  
11 the Executive Director's decisions. And there are no  
12 appeals to consider under Item 3.

13 CHAIR REYES: Okay.

14 MS. HALSEY: Let's go ahead and move to the  
15 Article 7 portion of the hearing.

16 Will the parties and witnesses for Item 5  
17 please rise?

18 CHAIR REYES: Those who will be testifying on  
19 Item 5 please rise for the swearing in.

20 *(The parties and witnesses stood to*  
21 *be sworn.)*

22 MS. HALSEY: Do you solemnly swear or affirm  
23 that the testimony you are about to give is true and  
24 correct based on your information, knowledge, or belief?

25 //

1                   (Parties and witnesses responded  
2                   affirmatively.)

3                   MS. HALSEY: Thank you.

4                   CHAIR REYES: Okay, Thank you.

5                   MS. HALSEY: Item 4 has been postponed to the  
6                   April hearing.

7                   So moving right into Item 5, Commission Counsel  
8                   Matt Jones will present Item 5, parameters and guidelines  
9                   on *Behavioral Intervention Plans*, or "BIPs."

10                  MR. JONES: Thank you.

11                  These parameters and guidelines pertain to the  
12                  *Behavioral Intervention Plans* mandate adopted by the  
13                  Commission on September 28<sup>th</sup>, 2000.

14                  The Commission approved reimbursement for  
15                  increased costs of implementing regulations promulgated  
16                  by the California Department of Education, which required  
17                  schools to assemble a special education local plan areas,  
18                  or "SELPAs," to provide individual behavioral assessments  
19                  and planning to address behavioral issues within a  
20                  special education pupil's individualized education plan.

21                  The claimants have requested reimbursement by  
22                  way of a reasonable reimbursement methodology or RRM,  
23                  based on a dollar amount, per average daily attendance,  
24                  ADA, calculated on the basis of survey results from a  
25                  sample of participating SELPAs.

1 State agencies have objected to the RRM  
2 proposal on the basis of their understanding of the  
3 requirements of the statutes authorizing an RRM. State  
4 agencies have also raised potentially offsetting revenues  
5 included in the annual budget acts which the claimants  
6 have disputed.

7 Staff has analyzed the RRM proposal and the  
8 offsetting revenues, and has taken the unusual step of  
9 offering the members two statements of decision and two  
10 parameters and guidelines.

11 Option A, if adopted, would approve the RRM  
12 proposal, finding that the statutory and constitutional  
13 standards of evidence needed to adopt the RRM have been  
14 met and that substantial evidence supports adoption of  
15 the RRM, consistent with the constitutional requirement  
16 to provide reimbursement for state-mandated increased  
17 costs.

18 Option B, if adopted, would deny the RRM, and  
19 instead provide for actual cost reimbursement on the  
20 ground that although the statutory authority to adopt an  
21 RRM is sufficiently broad, and the evidence satisfies the  
22 constitutional and statutory standards, the RRM proposal  
23 itself does not reasonably represent the costs incurred  
24 by the claimants and, therefore, the RRM does not satisfy  
25 the constitutional requirement to provide reimbursement

**Commission on State Mandates – January 25, 2013**

1 for state-mandated increased costs.

2 Both Option A and Option B include  
3 identification of potentially offsetting revenues  
4 consistent with the Commission's regulations and with  
5 Article XIII B, Section 6.

6 Staff respectfully recommends the Commission  
7 adopt the proposed statement of decision, Option A, and  
8 the attached parameters and guidelines approving the RRM  
9 for reimbursement for mandated costs.

10 Will the parties and their witnesses please  
11 state your names for the record?

12 MS. McDONOUGH: Diana McDonough for the  
13 claimants San Diego Unified School District, San Joaquin  
14 County Office of Education, Butte County Office of  
15 Education.

16 MS. GEANACOU: Susan Geanacou for Department of  
17 Finance.

18 MS. KISSEE: Jillian Kisse, Department of  
19 Finance.

20 MS. McDONOUGH: We are going to have additional  
21 witnesses.

22 Do they need to state their names at this  
23 point?

24 CHAIR REYES: When they come up, they can  
25 identify themselves for the record. I'm assuming that

1 they did take the oath as well.

2 MS. McDONOUGH: They did.

3 CHAIR REYES: Thank you.

4 All right. This is a hairy one. It's been  
5 going on since 1994. And because of the Bagley-Keene  
6 Act, I've not had the opportunity to discuss some of my  
7 thoughts with fellow board members.

8 There are a lot of pieces to this thing. And  
9 rather than having everybody come in and discuss every  
10 issue, I was wondering if the rest of the board members,  
11 Commission members, were open for me laying out sort of  
12 what I see as the, kind of just cleaning out the stuff,  
13 the low-hanging fruit and taking care of that, as I see  
14 it. And maybe you concur or not concur, and we just go  
15 through the full hearing.

16 The Department of Finance has requested that  
17 this thing be put over. I disagree. The law is the law.  
18 And if they come over with a piece of legislation that  
19 changes the law, then we will address parameters and  
20 guidelines at that time. But at this point, we need to  
21 address what stuff has happened since 1994.

22 The Controller doesn't like the reasonable  
23 reimbursement methodology because there are no audits in  
24 there to support or substantiate the costs identified.

25 Finance is concerned that some of the costs



1 are -- the ranges are pretty high, so to go forward in  
2 such a high range sort of sets it up for unknown costs  
3 that will never be verified.

4 The claimants suggest, and staff suggests, that  
5 the reasonable reimbursement methodology is a method of  
6 getting to a place without all the details to get us  
7 there; and, hence, the term reasonable reimbursement  
8 methodology. And, in fact, reasonable reimbursement  
9 methodology does not have a lot of requirements. It is  
10 just, put forward something that appears to be  
11 reasonable.

12 Then the burden comes to us: Is it reasonable?  
13 Does it make sense?

14 Finance believes that because the sample  
15 represents less than 12 percent of what the sample of the  
16 ADA is statewide is not reasonable, and the range is not  
17 reasonable.

18 Unless we go and have actual costs for what  
19 happened since 1994, it's all going to be a best guess.

20 To go with Option B, which requires actual  
21 costs, is not reasonable, because some of the folks who  
22 will be providing the time limits have since retired or  
23 otherwise.

24 If you go back to 1994 to now, some of the kids  
25 who were born in that year are actually in college now.

1 I mean, that's almost a generation ago that this thing  
2 happened.

3 So I don't think it's reasonable to go with  
4 Option B. But I wouldn't think it's reasonable to go  
5 with Option A as well.

6 So I would propose an Option C. And the "C"  
7 would go in terms of the reasonable reimbursement  
8 methodology, would cover the period between 1994 and some  
9 period. And that's where I'm going to rely on attorneys  
10 to tell me what is reasonable or what makes sense under  
11 the law.

12 I mean, the question is, how do you split the  
13 baby? What's your legal authority to split the  
14 reasonable versus the actual costs? The default is  
15 actual costs.

16 I mean, Option B is an option, and that's  
17 actual cost. But you have to apply some reasonableness  
18 to this, and say, "Well, you're not going to get actual  
19 costs for stuff that happened in 1994, 1995, and 1996."

20 There was a study done, and it was used for  
21 negotiation by Finance and the claimants at some point;  
22 so there was an agreement as to what costs were there and  
23 what would be covered. And it seems to me that's a good  
24 splitting point for what is reasonable reimbursement  
25 methodology for past; and then moving forward from that

1 point, or some point around there, that does cover actual  
2 cost.

3 And so I'm just throwing it out there. I don't  
4 know what -- I know this is...

5 And then we can get into the revenue issue as a  
6 second issue, but I would like to discuss this option  
7 first and see what folks think.

8 MS. SHELTON: Could I just clarify that the  
9 beginning period of reimbursement is July 1, 1993, not  
10 1994?

11 CHAIR REYES: Thank you. So it is a  
12 generation, 20 years. Thank you.

13 Thoughts, comments by board members?

14 Ms. Ramirez?

15 MEMBER RAMIREZ: Well, I still consider myself  
16 something of a newbie here, so I really appreciate your  
17 comments and your division of the issues.

18 I would like to hear from counsel and the  
19 claimants as to what they think about that.

20 CHAIR REYES: Absolutely.

21 But I just want to sort of -- if we use this as  
22 a framework, then I'd like folks who come in to testify  
23 to use that as a framework.

24 If there is complete disagreement, and there is  
25 enough votes to take either Option A or Option B, I can

1 be overruled, and that's a different conversation.

2 MEMBER SAYLOR: Mr. Chairman, I haven't made a  
3 final decision on whether I will support Option A or  
4 Option B, pending hearing what the claimants and other  
5 witnesses may have to present.

6 CHAIR REYES: Okay. Fair enough.

7 MEMBER SAYLOR: So I'd like to --

8 CHAIR REYES: Proceed with the full hearing?

9 MEMBER SAYLOR: -- proceed with the hearing and  
10 hear people out, and then make a judgment based on that  
11 evidence.

12 CHAIR REYES: Ms. Olsen?

13 MEMBER OLSEN: I'm sort of with Don --  
14 Mr. Saylor.

15 I think, though, I would like Option C to be  
16 included in that, because I find it to be an interesting  
17 "splitting the baby" sort of option. You know, it may  
18 have all of the bad stuff that goes along with splitting  
19 the baby, too; but it could solve some problems. So I  
20 would like that to be in the mix of the decision.

21 CHAIR REYES: All right. So as you testify,  
22 just keep those in mind.

23 MS. GEANACOU: May I ask a question, please?

24 CHAIR REYES: Yes.

25 MS. GEANACOU: Susan Geanacou for Finance.

1 I want to paraphrase what I think I heard you  
2 say on Option C, that it would be something akin to using  
3 the RRM proposed in Option A, going from 1993 to about  
4 the year the cost study data was based on, 2006-07, if I  
5 recall correctly; and then from that year forward on,  
6 that would be then actual costs.

7 Is that what you're saying?

8 CHAIR REYES: And part of the conversation I  
9 would like to take is, what would be the appropriate  
10 year. Because I don't know what the appropriate year is.  
11 And I don't know to what date schools would have data  
12 that is still validated. I don't know what that would  
13 be. And so I don't have a -- I didn't bring the silver  
14 bullet with me. So I would like to have that  
15 conversation as a frame. But we can go back to -- okay.

16 How's that for confusing the issue? Yes.

17 MS. McDONOUGH: I'm Diana McDonough.

18 Do I have to keep raising this thing, or do you  
19 think it's like --

20 CHAIR REYES: I think that should stay in  
21 place.

22 Do you want --

23 MS. McDONOUGH: Okay. I want to make sure you  
24 hear me.

25 CHAIR REYES: Oh, yes.

**Commission on State Mandates – January 25, 2013**

1 MEMBER OLSEN: We're hearing you, loud and  
2 clear.

3 MS. McDONOUGH: This is not my prepared  
4 remarks, but I need to say this to you.

5 We had an informal conference on April 25<sup>th</sup>,  
6 2011. The purpose of that conference was to get the  
7 Department of Finance and the Controller into the room  
8 with us to try and see what people thought about our RRM.

9 We have never had any conversations with the  
10 Department of Finance. There has never been any  
11 follow-up.

12 And I guess what I'm saying is, there were many  
13 opportunities to suggest the, quote, "commonsense" idea  
14 that you have suggested. None of them were ever put  
15 forward.

16 So I would really hesitate to suggest a time  
17 date that would be reasonable, cold turkey, bingo, like  
18 today.

19 I also would like to say that, to me, since the  
20 study was done in 2006-2007, it would certainly make  
21 sense that it's valid for five years forward, just as it  
22 is for 15 years backward.

23 So I don't see why we would think that  
24 suddenly, in 2007-2008, it is not valid. That doesn't  
25 make sense to me.

1 Now, that's just an overview of this.

2 I recognize this is a complicated program, but  
3 I also want to point out to you that the LAO found in the  
4 January 2013 study of special education, that doing per  
5 ADA funding of special ed. services is a sound approach;  
6 and that, in fact, generally speaking, the per ADA  
7 funding of special ed. -- sorry, I can't see you.

8 CHAIR REYES: We can hear you --

9 MS. McDONOUGH: I know, but I hate to miss  
10 Mr. Rivera and -- okay, or Ms. Ramirez.

11 Okay, so --

12 CHAIR REYES: Would you like to take the other  
13 seat instead?

14 It's a better spot for you, and have the other  
15 folks who testify take that spot since you'll be there  
16 longer than most. That's always an option.

17 MS. McDONOUGH: Certainly at the rate I'm going  
18 for sure. Sorry about that.

19 Okay, I'll just move on. And you can tell that  
20 this has, like, caught me flatfooted, and I need to think  
21 about it.

22 I understand where you're coming from, and I  
23 very much appreciate that you did not say it should be  
24 Option B for all the reasons that we can see why that  
25 would be a completely horrible idea, just to be

1 straightforward.

2 Now, I'm going to start what I planned to say,  
3 if I may, and I'll back up in a minute.

4 CHAIR REYES: So let me --

5 MS. McDONOUGH: Oh, the LAO, I didn't quite  
6 finish that.

7 CHAIR REYES: Let me -- for a second here.

8 Now, there is no requirement that I know of in  
9 the reasonable reimbursement methodology that the Finance  
10 or the State Controller join you in any of your meetings.

11 There is a provision in there that allows for  
12 a reasonable reimbursement methodology that gets worked  
13 on together. That is a section of the law that allows  
14 you folks to have this conversation and come up with  
15 something. But either party can walk away from that, and  
16 then we go to the default.

17 But the reasonable reimbursement methodology --  
18 I'm the chair. I'm with the Department of Finance, but  
19 I'm not representing Finance at this point.

20 That's Finance, right there (pointing).

21 But my point is that there is no requirement;  
22 that, you know, the fact that they chose not to  
23 participate in your efforts to come with reasonable  
24 reimbursement doesn't really mean anything.

25 In terms of the ADA, in either proposal, I'm



1 not challenging the ADA. I think the ADA is reasonable.

2 And what I'm saying, though, is that to tie --  
3 if you have data from -- if you take actual costs for a  
4 period of time to the present, or to the near future, and  
5 then if we adopt those actual cost expenditures as the  
6 methodology for the parameters and guidelines for the  
7 reimbursement, then at a future date, somebody can come  
8 in or request reasonable reimbursement, and at that  
9 point, you will have more information. That's why I  
10 wanted to split it.

11 MS. McDONOUGH: We will need to explore this  
12 more.

13 CHAIR REYES: Go ahead, go ahead.

14 MS. McDONOUGH: Okay. Let me say that the  
15 2006-2007 survey that we did, which was very extensive,  
16 was not very different from the claiming instructions  
17 that you get from the Controller.

18 In other words, I would say it's quite common  
19 that school districts, the year that something is  
20 finished, filled out their claim form. That's basically  
21 what they did: They filled out a form that said how many  
22 hours, what positions, and so on and so forth, in great  
23 detail. And we did spreadsheets for each of those  
24 returns, and so on.

25 So we feel the 2006-2007 study is virtually the

1 actual claim forms from that time period.

2 But, again, I bird-walk back to this, okay.

3 I want to start out by saying I'm here  
4 representing the claimants, but it's only thanks to the  
5 California School Boards Association Education Legal  
6 Alliance who paid for our firm's services because this  
7 matter is very important to all school districts for  
8 obvious reasons that you can see.

9 I also want to thank you Commission members for  
10 having paid attention to this, as I can see Mr. Reyes  
11 definitely has, and I trust the rest of you have. I know  
12 it probably is not completely stimulating reading, and  
13 we really appreciate however much you've managed to get  
14 through it; we appreciate that. It's important to school  
15 districts, and our time before you is important today.

16 I also want to thank the Commission staff who  
17 have managed to go through all of this. We have been  
18 impressed by their real diligence. I mean, I hope you  
19 guys know, this is a fabulous piece of work, whichever  
20 option you were to pick. And the staff has to be greatly  
21 complimented.

22 Requiring comments from us December 24<sup>th</sup>,  
23 reviewing them and posting a proposed decision on Friday,  
24 January 11<sup>th</sup> at 7:14 p.m. Okay, really impressive.

25 I had shut my computer down at 5:00 p.m.,

1 confident that no normal civil servant was going to do  
2 anything like that. And guess what?

3 CHAIR REYES: They were answering my questions  
4 at 10:00 p.m. last night.

5 MS. McDONOUGH: Now to the business at hand.

6 I am going to address a little bit more about  
7 Option A and Option B.

8 When I considered this, Option C was not  
9 available, but I imagined some correlates will follow  
10 from that.

11 I'd like to give you a little bit of background  
12 about that choice, and then we'll have three witnesses  
13 with some firsthand knowledge about the nature of this  
14 mandate.

15 We support the staff recommendation for  
16 Option A. Option A allows school districts to be  
17 reimbursed based on a per ADA formula for each year that  
18 the mandate existed and exists.

19 Speaking broadly, since there are about six  
20 million students in California and Option A rests on a  
21 formula of a little more than \$10 per regular ed.  
22 student, this amounts to approximately \$60 million per  
23 fiscal year, adjusted upward or downward based on  
24 inflation.

25 Option B requires the claims based on actual

1 costs for fiscal year 1993-94, and every year thereafter,  
2 now 20 years.

3 So, in fact, the kids that got those services  
4 in '93 and '94 were born, you know, before that, okay.

5 It doesn't take a rocket scientist to recognize  
6 that such a task would be gargantuan and its  
7 uncertainties incalculable. Difficult for school  
8 agencies to put valid claims together. Harder yet for  
9 the Controller to audit, and virtually impossible for  
10 Finance to predict and budget for.

11 And I do want to note that in its comments that  
12 the Controller filed, the Controller made technical  
13 corrections to Option A, parameters and guidelines, and  
14 Option B.

15 The Controller's response did not say it  
16 opposed Option A. And if I were the Controller, I would  
17 stick with that.

18 Before our witnesses explain what this mandate  
19 is for and why it's so expensive, I want to address a  
20 couple items: A little bit of history and a word on  
21 offsets, which Mr. Reyes sort of put aside, but I need to  
22 address it for a moment.

23 Special education, public education for  
24 students with disabilities, is driven by federal law, as  
25 you probably know. Federal law requires that every

1 student receive -- every student with a qualifying  
2 disability receive a free appropriate public education.

3 Are you familiar with that term? F-A-P-E, a  
4 "FAPE."

5 General education students, students without  
6 disabilities, do not have a right to a FAPE. They have  
7 a right to a free public education but not a free  
8 appropriate public education.

9 This FAPE-appropriate must be set out in an  
10 IEP, an individualized education program, IEP, which is  
11 developed at a meeting, including parents and education  
12 professionals.

13 Now, the original federal law was a grant  
14 program. We all know how these grant programs work,  
15 though, don't we? It was not, quote, "required" that  
16 every state participate; but if a state wanted the  
17 federal money, it needed to meet the law's conditions and  
18 submit a state plan.

19 California submitted its California Master Plan  
20 for special ed. in or around 1980.

21 Ultimately, all states chose to participate in  
22 this voluntary plan.

23 Our state plan included more than the federal  
24 law required, and so the mandate question began.

25 As you may know, if a mandate is required by

1 federal law, the state need not fund it. But if it is in  
2 excess of federal law, the state must fund the excess.

3 A California Court of Appeal found that the  
4 federal grant program was actually a requirement; but  
5 that if the state mandated more of local agencies than  
6 federal law demanded, school districts would qualify for  
7 reimbursement.

8 This commission considered a number of these  
9 issues, and I was present at that time in the late  
10 nineteen-nineties, and found many requirements of  
11 California special education were in excess of federal  
12 law.

13 In 2000, this Commission found that the *BIP*  
14 mandate was in excess of federal law, the mandate you're  
15 considering today.

16 Now, the other special education mandates the  
17 Commission found were addressed in the consolidated  
18 special education mandated cost settlement of 2000, which  
19 is memorialized in the Ed. Code. \$100 million was added  
20 annually to the special education line item as a result  
21 of that settlement, and more than \$500 million paid  
22 retroactively. In exchange, school agencies agreed to  
23 waive all mandated cost claims for those matters.

24 One special education mandate was not included.  
25 Guess which one? The *BIP* mandate. It is specifically

1 named as being excluded in the Education Code. And so it  
2 is before you today, the *BIP* mandate.

3 *BIP* was different in 2000. It was the elephant  
4 in the room when that settlement developed.

5 The other mandates have been around as part of  
6 the Master Plan since approximately 1980; but *BIP*, only  
7 since 1993-94.

8 Everyone knew it cost a lot, but nobody knew  
9 how much. Everybody knew it was likely to blow up the  
10 global special ed. settlement, so the parties agreed to  
11 kick the can down the road, which it happened until  
12 today.

13 Now, we are seeking a tool whereby school  
14 agencies can be reimbursed for implementing this law  
15 since 1993-94. End of history.

16 A word on offsets. We continue to disagree  
17 with the staff recommendation that there should be  
18 revenue -- any revenue which districts must offset  
19 against this claim. The special education funding  
20 stream, a specific line item in the budget, existed long  
21 before *BIP*; and it was never increased in light of *BIP*.

22 It was increased with the special education  
23 settlement discussed above and more recently, with the  
24 transfer of certain mental health programs; but not  
25 because *BIP*.

1           To require districts to reapportion their  
2       preexisting special education funds as of 1993-94 to pay  
3       for *BIP* is contrary to the constitutional requirement  
4       that agencies should receive new dollars for new  
5       programs.

6           However, the most egregious offset language  
7       involves AB 1610, which applies only to 2010-11 and  
8       forward.

9           AB 1610 requires that special ed. dollars be  
10      first used to fund *BIP*.

11          AB 1610 is being challenged in the courts, and  
12      we will later petition to amend these parameters and  
13      guidelines in light of that, if necessary.

14          So we continue to believe that you should  
15      delete the offset language, whether you choose Option A  
16      or Option B or Option C.

17          Now, for our witnesses.

18          *(Handout was distributed to Members of the*  
19      *Commission.)*

20          CHAIR REYES: Thank you.

21          MS. McDONOUGH: Sorry for this pause. I just  
22      wanted to make sure that everybody could follow what is  
23      happening to these people and who they are.

24          CHAIR REYES: You're delaying us.

25          I'm kidding. Go ahead.



**Commission on State Mandates – January 25, 2013**

1 MS. McDONOUGH: Okay, just don't be mentioning  
2 Option C, then I'll make a deal, I'll be real fast.  
3 Okay.

4 We have three people who are going to appear.

5 Dr. Sandy Kludt, who is a representative of the  
6 BIP claimant for San Joaquin County Office of Education,  
7 and she has retired as their SELPA director and assistant  
8 superintendent for special ed., and has worked on this  
9 claim for many, many years. She is going to talk about  
10 basically the nature of this mandate: Why is it so  
11 expensive?

12 Mike Lenahan, a retired chief business  
13 official, is someone that we retained when we started  
14 working on this survey. He'll talk to you briefly about  
15 the nature of the survey methodology.

16 And finally, Mary Bevernick who is a SELPA  
17 director for Irvine Unified School District and is chair  
18 of the Coalition for Adequate Funding for Special  
19 Education. She will talk to you a little bit about the  
20 claiming process and what that could mean to special  
21 educators.

22 So Sandy, would you begin?

23 By the way, I neglected to ask what I meant to  
24 earlier, which is, will you be asking questions of the  
25 witnesses, or do you want to wait until our whole

1 presentation is over? How do you want to do that?

2 CHAIR REYES: I will defer to the  
3 commissioners.

4 I think as issues come up, I think it's fair  
5 to ask the questions so we understand. But we also  
6 reserve the right to call them back for clarification if  
7 something triggers their memory cells.

8 Is that reasonable?

9 MEMBER OLSEN: So, yes to both.

10 MEMBER SAYLOR: Yes.

11 MS. KLUDT: All right, good morning.

12 CHAIR REYES: And I'm not an attorney and I  
13 answer that way.

14 MS. KLUDT: It's one of those, it depends.

15 As Diana indicated, I am Dr. Sandy Kludt, and  
16 I serve as the consultant for special education for the  
17 San Joaquin County Office of Education, the office from  
18 which I retired in 2008. I retired with 36 years of  
19 experience in the field of special education, 28 of those  
20 years having served as an assistant superintendent of  
21 special ed. and SELPA director.

22 In 1994, I moved from the Tri-County Consortium  
23 in the Foothills to San Joaquin County to assume the  
24 assistant superintendent and SELPA director position.

25 As the previous SELPA director was orienting me

1 to my new position, she commented: "I'm leaving this job  
2 to you with everything pretty much caught up. The only  
3 thing currently on your desk to be completed is that,"  
4 pointing to the *BIP* Hughes bill mandate claim, and  
5 explaining that San Joaquin County office was, indeed,  
6 one of the three claimants.

7 That was 20 years ago, and we still have not  
8 received any reimbursement for the activities required by  
9 the mandate.

10 As the SELPA director, some of my  
11 responsibilities were to ensure that the districts in my  
12 SELPA and county office special education programs were  
13 compliant with all state and federal laws and mandates,  
14 and making sure that I was supervising the development of  
15 policies, filing of reports, and the organization of  
16 training to implement all requirements concerning special  
17 education and specifically related legislation, such as  
18 the *BIP* Hughes bill mandate.

19 As I supervised the implementation of all of  
20 the *BIP* Hughes bill requirements throughout our SELPA, I  
21 realized what an extremely complicated mandate it really  
22 is. It is truly much more than a simple scoliosis  
23 screening mandate.

24 The *BIP* Hughes bill mandate applies to our  
25 students with the most serious, dangerous, and assaultive

1 behaviors. They are students who oftentimes physically  
2 act out because they have not learned how to control  
3 their behavior. And in that process, if not correctly  
4 managed, can seriously injure themselves, other students,  
5 and/or staff.

6 The requirements apply to students for whom  
7 less involved behavioral plans and goals and objectives  
8 have not been successful, leaving themselves and others  
9 at risk, and requiring a high level of positive  
10 intervention.

11 The mandate requires very time-consuming and  
12 involved assessments done by very specifically trained  
13 personnel.

14 The purpose of these functional analysis  
15 assessments is to determine what antecedents caused these  
16 potentially serious behaviors, and what consequences are  
17 reinforcing these behaviors and causing them to reoccur.

18 Following the special education assessment, a  
19 positive behavioral intervention plan is developed,  
20 focusing on the behaviors to be addressed which will  
21 replace the potentially dangerous behaviors reflected in  
22 the assessments.

23 The plans and goals and objectives are  
24 developed in lengthy IEP meetings, which include  
25 additional team members, such as the assessor, who has

1 had special training in behavioral analysis with an  
2 emphasis on positive behavioral interventions, as well as  
3 a behavioral intervention case manager, who we call the  
4 "BICM," who evaluates the effectiveness of the behavioral  
5 intervention plan in accordance with the Hughes bill  
6 requirements.

7 An extensive amount of data collection is  
8 required to determine whether PBIPs are being successful  
9 or not.

10 Subsequent meetings are held to monitor  
11 progress being made and to determine if changes in the  
12 plan are necessary or, in fact, if additional functional  
13 analysis assessments are needed.

14 After all, safety is the major concern  
15 regarding our students and staff.

16 The SELPA is also required to adopt a policy  
17 and administrative regulations which addresses all  
18 components of the Hughes bill; and they must be reviewed  
19 and, if necessary, modified whenever applicable  
20 legislation is chaptered.

21 The SELPA is also required to adopt acceptable  
22 emergency interventions to be utilized to control  
23 unpredictable, spontaneous behavior, which poses clear  
24 and present danger of serious physical harm to the  
25 student or others.

1           We have had students suddenly throw a desk or  
2           chair through the room when extremely upset or  
3           frustrated, or suddenly bolt from the classroom. These  
4           types of behaviors can sometimes call for an emergency  
5           intervention, which may not be addressed in the positive  
6           behavioral intervention plan.

7           Because of the seriousness of the acting-out  
8           behavior, special training on these specific emergency  
9           interventions, which can and cannot be used in these  
10          emergency situations, must be completed.

11          Because of the turnover of staff throughout the  
12          year or from year to year, training is not a one-time  
13          activity.

14          When emergency interventions are utilized,  
15          parents must be contacted within one school day, and a  
16          report must be completed immediately and ultimately sent  
17          to the California Department of Education.

18          Again, follow-up IEP meetings are held to  
19          determine the necessity for additional training for staff  
20          and/or the need for additional functional assessments or  
21          possible modifications to the PBIP.

22          Because the positive behavioral intervention  
23          plan is a specific part of the IEP, the functional  
24          analysis assessments and the PBIPs are sometimes areas of  
25          disagreement between the districts and the parents, and

1 due-process proceedings may result.

2 These proceedings are very costly and  
3 time-consuming because they entail a great deal of staff  
4 preparation and may involve attorneys.

5 The San Joaquin County SELPA supports the  
6 reimbursement methodology as proposed under Option A.  
7 Our costs, as borne out by the survey, were actually  
8 \$25.40 per ADA, as compared to the proposed RRM of \$10.64  
9 per ADA. So we would obviously receive less  
10 reimbursement.

11 However, not having the burden of filing actual  
12 claims, and having the predictability of somewhat of a  
13 known reimbursement amount, helps compensate for the  
14 loss.

15 And in this day of budgeting, being able to  
16 budget at a more known number rather than a guesstimate  
17 is huge. It is generally much easier to predict the  
18 District's ADA for the following year than it is to  
19 predict the types of students or needs which might move  
20 into or move out of one of our districts.

21 So on behalf of the San Joaquin County SELPA,  
22 I wish to thank you today for not only the opportunity to  
23 speak with you, but also for the endless number of hours  
24 and for the commitment you have all given to reviewing  
25 the information associated with this *BIP* Hughes bill

1 mandate claim.

2 I look forward to a positive resolution.

3 CHAIR REYES: Thank you.

4 Any questions from Board members?

5 MEMBER RAMIREZ: I do have one question. It  
6 might be slightly off topic.

7 MS. KLUUDT: All right.

8 MEMBER RAMIREZ: Is it, what would be the  
9 criteria used to -- is there a specific reference to a  
10 criterion that would be used to say a particular student  
11 can't be in public school versus the ones who can be,  
12 even with all of these challenges?

13 MS. KLUUDT: We are governed, of course, by  
14 state and federal law regarding our placements for our  
15 students, and we are also required to identify what we  
16 call the least restrictive environment for each child.  
17 And that means that they would not be removed from public  
18 education any more than necessary for them to receive  
19 their FAPE, their *free appropriate public education*.  
20 So, generally, what we look at is to see if they need a  
21 more restrictive environment to be basically safe in the  
22 classroom. That's one of our highest priorities.

23 So if everything we have planned, including all  
24 these functional assessments and analysis assessments and  
25 the PBIPs and such, and we're still seeing pretty serious



1 acting-out behaviors, we would look at a more restrictive  
2 setting, possibly a non-public school, for example, so  
3 that we can get them into a safer environment for not  
4 only themselves, but for all the other children they  
5 would be leaving.

6 MEMBER RAMIREZ: Are there uniform rules for  
7 the schools in California, as to who or what particular  
8 characteristics of a student require them to be in the  
9 classroom versus not in a classroom?

10 MS. KLUDT: You know, that is all decided by  
11 the individual educational planning team meeting,  
12 including the parents.

13 So, you know, they look at, based on the  
14 assessments, what the needs are of the students, and how  
15 they can meet those needs and what placement is most  
16 appropriate for them. And that may be in a public school  
17 setting and it may not be.

18 MEMBER RAMIREZ: And the school district would  
19 still pay for that placement if it's out of the  
20 classroom; is that correct?

21 MS. KLUDT: If the IEP team, including the  
22 district, decides that's the most appropriate placement  
23 for the child, yes, they would assume costs for that  
24 placement.

25 MEMBER RAMIREZ: Thank you.

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1 CHAIR REYES: Thank you.

2 Your next witness, please?

3 MS. McDONOUGH: Mike Lenahan is our next  
4 witness.

5 MR. LENAHAH: Good morning.

6 CHAIR REYES: Good morning.

7 MR. LENAHAH: As Diana indicated, I am Mike  
8 Lenahan. I am one of the two fiscal consultants that  
9 worked on compiling the costs of this mandate.

10 My education includes a BS in accounting and  
11 an MBA in finance. I have over 30 years' experience in  
12 school district business. My last position before  
13 retiring was associate superintendent for Alameda County  
14 Office of Education. Before that, I was deputy  
15 superintendent for Fairfield-Suisun Unified School  
16 District.

17 Since retiring, I have served in several  
18 interim school chief business official positions.  
19 I was retained by Fagan, Friedman & Fulfroost through  
20 Diana McDonough in December 2007 to work on compiling the  
21 costs. I have known Diana McDonough professionally for  
22 over 30 years.

23 I asked Linda Grundhoffer to assist. She is  
24 here today.

25 *(Ms. Grundhoffer raising hand.)*

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1           MR. LENAHAN: She has over 30 years experience  
2           in school districts.

3           Recently, for a period of four years, she was  
4           the State trustee for West Contra Costa Unified School  
5           District, until they paid off their state loan.

6           Currently, she is the chief business official  
7           for the South Monterey County Joint Union High School  
8           District.

9           I'd like to take this opportunity to compliment  
10          the Commission staff in the compilation of their report.  
11          It was very well done.

12          I am here to explain our data-gathering  
13          process.

14          The survey was developed by Diana McDonough and  
15          her staff, with Department of Finance input and  
16          concurrence. This occurred from October 2007 through  
17          December 2007.

18          Linda Grundhoffer and I gave some input on the  
19          survey, towards the end, to help make sure we would  
20          receive the data we needed.

21          The survey was broken down into three areas:  
22          behavioral intervention case manager, the school district  
23          level, and the SELPA level.

24          SELPAs were asked to volunteer in December 2007  
25          to fill out the surveys and provide the related salary

1 and benefit information.

2 This was truly a volunteer effort, which was  
3 completed in addition to each person's regular work.

4 The survey was for the services and costs of  
5 the 2006-2007 school year, except for the one-time cost  
6 to develop the initial procedures in 1993-94.

7 The BICM surveys were completed by the actual  
8 person who provided the service, or in some cases, their  
9 supervisor who had firsthand knowledge. The SELPA  
10 directors completed their survey. We did not use any  
11 information that could not be verified. Thus, this  
12 survey information is very reliable.

13 The surveys were collected by the Fagan,  
14 Friedman & Fulfrost office under the direction of Diana  
15 McDonough and Kate Parnes.

16 Ms. Parnes, an educational consultant with the  
17 firm, is a retired school administrator of 34 years,  
18 holding past positions of Director of Special Education  
19 for Santa Clara County Office of Education, Director of  
20 Pupil Services for Evergreen School District, and SELPA  
21 Director for Southeast SELPA in Santa Clara County.

22 Ms. Parnes is here today also. She reviewed  
23 the survey returns for accuracy, thoroughness, and  
24 reasonableness. If a question arose regarding the data  
25 or if a survey was incomplete, Ms. Parnes followed up by

1 telephone and e-mail to obtain the correct information.

2 Surveys were either resubmitted at that time or  
3 corrected within the permission of the SELPA. Copies of  
4 all surveys received were made and sent to the State  
5 Department of Finance.

6 Linda Grundhoffer and I developed the  
7 spreadsheet to tabulate the survey information and  
8 calculate the costs.

9 We have a binder full of the spreadsheets,  
10 which is a compilation of all of the surveys.

11 We also compared our calculations with DOF's  
12 calculations and reconciled the differences. This  
13 included meetings with DOF, as well as telephone calls  
14 and e-mails, until we both agreed on the accuracy of the  
15 costs.

16 The volume of information was large, and often  
17 we needed to call school personnel to obtain  
18 clarification or obtain missing information such as  
19 district salary schedules. Linda Grundhoffer and I  
20 personally compiled the information since, after review,  
21 we determined that the information and process was too  
22 complex for a clerical person.

23 Based on my experience, the sample SELPAs and  
24 districts are representative of the SELPAs and districts  
25 in the state. We developed a list for SELPAs to sign

1 up to participate in the survey. It was divided into  
2 subgroups based on ADA to ensure we had an adequate  
3 sampling from SELPAs of various sizes. 21 SELPAs  
4 participated, making up 197 school districts and  
5 11 county offices.

6 The 674,000 ADA included represents  
7 approximately 12 percent of the state's ADA, and the  
8 197 districts represent approximately 20 percent of the  
9 state's school districts.

10 There is no evidence that would suggest that  
11 the costs would be, on average, any different between  
12 Southern California and Northern California.

13 The RRM is a reasonable method of  
14 reimbursement. In special ed., the needs of students  
15 vary from year to year, so the need for these additional  
16 services will vary from year to year. Thus, it makes  
17 sense to fund this on an ADA basis. As a school business  
18 official, I would prefer to have a known figure per ADA  
19 each year.

20 In addition, as noted in the Legislative  
21 Analyst's office's January 3<sup>rd</sup>, 2013, report on special  
22 education, California's special education funding model,  
23 which was based on ADA, is based on the implicit  
24 assumption that special education students are relatively  
25 equally distributed among the general population and

1 across the state. Indeed, the LAO report finds that most  
2 SELPAs do report serving proportionately similar numbers  
3 and types of students with disabilities.

4 As noted, the settlement agreement with the  
5 State was based on a per ADA amount, and was supported by  
6 over 95 percent of the school agencies representing  
7 99.85 percent of statewide ADA.

8 When the settlement did not get funded by the  
9 Legislature, Diana McDonough suggested using the survey  
10 as the basis of an RRM. I agreed, and worked on figures  
11 to calculate the RRM.

12 As noted in the proposed statement of decision,  
13 the State has funded special education on a per-ADA basis  
14 since 1997. The recent LAO report also noted that  
15 special education funding is based on the overall student  
16 population, not the number of disabled students.

17 As noted in the proposed statement of decision,  
18 claimants have been providing these mandated services for  
19 19 years without any reimbursement from the State. This  
20 very extended time frame is certainly not what the  
21 California Constitution had in mind.

22 Thank you for the opportunity to speak to you  
23 today.

24 CHAIR REYES: I do have a question.

25 Refresh my memory, the 21 SELPAs that

1 participated, was that a random statistical valid sample  
2 or was it just people who opted in to participate?

3 MR. LENAHAAN: They were volunteers.

4 CHAIR REYES: So volunteers? So it's not  
5 really statistical, you know, back from the statistics  
6 classes where you do the random sample, and you take a  
7 very small sample, and you could extrapolate.

8 When you were following up on the surveys, what  
9 kind of questions did you follow up when you had the  
10 range of a \$1.31 in one place, to \$81.91 in another?

11 MR. LENAHAAN: The questions that we asked were  
12 basically on the data that was provided. So we were  
13 asking if they didn't provide the salary information so  
14 that we could do a calculation, we'd ask for that.  
15 Because the survey, and our compilation, is based on the  
16 actual costs. So it wasn't -- we weren't trying to  
17 control a range.

18 CHAIR REYES: No, no, no. But, I mean, when  
19 somebody comes in at, you know, in this case, one-tenth  
20 of the cost, did anybody follow up and ask, "Did you  
21 leave this off," or when there was somebody on the high  
22 end, did anybody follow up and say, "What did you  
23 include? Did you include the car?" or...?

24 I mean, because the range is pretty -- that is  
25 my concern, is that the range is pretty broad.



1 MR. LENAHAN: Well, let me just say, is that  
2 the surveys, in our compilation, is the actual costs. So  
3 nobody included a car or something like that. This is  
4 what the districts really spent.

5 But I think you need to understand, in special  
6 education, that the students don't come kind of  
7 homogenously throughout the year or throughout the years.

8 So my experience, like, in Fairfield-Suisun is  
9 one year, we had six autistic kindergarten students  
10 which, you know, was kind of off the chart.

11 So the same sort of thing occurs here, is that  
12 these are not, you know, like it happens like clockwork.  
13 It depends on what happened.

14 So that district, that had a high cost in  
15 2006-07, may have a lower cost in 2007-08.

16 What we were counting on is, what is the actual  
17 cost? And I believe, in my opinion, we have a big enough  
18 sample that you'll get a good average.

19 And I think, as I indicated in my talk here, is  
20 that, you know, the school districts agreed with that,  
21 too. I mean, we had 95 percent that said, "Yes, let's go  
22 forward with this," when we were negotiating the  
23 agreement.

24 CHAIR REYES: And, again, I don't take issue  
25 with using ADA. I think that's not unreasonable. I

1 mean, we have to come up with something, and so I don't  
2 have issue with that.

3 Anyway, that's --

4 MR. LENAHAN: Well, let me just also say, if  
5 you looked at special ed. costs by SELPA or district and  
6 stuff like that, the amount that the district has to --  
7 of those costs per the special ed. students varies, too,  
8 throughout the state. This is not an unusual sort of  
9 thing that they're going to have some varieties. I  
10 experienced that in several school districts I've worked  
11 for.

12 CHAIR REYES: Right. And so the information  
13 was self-reported, though? In other words, nobody went  
14 back and confirmed that, in fact, there are receipts for  
15 the costs included?

16 MR. LENAHAN: Well, but the costs included were  
17 mostly salary costs. And so there isn't kind of like --  
18 I mean, there were some consultant, but that was very  
19 minor. It was always pretty -- you know, it's about the  
20 staff time to implement this mandate.

21 CHAIR REYES: As reported by the district  
22 without verification, by anybody other than the district?

23 MR. LENAHAN: Well, that -- yes, the people --  
24 you know, the staff, as we said, who actually provide the  
25 services, put down how much time they spent. And these

1       were also re-reviewed by their director. And, as I  
2       mentioned, Ms. Parnes also looked at the surveys that  
3       came in and looked for reasonableness to see whether or  
4       not there was something that was off the charts.

5               And occasionally there was, and Ms. Parnes took  
6       care of following up to make sure that we got accurate,  
7       verifiable data.

8               CHAIR REYES:   Okay, thank you.

9               MR. LENAHAAN:   Uh-huh.

10              CHAIR REYES:   Any questions from the board  
11       members?

12              *(No response)*

13              CHAIR REYES:   Thank you.

14              And you have a third witness?

15              MS. McDONOUGH:   Yes.

16              Could I add one thing to that commentary for a  
17       moment?

18              CHAIR REYES:   Sure.

19              MS. McDONOUGH:   I just wanted to mention that  
20       on the survey data, the \$80 ADA figure is from Modoc  
21       County, which is a very small county; and so, therefore,  
22       weighted very low in the overall, you know, averaging of  
23       how it went. And also -- that's the only one that's up  
24       crazy like that.

25              And I just want to mention that there's a

1 couple of possibilities.

2 One is, when you're in a small area and you get  
3 one expensive kid, it can put you way off the charts for  
4 a couple years, then you come back down.

5 Another is that there may be some  
6 transportation issues around getting the necessary  
7 experts when you are in a place like Modoc County.

8 So I'm not sure all the reasons; but I'm just  
9 saying, it's important to note, it's the very -- it's the  
10 smallest, you know, ADA people that have that problem  
11 more often.

12 If it's a large ADA, it tends to more even out.

13 CHAIR REYES: Right.

14 And then the other, the low end was Inyo, which  
15 is also pretty rural, so that made it kind of odd.

16 And so that goes to my point, that when the  
17 sample took place, you could have had a very expensive  
18 case, and that is now built in as the permanent.

19 So that's my concern with using the reasonable  
20 reimbursement methodology on an ongoing basis is that  
21 whatever happened at that point in time, it's a good  
22 slice of that window of time.

23 And I would like to see another slice of window  
24 time before I go into a permanent reimbursement  
25 methodology.

1           That's why the "C" issue for me. Because if  
2           you look at what actual expenditures from whatever  
3           period, were we to go to Option C, then you could have  
4           this wider data that then you can extrapolate a more  
5           reasonable reimbursement; because you're not only looking  
6           at 21 SELPAs, hopefully, you're looking -- I mean, it  
7           would be a deal if you didn't have any SELPAs -- but if  
8           you had a larger sample.

9           But that's just where I'm coming from.

10          Yes, Commissioner Saylor?

11          MS. McDONOUGH: Could I say --

12          CHAIR REYES: Go ahead.

13          MEMBER SAYLOR: I think that any slice will  
14          have the same kind of anomalies. So it doesn't matter  
15          which time it is going to be. The next slice that could  
16          be taken would have an anomaly in a different county.

17          MS. McDONOUGH: That's exactly -- basically --  
18          in other words, one is low, one is super high; and those  
19          are especially those small counties like Inyo, Mono, and  
20          Modoc; and then the next time, it will be switched  
21          around. But overall, it's basically reasonable.

22          CHAIR REYES: Okay.

23          MEMBER SAYLOR: It washes out in the...

24          MS. McDONOUGH: It washes out.

25          But, anyway -- okay, the next witness.

1 Mary Bevernick is here to talk a little bit  
2 about what would be involved in getting actual claiming  
3 data.

4 MS. BEVERNICK: Good morning, Commissioners.

5 CHAIR REYES: Good morning.

6 MS. BEVERNICK: I am Mary Bevernick, SELPA  
7 director for Irvine. A single-district SELPA in Southern  
8 California, Irvine's ADA is about 28,000, and our special  
9 ed. count as of December 1<sup>st</sup>, 2012, is about 2,600.

10 I've been the SELPA director for Irvine for the  
11 past five years, and I have been a special education  
12 administrator for the past 15 years.

13 I'm also the chair of the Coalition for  
14 Adequate Funding for Special Ed., a California  
15 organization of special educators, mainly SELPA  
16 directors, whose mission is to promote full funding for  
17 special education at both the federal and the state  
18 level.

19 I sit before you this morning to urge you to  
20 adopt Option A and its reasonable reimbursement  
21 methodology to resolve the *BIP* Hughes bill mandate claim  
22 that has dragged on for the past 20 years.

23 Let me first say that SELPAs are adamant about  
24 being reimbursed. We will make sure that we do what is  
25 needed to receive dollars owed to us.

1           As SELPA directors, we constantly face  
2           underfunding of our programs. We are dedicated to  
3           pursuing every dollar that it takes to provide the  
4           necessary programs for students. The very existence of  
5           the Coalition for Adequate Funding for Special Education,  
6           the organization I chair, not only speaks to our  
7           dedication toward the proposition, but also to situations  
8           such as the one we are discussing today.

9           This giant unfunded mandate has existed far too  
10          long. We have pursued, and we will continue to pursue  
11          a solution until the issue is resolved. And we so  
12          appreciate the opportunity to potentially resolve the  
13          issue because we do need a resolution after 20 years.

14          Option A offers the best reimbursement option.  
15          It relies on samples submitted by 21 SELPAs, based on the  
16          2006-2007 data. The data has been examined and reviewed  
17          and deemed to be accurate, actual costs by all parties.

18          Although there is cost variation among SELPAs,  
19          we are comfortable with that variation due to size  
20          variations among SELPAs and frequency variations  
21          regarding issues with students.

22          We are subject to specific behaviors of the  
23          particular students we serve in any given year. Those  
24          variations are mitigated by the size of the SELPA, as was  
25          just being discussed.

1           We are all keenly aware that wide variations  
2       occur from year to year and SELPA to SELPA; but that we  
3       are all subject to the behaviors of whoever walks in the  
4       door in any given school year.

5           In analyzing a variety of funding options for  
6       particular programs, the SELPA organizations and the  
7       Coalition for Adequate Funding have found that overall  
8       per-ADA funding is overtime, the most equitable funding  
9       option, in general. Episodic funding is less reliable  
10      and requires far more detailed and frequent analysis.

11          In this case, we're considering funds over a  
12      long period of time and circumstances. An overall ADA  
13      model is preferred.

14          We believe that there is value in simplicity of  
15      formula. If you were to adopt a plan to collect data  
16      back to 1993, we believe that there would be a host of  
17      issues to be addressed.

18          BIP information is available through IEP  
19      documents.

20          Current data collection systems store IEPs, but  
21      not back to 1993. Hardcopy files will be difficult to  
22      retrieve. When available, they will need to be searched  
23      by hand.

24          Processes that lead to BIPs and follow BIP  
25      implementation will need to be captured. This



1 information is not aggregated in any data system. It  
2 will need to be gathered by unstructured means.

3 Information to be gathered includes staff time  
4 in a multitude of activities such as scheduling and  
5 holding IEP meetings to determine the necessity of an FAA  
6 that would lead to a BIP, developing a BIP after hours of  
7 observation and interviews, monitoring implementation of  
8 the BIP across settings.

9 Potential difficulties in gathering the above  
10 information that is not already in a database: student  
11 mobility, staff mobility, and inconsistent  
12 record-keeping. Nonetheless, the data can be collected.

13 If you do not adopt Option A, the data will  
14 be collected at great time and expense. It will be  
15 submitted to the Controller, who will be required to  
16 spend a great deal of time and expense to verify the  
17 data.

18 But we already have a snapshot in time from  
19 21 SELPAs collected in 2006-07. Why would we not use the  
20 verified data to inform the reasonable reimbursement  
21 methodology? Would that not be a reasonable method?

22 I can assure you that SELPAs across California  
23 would commend you for adopting an actual reasonable  
24 reimbursement methodology rather than attempting to  
25 impose unreasonable procedures in an attempt to choose a

1 different definition of equity, which will surely result  
2 in further perceptions of inequity.

3 Please carefully consider Option A.

4 Thank you for the opportunity to present on  
5 this topic. It is a topic that has plagued SELPAs for  
6 many years due to the unfunded status. We would so  
7 appreciate its resolution.

8 Again, thank you for this opportunity.

9 CHAIR REYES: Any questions of board members?

10 MEMBER SAYLOR: No.

11 CHAIR REYES: Ms. Olsen?

12 MEMBER OLSEN: This is slightly off topic, but  
13 the numbers sort of caught my fancy.

14 So you said you have 28,000 students that are  
15 in Irvine, and 2,600 of them are in special education?

16 MS. BEVERNICK: Yes.

17 MEMBER OLSEN: And of that, how many have BIPs?

18 MS. BEVERNICK: Oh, I didn't collect the exact  
19 number of BIPs currently.

20 MEMBER OLSEN: That's 9 percent of your student  
21 body?

22 MS. BEVERNICK: Yes, it is.

23 MEMBER OLSEN: So that means, that is  
24 2,800 students that have IEPs?

25 MS. BEVERNICK: 2,600 students have IEPs.

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1 MEMBER OLSEN: Okay.

2 MS. BEVERNICK: I can't tell you the exact  
3 number of students who have BIPs, but it's significant;  
4 and I can also tell you that it's growing. Behavior  
5 issues seem to be on the rise. And that's the case in  
6 every SELPA I know of.

7 MEMBER OLSEN: So would your professional  
8 judgment be that 10 percent of all students with IEPs  
9 have BIPs, or 2 percent? I mean, I have no sense of  
10 this -- it would be nice to have a sense of the world  
11 we're talking about.

12 MS. KLUDET: Let me make a stab at that for  
13 San Joaquin County, because as I walked out of the office  
14 last night, as she said, we do have a system that at  
15 least tells us whether or not there is a PBIP on a  
16 student.

17 We have about -- I don't know -- 5,500,  
18 6,000 special ed. students in San Joaquin County SELPA,  
19 and 66 of those have PBIPs.

20 Now, the interesting piece for me there,  
21 though, was --

22 MS. McDONOUGH: That's 10 percent.

23 MS. KLUDET: That's 10 percent.

24 We, of course, were one of the SELPAs, being a  
25 claimant that collected that data back on the survey.

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1           The number of students having PBIPs today has  
2           tripled over the number when we completed the survey.

3           MEMBER OLSEN:   So, I'm sorry, there were  
4           some -- it's 1 percent?

5           MS. McDONOUGH:   Yes.   I said that wrong.  
6           Sorry.   66 of 6,000.

7           MS. KLUDT:   Right, right.

8           But, again, I think we had 26 when we were  
9           doing the survey, when I looked last night, and there  
10          were about 66.   So the number has dramatically increased  
11          over the last few years.

12          MEMBER OLSEN:   Thank you.

13          MS. BEVERNICK:   And I can add to that, that  
14          although I didn't, last night, count up the number of  
15          BIPs that we currently have in Irvine, I have been  
16          training more and more staff to be able to provide BIPs  
17          and that I've added several positions.   So I think I can  
18          verify that, in fact, the incidence of students who need  
19          BIPs has been on the rise dramatically.

20          CHAIR REYES:   Thank you.

21          Questions from Board members?

22          You do?

23          MEMBER SAYLOR:   Yes.   A question for  
24          Ms. Bevernick.

25          So 20 years ago was a long time ago.

1 MS. BEVERNICK: Yes.

2 MEMBER SAYLOR: So whatever happened back then,  
3 so what? I mean, in some respects, the expense that  
4 school districts and SELPAs put out, that was a long time  
5 ago.

6 Why is there an issue for expenditure now? The  
7 impacts, what impacts actually took place as a result of  
8 this mandate?

9 MS. BEVERNICK: When programs and needs of  
10 students are -- regardless of the need of a special ed.  
11 student, the law says we must provide a service in order  
12 to service that student. So when funding isn't available  
13 through state and federal means, then the funding for  
14 whatever the special ed. service is comes from the  
15 general fund of a school district.

16 So the general funds of school districts all  
17 over the state have been impacted greatly by this  
18 unfunded mandate. And the school districts have had to  
19 absorb that expense because of the lack of funding for  
20 it. So it has been -- school districts have been very  
21 heavily hit by this expense.

22 MEMBER SAYLOR: So what happened? What did  
23 they do?

24 MS. BEVERNICK: They had to increase class  
25 size. A myriad of things. Many general-fund programs

1 have had to be reduced or eliminated in order to support  
2 the special ed. needs in any given district.

3 MEMBER SAYLOR: There are these potentially  
4 offsetting revenues that are identified in the write-up  
5 that we're looking at here.

6 So weren't those other non-local resources  
7 available for school districts all along?

8 MS. BEVERNICK: There are many sources of  
9 income available for school districts. But regardless,  
10 these services have had to be provided without any  
11 particular funding.

12 MEMBER SAYLOR: So at this point in time, what  
13 would the school districts -- what would SELPAs do with  
14 the money, if it comes, for the past 20 years?

15 MS. BEVERNICK: I can't speak for every SELPA.  
16 I have to say that.

17 I could tell you that in Irvine, I suspect that  
18 we would use the funding to offset the general fund that  
19 we're already using to serve the students.

20 It would mean more money.

21 MS. KLUDT: And as I said, we've also had a  
22 tremendous increase in these numbers of students. So,  
23 you know, that's -- we're obviously going to be  
24 reimbursed -- if this RRM Option A is adopted, we will be  
25 reimbursed, you know, less than half of what that cost

1 was. So we'll get a reimbursement for less than half.  
2 And then we've got a number of students that are three  
3 times as large with those needs as we had before. So  
4 there will be a great use of those dollars, I can assure  
5 you.

6 And as the number of students increase,  
7 obviously, the number of staff that need to be trained  
8 increases. I mean, it just impacts all facets of the  
9 mandate that I explained to you.

10 CHAIR REYES: Thank you.

11 Finance, do you have anything to add?

12 MS. KISSEE: I'll go ahead with prepared  
13 comments.

14 As you already, Mr. Reyes, laid out, as well  
15 as the staff analysis and previous comments submitted by  
16 the Department of Finance, we continue to believe that  
17 reimbursement of claims should be based on actual costs  
18 rather than the proposed RRM's due to our concerns over  
19 the data being used.

20 We believe that reimbursing claims based on  
21 the actual costs is the most reasonable and accurate  
22 methodology in this case, as it is based on substantiated  
23 documentation and it represents the true costs of  
24 implementing *Behavioral Intervention Plan* mandated  
25 activities.

1           The proposed RRMs do not reasonably reimburse  
2           the eligible claimants, as it does not represent costs of  
3           the *BIP* program accurately.

4           As already discussed in previous comments,  
5           there are wide variations of costs, and also the number  
6           of BIPs reported per SELPA ranges widely from zero to 87.

7           Also, implementing RRMs based on this data  
8           suggests that some SELPAs will receive reimbursement in  
9           excess of their costs, and others will not receive full  
10          reimbursement for their costs.

11          We believe this variation in costs renders the  
12          proposed RRMs based on ADA inappropriate; and the data  
13          used to calculate the proposed unit rate per ADA is not  
14          representative of actual costs and, therefore, not  
15          reasonable reimbursement methodology.

16          MS. GEANACOU: I have another comment, if I  
17          may --

18          CHAIR REYES: Yes, please.

19          MS. GEANACOU: Susan Geanacou, Department of  
20          Finance.

21          -- primarily focused on the offsetting revenue  
22          aspect of the Commission's staff analysis.

23          First, I'd like to say, Finance supports the  
24          Commission's distinction between what is potential or  
25          available offsetting revenue, both as to pre-2010 State



1 special education funding and federal funds, and then  
2 post-October 2010 required offsets as to the available  
3 State funds that have a first call on -- for this *BIPS*  
4 mandate.

5 I also want to point out and emphasize the  
6 distinction the Commission staff makes that we think is  
7 accurate between revenues being available to be used for  
8 a mandate in the P's & G's phase versus a point the  
9 claimant tries to make that this money may not have been  
10 specifically intended to fully cover the cost of the  
11 mandate under 17556 of the Government Code, if we were  
12 back at the test-claim phase and trying to decide if this  
13 were a mandate or not. And we're well past that, as we  
14 know.

15 So we think the Commission got the offsetting  
16 revenue analysis correct, and we support that aspect of  
17 the analysis as it flows through to both Option A and  
18 Option B.

19 CHAIR REYES: Any questions or comments from  
20 board members?

21 *(No response)*

22 CHAIR REYES: Any additional testimony from  
23 folks in the audience?

24 *(No response)*

25 CHAIR REYES: I see staff of the Controller's

1 office. I don't know if they want to come up.

2 I don't see anybody else coming up.

3 So what is the pleasure of the --

4 MS. McDONOUGH: May I have a closing --

5 CHAIR REYES: Yes.

6 MS. McDONOUGH: -- pardon me, a closing recap  
7 for just a minute?

8 CHAIR REYES: Sure.

9 MS. McDONOUGH: So this is a very -- this is a  
10 tough issue, and you can see that schools have been  
11 working with this very expensive mandate for a long  
12 period of time without reimbursement.

13 CHAIR REYES: Yes, I blame Dr. Kludt for that.  
14 When she took the assignment, that was the only thing on  
15 her table.

16 She has clearly failed at that. So I don't  
17 know that...

18 MS. McDONOUGH: I'm glad we have someone to  
19 blame. That's always so helpful, isn't it?

20 MS. KLUDET: And, actually, I had said over the  
21 years I wasn't going to retire until this was settled.  
22 Now, I'm partially retired; but, you know, I can't fully  
23 retire until it's done.

24 CHAIR REYES: I'm sorry, I interrupted you.

25 MS. McDONOUGH: No problem.

1           The core reason to decide for Option A is that  
2           it better implements the intent of the law. This is the  
3           basic reason why you're paying. It's not what we are  
4           going to do with the money. That the State reimburse  
5           local agencies for new programs or higher levels of  
6           service that it requires.

7           In 2004, the Legislature placed the RRM in  
8           statute to better implement reimbursement.

9           In 2007, the Legislature streamlined RRM  
10          requirements in answer to an LAO recommendation urging  
11          it to expand the use of simple claiming methodologies.

12          The resulting 2007 statute requires that RRMs  
13          balance accuracy with simplicity.

14          I love that phrase. It's hard to believe our  
15          Legislature came up with something like that. "Accuracy  
16          with simplicity." Is that beautiful?

17          So think about that, and don't forget  
18          simplicity. It is a word that is rarely heard in  
19          government, and one that we believe deserves attention  
20          here.

21          That language also states, "Whenever  
22          possible -- whenever possible -- a reasonable  
23          reimbursement methodology shall be based on general  
24          allocation formulas, uniform cost allowances, and other  
25          approximations of local costs, rather than detailed

1 documentation of actual costs."

2 We believe a commonsense review of the proposed  
3 RRM, not to mention a careful review, such as staff has  
4 done, shows that it balances accuracy with simplicity,  
5 and considers variation to implement the mandate in a  
6 cost-efficient manner.

7 So Option A meets the statutory requirements.

8 When asking whether Option A or Option B is  
9 more likely to carry out the intent of the law that local  
10 agencies are actually reimbursed reasonably for  
11 additional state-imposed costs, Option A is the clear  
12 answer.

13 The California Supreme Court stated that the  
14 reimbursement obligation was, quote, "Enshrined in the  
15 Constitution to provide local entities with the assurance  
16 that state mandates would not place additional burdens on  
17 their increasingly limited revenue resources."

18 Option A provides that assurance. Option B  
19 does not.

20 Option A will also help restore local agencies'  
21 faith that this is not just a game; that the State does  
22 live under and inside the law, and given its limits,  
23 attempts to implement it, just as it expected schools to  
24 do when the Legislature passed the *BIP* legislation and  
25 the Department of Education promulgated its regulations.

1           Schools have lived up to their side of the  
2           bargain for 20 years. Option A will help the State live  
3           up to its side.

4           So we respectfully ask the Commission to adopt  
5           the Option A statement of decision.

6           Thank you.

7           CHAIR REYES: Members, when we started this,  
8           I believe that in Option B -- I respectfully disagree  
9           with you. Option B does provide for that reimbursement.  
10          It's provided for other mandates that we provide for  
11          other local entities. And so the fact is that you'd get  
12          paid perhaps in arrears instead of moving forward; but  
13          the fact is, if Option B were adopted, you would have the  
14          reimbursement required under the Constitution. You would  
15          not have it prospectively in terms of your calculations.  
16          But whatever costs you incur, that would be provided.

17          The reasonable reimbursement methodology is not  
18          a requirement. It's an option. It's a tool available,  
19          as you point out, and the statute points out, trying to  
20          expedite and streamline the process.

21          I know a little bit about that when it was  
22          drafted, since I was staffing the committee who  
23          ultimately came up with that legislation. And it has  
24          been amended since.

25          Originally, the goal was to get parties at a

1 table and work out the options. It did not happen, so  
2 we came up with other venues for those reasonable  
3 reimbursement methodologies. But the word still is  
4 "reasonable."

5 And so we as the Commission then have to decide  
6 what is reasonable to make that determination. There is  
7 nothing that -- you know, reasonable minds can disagree.  
8 And so that's the task that we have before us.

9 And as I indicated earlier, I thank you for  
10 your comments. I actually did read this thing three  
11 times, and I ultimately made copies of it instead of  
12 keeping it electronic, because I wanted to be able to  
13 move back and forth between options and sections.

14 And I'm still struggling with Option A.

15 I'm willing to go with Option A because  
16 Finance -- I don't believe that they can come up with the  
17 actual costs for stuff that happened in 1993 and 1994.  
18 I couldn't come up with costs of things that happened in  
19 my office or my home back in 1993-94.

20 So to expect that they would have this  
21 information, you know, to do time studies or to -- I  
22 mean, folks aren't even around to sign the affidavits  
23 that, yes, in fact, they were employed.

24 So I have a difficult time with Option B across  
25 the board; although Option B, to me, is an option that we

1       apply to other mandates.

2               The problem is that this mandate is 20 years  
3       old. I mean, the issue is 20 years old.

4               There's no doubt that we have a reimbursable  
5       mandate here. We can get to it in terms of the  
6       offsetting revenue separately. But I'm looking to my  
7       commissioners in terms of what -- I laid out what I  
8       thought was a reasonable approach to recognize that the  
9       costs from 1993 to some period of time yet to be  
10      determined, the reasonable reimbursement methodology is  
11      not unreasonable; but I'm also not comfortable with  
12      accepting such a wide range as, you know, going -- as  
13      going as the permanent formula.

14              And I get it, this is the point in time. But  
15      I also think that if we go with Option A for the early  
16      stage, and Option B for the second stage, then Option B  
17      would give us lots of data that at some point in the  
18      future, somebody can come in and say, "Okay, now, you  
19      have a lot of data. You can come up with a reasonable  
20      reimbursement methodology."

21              I don't object to the ADA. My problem is  
22      the dollars to the ADA. I think using the ADA, Finance  
23      would disagree. But I think using the ADA is reasonable;  
24      that's where I am.

25              MEMBER SAYLOR: What time period, and why --

1     what's your thinking about what would be the appropriate  
2     criteria for determining that time period?

3             CHAIR REYES: Well, the question I posed  
4     earlier, and I never got an answer, is what data -- what  
5     time period do you have actual data for?

6             I mean, you've been -- you've been paying  
7     bills, you've been paying folks, and you did the study  
8     back in 2006.

9             MS. McDONOUGH: Mr. Reyes, are you suggesting  
10    that you basically think, per ADA, RRM is a good idea;  
11    you just aren't completely convinced that over time,  
12    \$10.64 is the right amount?

13            CHAIR REYES: That is it essentially, yes.

14            MS. McDONOUGH: Okay, because I do want to say  
15    that if that's your concern, I can virtually guarantee  
16    that you will not get a lower amount than that.

17            And if what you wanted to collect data  
18    truthfully, in a fair-minded way, you would need to start  
19    prospectively -- or this year, in other words -- and  
20    say -- because now we're doing it, right. People haven't  
21    been sitting around, tallying down their hours for how  
22    much time they spent for an FAA or a BIP. Up to now,  
23    there's been no parameters and guidelines, no claiming  
24    instructions, nobody's given them any guidance on how to  
25    do that. And they haven't been doing that.



1           If that's what you wanted, you say, going  
2 forward, let's check that out and, you know, maybe that  
3 \$10.64 is the wrong amount.

4           As the staff noted in the decision, you know,  
5 if we had a requirement, for instance, that you have to  
6 do three years' worth of time-cost study, and then  
7 average it and put it in, that would be one interesting  
8 idea.

9           But financing that and seeing it through, it's  
10 a whole different matter in something of this scope. And  
11 clearly, it would take even longer to get this type of  
12 thing done.

13           CHAIR REYES: So my goal is not to shortchange  
14 you or to give you more money.

15           MS. McDONOUGH: Uh-huh. You want it accurate.

16           CHAIR REYES: I want to know what it is that it  
17 is costing us so everybody knows what it is. And we have  
18 other provisions. And there are other provisions -- I  
19 mean, the Governor is proposing to do something with this  
20 mandate.

21           MS. McDONOUGH: Yes.

22           CHAIR REYES: But I mean, quite frankly, the  
23 numbers you folks use, the Controller has never seen.  
24 And so I would like to be able to say -- you know, have  
25 comfort that whatever it is that we were reimbursing on

1 a permanent basis, it is something that the Controller  
2 has had the opportunity to audit and say, "Yes, there was  
3 Joe Schmoe who spent X number of hours on Kenny," or  
4 whatever it is.

5 MS. McDONOUGH: We did file these -- I mean,  
6 I'm not saying the Controller's office is sitting around,  
7 reading the Commission on State Mandates files; but we  
8 did --

9 CHAIR REYES: Oh, yes, they do.

10 MS. McDONOUGH: Mr. Chivaro is not commenting  
11 on that. Okay.

12 But I'm just saying that they could have looked  
13 at those if they wished to do so.

14 CHAIR REYES: But it was not subject to audit  
15 at the time.

16 MS. McDONOUGH: True.

17 CHAIR REYES: And so now, if we do --

18 MS. McDONOUGH: No, true.

19 CHAIR REYES: -- and I'm not speaking -- I  
20 apologize, I'm not trying to speak for you.

21 MEMBER CHIVARO: No, that's all right.

22 CHAIR REYES: I'm just looking globally here,  
23 because, you know, I'm looking at this in terms of what  
24 the Commission can do as a quasi judiciary body that will  
25 stand. And I'm just saying flat out, I'm not comfortable

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1 with Option A. And Option B, to me, is not practical.

2 But other folks have comments.

3 So why don't we start with Ms. Olsen and then  
4 Mr. Saylor, and then Council Member Ramirez.

5 Go ahead.

6 MEMBER OLSEN: Well, I'd like to have a little  
7 bit of a discussion between the parties here about this  
8 idea of this Option C versus the use of the  
9 reconsideration process we now have.

10 Is it your contention that because, under the  
11 RRM, if we adopted Option A, then school districts would  
12 no longer be required to collect data that could then be  
13 used for reconsideration?

14 CHAIR REYES: Yes.

15 MEMBER OLSEN: Is that what forces us towards  
16 Option C?

17 MS. HALSEY: I just want to clarify.

18 Sarah, I think you're meaning redetermination.

19 MEMBER OLSEN: Redetermination.

20 CHAIR REYES: Redetermination, yes.

21 MEMBER OLSEN: Yes.

22 CHAIR REYES: So we now accept this number, and  
23 that's it, that's the law of the land. And you can never  
24 go back and audit that number because they're not  
25 required to, because that is in lieu of actual receipts.

1           Now, we say, we're going to pay X dollars,  
2           period, whether it's higher or lower or non-existent, we  
3           would still commit to that dollar.

4           And I find that problematic, with only having  
5           21 entities participating.

6           So from my perspective, if we have Option B  
7           applied over a period of time, it may be high, it may be  
8           lower, but it's going to be closer to the truth, and it  
9           is going to be for a longer period of time, and more  
10          entities will have participated by default. More  
11          entities. The data will be greater.

12          And then from there, if you want to come up  
13          with a dollar figure, at that point, the auditors would  
14          have seen, the Controller folks would have seen the  
15          numbers. And if at that point then somebody comes in and  
16          says, "Hey, you know, given this data, we now know enough  
17          to make a case for redetermination that we ought to have  
18          the reasonable reimbursement -- or Ms. Shelton, what am  
19          I looking for?

20                 MS. SHELTON: Well, a redetermination is  
21                 really not --

22                 CHAIR REYES: It's not a redetermination.

23                 MS. SHELTON: It's not relevant to the cost  
24                 issue.

25                 CHAIR REYES: No, no.

1 MS. SHELTON: Those are going to be legal  
2 issues, and there has to be a subsequent statute or some  
3 other thing that is enacted that changes the State's  
4 liability. So it's really not going to be based on the  
5 cost issue.

6 MS. McDONOUGH: It's a motion to amend the  
7 P's & G's, I presume.

8 CHAIR REYES: Exactly, yes.

9 MS. SHELTON: Is that what you're --

10 CHAIR REYES: Yes, yes.

11 MS. SHELTON: Yes, that's --

12 CHAIR REYES: So at that point, somebody could  
13 come in and say we would like to amend the P's -- it  
14 could be Finance, it could be the interested party, it  
15 could be the school district -- and then, say, "We now  
16 have three years of data," "five years of data." And, in  
17 fact, if we make this Plan B for -- I'm just throwing out  
18 a number, okay, this is not a number for the record --  
19 this is not the number. If we throw out for the last  
20 five years, you take Plan B, now you have five years of  
21 data for these entities, and then you can then say, an  
22 amendment to P's & G's, to make a reasonable  
23 reimbursement methodology effective whenever we're done  
24 with that --

25 MS. SHELTON: Yes, there is nothing prohibiting

1 any party from filing a request to amend the P's & G's at  
2 any time. So they could do that every year.

3 CHAIR REYES: Right. And at that point, you  
4 have a lot of data, and the Controller would have audited  
5 that information.

6 MS. SHELTON: No matter what option you pick.

7 MEMBER OLSEN: Well, but I think the issue here  
8 is that if we choose Option A today, then the ability to  
9 collect, or the likelihood -- the likelihood that ongoing  
10 data will be collected, that's actual cost data, pretty  
11 much disappears.

12 MS. SHELTON: Correct.

13 MEMBER OLSEN: In which case, we don't get the  
14 kind of audited data that the Controller and Finance  
15 would be interested in.

16 MS. SHELTON: Right.

17 MEMBER OLSEN: So, I mean, I think that's  
18 really the issue.

19 Now, I sort of feel, thinking about this, that  
20 we should probably adopt Option A up until this point in  
21 time.

22 And then there is a discussion about, is there  
23 something that should be happening for 2013 and beyond.

24 CHAIR REYES: So the question then is, how far  
25 back do you have data that's available? And you're

1 saying that you are gathering data now.

2 But, Ms. Shelton, what, legally -- how far  
3 back, or retroactively...?

4 MS. SHELTON: These are kind of a lot --  
5 there's a lot of mixed issues in your question to me.

6 CHAIR REYES: Yes. That's the way I usually  
7 think.

8 MS. SHELTON: And --

9 MS. McDONOUGH: Thank you for thinking about  
10 it, though. I do want to say, we really appreciate  
11 you've actually read all this stuff, which is like  
12 formidable and impressive.

13 CHAIR REYES: Not the 3,500 pages of exhibits,  
14 though, I'll admit.

15 MS. McDONOUGH: Oh, for Pete's sake.

16 MS. SHELTON: One of the issues for supporting  
17 the adoption of the RRM, up until a certain point, is  
18 that that probably is the best evidence that exists in  
19 the state to identify what the costs are, right. And so  
20 at some point in time, if you're looking into ideas of  
21 making them file based on an actual claim reimbursement,  
22 that's not going to be based on ADA. It's going to be  
23 driven by the actual special ed. students and the actual  
24 time taken to do all the activities they have to do under  
25 this program.

1           So if you're wanting to do that, then it should  
2       be based on when they kept their documentation to support  
3       that. Otherwise -- I mean, I don't know, we still  
4       haven't really received any information in the record.

5           CHAIR REYES: Let me ask you this: If we did  
6       Option B --

7           MS. SHELTON: Right.

8           CHAIR REYES: Let's say that we did Option B,  
9       and we said, "No, no reasonable reimbursement. We don't  
10      know what it is," what would they then do to submit those  
11      claims?

12          MS. SHELTON: Well, that would be pretty  
13      interesting. They would have to come up with something  
14      and work with the State Controller's office.

15          CHAIR REYES: Right.

16          MS. SHELTON: Because they are required to  
17      support their claim with documentation.

18          CHAIR REYES: So let me ask the counsel: What  
19      would you guys do if we went with Option B?

20          MS. McDONOUGH: Cry.

21          I mean, truth -- let's try to be truthful here  
22      now.

23          CHAIR REYES: Well, you took an oath that you  
24      were going to.

25          MS. McDONOUGH: You mean, you're going to hold



1 me to it?

2 CHAIR REYES: I have to. I've paid attention  
3 to that oath.

4 MS. McDONOUGH: No, no.

5 Yes, let's just talk about this claim.

6 CHAIR REYES: I took it when I took office.  
7 Defend the Constitution of the State of California, and  
8 that's a requirement.

9 So, go ahead.

10 MS. McDONOUGH: Nobody's -- when a person's in  
11 an IEP meeting; and they say, "Oh, I spent blank number  
12 of hours on that," I guess I'm saying, all claiming is  
13 based a little bit on people's actual self-reporting.  
14 Because how else do you get these figures, okay?

15 Now, we think that in 2006-2007, for that year,  
16 when we wrote those numbers down in January of 2008, and  
17 February, we did a doggone good job for those people of  
18 putting those claims together. And you wouldn't get any  
19 better data from actual claiming Option B from those  
20 21 SELPAs than that, okay.

21 Now, I don't believe that you can get any  
22 decent data if you want, if you want to plunge into the  
23 data world again unless you do it as of this year.  
24 Because people are not now -- they haven't been keeping  
25 track of this, as we said.

1           So I just am restating what Ms. Olsen was  
2           saying. I don't see how it could be done.

3           CHAIR REYES: But why haven't you been  
4           keeping -- I mean, in order to be reimbursed for this,  
5           since reasonable reimbursement has not been adopted, if  
6           you want to get paid back by the State -- because, I  
7           mean, this thing has been going on for 20 years.

8           MS. McDONOUGH: Yes. But if your goal is  
9           accuracy, which you said.

10          CHAIR REYES: Right.

11          MS. McDONOUGH: Okay, if your goal is accuracy,  
12          then you don't want to be saying, "Maybe some of you did  
13          it for the last five years, maybe you didn't."

14          CHAIR REYES: And that's my point, is that I  
15          don't know what that year, where you would have.

16          MS. McDONOUGH: We just said: This year.

17          CHAIR REYES: Okay, but --

18          MS. McDONOUGH: I mean, if accuracy is your  
19          goal.

20          If accuracy is your goal, you've got 2006-07,  
21          which we're ready to stand on with those 21 SELPAs, and  
22          then you have the collection that you would do  
23          prospectively.

24          CHAIR REYES: I guess the question -- I get it,  
25          moving forward, I will do what I need to do, moving

1 forward. I get that.

2 But for my income taxes, I needed to do stuff  
3 from last year, and I kept that. For my 700 forms, I  
4 needed to do that, I keep that. Because I knew  
5 eventually I would have to use it to do something.

6 You submitted a claim, and you know the  
7 process -- I mean, I'm looking at folks here that I see  
8 often, and you know this process that you are required to  
9 have something to support your claim, since we don't have  
10 the reasonable reimbursement methodology in place yet.

11 That's the question I'm posing, but  
12 Commissioner Saylor had a question and so did  
13 Ms. Ramirez. I apologize -- and then Ms. Olsen.

14 MEMBER SAYLOR: I'll wait.

15 CHAIR REYES: You'll wait? Okay.

16 Ms. Ramirez?

17 MEMBER RAMIREZ: I'm leaning towards Option A  
18 to a certain point because I do think accuracy is  
19 important going forward. I have the suspicion it's going  
20 to be -- if you want to be accurate, it's going to be  
21 more because of all of the things you said. And I've  
22 actually done some special ed. work in my career. So  
23 I know that it is burgeoning. And I think that we  
24 shortchange ourselves if we don't really get an accurate  
25 account for everybody's sake, including the State budget.

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So I'd like to know, though, just a review from staff about this proposed Option C, how that could work. If someone could give me some background.

MR. JONES: Well, staff didn't suggest Option C, first of all.

MEMBER RAMIREZ: I know.

AUDIENCE MEMBER: They should have.

MR. JONES: Staff certainly could have written a third proposed statement of decision, but we didn't.

I would -- well, it's my opinion that the witnesses have expressed that they do not, in fact, have any evidence going backward of what their costs would be. And that's as much as we know that we're not practicing equity here in the Commission, that the Members are not trying to weigh equitable concerns as much as trying to find what's legally correct. You know, perhaps that's a consideration for, as you said, what is practical.

And if you're asking for just an opinion off the top of my head, I would probably lean towards what Ms. Olsen has suggested.

CHAIR REYES: Okay.

MS. SHELTON: Could I follow up on that real quick?

CHAIR REYES: Yes.

1 MS. SHELTON: If you were trying to adopt an  
2 Option C, a couple of procedural matters first.

3 One, we don't have it before you. So you could  
4 take a vote today on that, but we would have to bring  
5 back a proposed statement of decision at the next  
6 hearing.

7 CHAIR REYES: Yes.

8 MS. SHELTON: That would be one issue.

9 Two, it would be, you know, a motion could be  
10 made that you would adopt Option A with the proposed RRM  
11 approved for the one-time cost, the proposed RRM approved  
12 for the ongoing cost, up until whatever date, and then  
13 cap it; and then adopt Option B for whatever future  
14 claiming that would occur.

15 And you could -- you know, going forward with  
16 the RRM up until a certain date would be based on  
17 substantial evidence in the record, because nobody has  
18 objected or put any contradictory evidence in for  
19 challenging the times identified in the surveys and those  
20 costs.

21 And it would be the best evidence of those  
22 costs during those years.

23 You could also say, during the -- to require  
24 actual costs claiming, that this is a program that simply  
25 doesn't count widgets, which makes it really easy for an

1 RRM, but is really cost-driven by individual students and  
2 their needs, which makes it more difficult to come up  
3 with a more precise or accurate number. So in that  
4 sense, that could be a finding.

5 The difficulty in everyone's mind, obviously,  
6 would be choosing that date when to go forward.

7 It is true for every mandates case, not just  
8 this one, that for schools, that they have not kept the  
9 data. We hear that all the time, in a way, because they  
10 don't know what ultimately the Commission is going to  
11 approve. And a lot of times, it's a higher level of  
12 service so it's very difficult to just keep the data for  
13 those activities that are approved. It's difficult for  
14 everybody.

15 The Controller has auditing options. They have  
16 in the past, and they have a time-study guideline, which  
17 is sort of like an RRM; but based on each individual  
18 claimant, it's very, I would imagine, time-consuming.  
19 It's a lot of back and forth between the individual  
20 claimant and the Controller. And it really depends on  
21 the Controller's policies on how they want to conduct  
22 their audits.

23 CHAIR REYES: So in the parameters and  
24 guidelines, we could authorize the Controller to adopt  
25 some sort of time study, and make it okay to do that.

1 MS. SHELTON: And we've done that before.

2 It's my legal opinion that we don't have to do  
3 that. They have the authority to do that on their own.  
4 It's an auditing tool.

5 CHAIR REYES: It's probably better just to  
6 provide for that authority as a commission; and that way,  
7 they have that to rely on.

8 Commissioner Saylor?

9 MEMBER SAYLOR: Yes, first of all, I appreciate  
10 the Chair's insights and very careful thought process in  
11 presenting the options that you did at the outset and the  
12 discussion that we've had so far.

13 I think reasonable reimbursement method is kind  
14 of interesting because it doesn't require that it be  
15 perfect. It's just something that's reasonable and makes  
16 sense, that all parties can -- that it's one that we can  
17 live with.

18 I think the one before us and that's presented  
19 in Option A makes sense. I think it is reasonable.

20 And I'm pretty sure that school districts and  
21 SELPAs don't have data that goes even yesterday, they  
22 didn't -- they don't -- the reason they don't is, guess  
23 what? They've been spending money on student support.  
24 And they don't have the money to have the staff sitting  
25 around to imagine what data somebody might ask for in the

1 future. So that's just a reality. It's a practicality.

2 Some methodology going forward is a sensible  
3 thing to present, I think, from -- so I would say, do  
4 something that -- approve Option A up to this point, and  
5 then set in motion whatever we choose for the future, so  
6 that we can have actual costs, with actual times and  
7 actual instructions for how to make claims for the  
8 future. And --

9 MS. McDONOUGH: Could I --

10 MEMBER SAYLOR: May I just make another  
11 comment?

12 MS. McDONOUGH: Yes, sorry.

13 MEMBER SAYLOR: And that is the reason that --  
14 this case is the reason that this commission exists. We  
15 have identified, through all processes and all the  
16 appropriate legal steps, an actual mandate that needs to  
17 be addressed. And here we are, 20 years later. And many  
18 of us have been around these places all that time and  
19 trying to find ways to make this thing, these kinds of  
20 things come out fairly.

21 So it's an amazing opportunity for all of us  
22 here in this room to arrive at a reasonable decision  
23 today -- not sometime in the future, not delay it again,  
24 not set up some new -- some longer-term activity that is  
25 going to result in something that may be 11 cents higher



1 or 40 cents lower. This is a reasonable strategy that  
2 we've got before us.

3 And I really appreciate the degree of fairness  
4 and balance that's been exhibited in the conversation  
5 that the Commission has had so far. And I really would  
6 like us to act today to support Option A for the time  
7 from the beginning of this mandate in July 1<sup>st</sup>, 1993, to  
8 the present time, or make it June 30<sup>th</sup> of 2013, and then  
9 go forward in the next fiscal year with whatever  
10 appropriate instructions and parameters and guidelines  
11 that we choose to. But let's move forward.

12 CHAIR REYES: Go ahead, Ms. Shelton.

13 MS. SHELTON: I was just going to say, too --  
14 Rick, correct me if I'm wrong -- that their initial claim  
15 would go from July 1, 1993, and then actually go to  
16 2011-12, right?

17 MEMBER CHIVARO: Yes.

18 MS. SHELTON: And then annual claims would  
19 start 2012-13.

20 MEMBER SAYLOR: Okay, perfect.

21 MS. McDONOUGH: I don't know if I understand  
22 what you just said.

23 MS. SHELTON: It's in the code, in 17561,  
24 you're going to have one huge, gigantic initial  
25 reimbursement claim, for the initial period of

1 reimbursement that goes back to when you had to file your  
2 actual reimbursement claim.

3 So it goes from the beginning until last fiscal  
4 year, right?

5 And then next year, you're going to be filing  
6 claims for 2012-13. So you file them one year behind.

7 MS. McDONOUGH: Okay, but let me just, if I  
8 may, note that the Department of Finance previously said  
9 they anticipate this mandate may be changed, they'd like  
10 to add it to the block grant -- there are all these  
11 different things going around that might happen, which  
12 seems possible. This year, maybe. We don't know.

13 But with that in mind, we would -- we think I  
14 would definitely -- if there's going to be a cutoff time,  
15 let's make it June 30, 2013, the RRM applies through that  
16 date.

17 There's a reasonable possibility that the law  
18 might change as of July 1, 2013.

19 MEMBER SAYLOR: Ms. Shelton, how does that jibe  
20 with your comment a minute ago?

21 MS. SHELTON: You can do that. I mean, there  
22 is nothing preventing you from doing that. There's just  
23 a lot of factors. If --

24 CHAIR REYES: I think my concern is that -- the  
25 law is the law now, and so the attempts have been made in

1 the past to do laws that didn't go anywhere. And, you  
2 know, hopefully Finance and the Administration will be  
3 more successful in this. But, you know, it is what it  
4 is.

5 Also, you folks also have a claim on 1610 and  
6 its constitutionality, so that may change things as well.  
7 So there is a lot of stuff out there that may change or  
8 may not change. I'd rather just go with what it is, and  
9 go -- you know, since we're not going back to 2006,  
10 2011-12 seems to be a reasonable year.

11 And then what I suggest is that we do, I guess,  
12 is my Plan C but a different year, it would be the year  
13 we land on, 2011-12. And then moving forward from there  
14 is actual cost. And so we actually can vote. And my  
15 goal was not to delay the vote. My goal is to move  
16 forward on this vote.

17 The mandate decision, the Commission already  
18 took a vote that it is, in fact, a mandate. So now the  
19 question is, how do we -- what is the tool to reimburse?

20 And as I suggested at the beginning, for the  
21 stuff in the past, we do Option A; and from, you said,  
22 2011-12 forward --

23 MS. SHELTON: Yes. And so under that proposal,  
24 the entire initial reimbursement claim would be based on  
25 an RRM.

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1           And then for future annual claiming, it would  
2     be actual.

3           MEMBER SAYLOR: Yes, I make a motion to go that  
4     way.

5           MEMBER OLSEN: I'll second that.

6           CHAIR REYES: Okay. Any additional -- any  
7     questions or comments from board members?

8           *(No response)*

9           CHAIR REYES: Okay, and then you'll tell us --

10          MS. SHELTON: Can I just --

11          CHAIR REYES: -- exactly what the motion will  
12     be in a minute.

13          MS. SHELTON: Okay. And then let me just also  
14     say that you can take the vote today, but a proposed  
15     statement of decision does not come back until April.  
16     You would not take any more substantive --

17          CHAIR REYES: We don't take new testimony at  
18     that time. At that time, it's just voting up, to be sure  
19     that it captured everything that we said.

20          MS. SHELTON: The only issue -- right. The  
21     only issue in the regs is whether the statement of  
22     decision accurately reflects your vote count.

23          CHAIR REYES: Okay, So that's the only thing  
24     we'll do.

25                 So go ahead.

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1 MS. McDONOUGH: Okay. Thank you, sir.

2 CHAIR REYES: I apologize. I just want to make  
3 sure we're all in the same -- and we're all looking at  
4 the same page before we move forward.

5 MS. McDONOUGH: Right. So I'm not still  
6 looking at that page. So let's -- I'm not clear that I  
7 understand it, let me put it that way.

8 The claiming time-line is not the same as  
9 asking us what data can we produce, realtime data, to  
10 support our claims. In other words, just because you  
11 claim backwards, that is not going to help us create data  
12 if we don't have it.

13 So if we make a backwards claim for 2011-12,  
14 like now, but we don't have data for 2011-12, we want  
15 2011-12 to be subject to the RRM.

16 Do you follow what I'm saying? Am I saying it  
17 right?

18 CHAIR REYES: No, I get it. And you would like  
19 1920 to also be subject to RRM. I get that. That is  
20 Plan A. So now we're talking --

21 MS. McDONOUGH: No, no, no.

22 CHAIR REYES: Okay.

23 MS. McDONOUGH: Because I was -- I think we  
24 were --

25 MEMBER SAYLOR: '11-12 is, but '12-13 is not.

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1 MS. McDONOUGH: Exactly. That's where I was  
2 going.

3 CHAIR REYES: But staff suggests 2011-12 for  
4 RRM.

5 MS. McDONOUGH: But that's because she is  
6 talking about this claiming time-line as opposed to data.

7 CHAIR REYES: So I'm seeking clarification from  
8 staff because they are the experts on the process. I  
9 just vote.

10 MS. SHELTON: Well, hopefully Mr. Chivaro will  
11 speak up if I get this wrong, because they are the  
12 Controller's office.

13 So when you file your first reimbursement claim  
14 after the parameters and guidelines are adopted and the  
15 Controller's office issues claiming instructions, it is  
16 for your entire initial period of reimbursement. And for  
17 this case, counting the timing, it would go to fiscal  
18 year 2011-12.

19 You don't file your annual reimbursement claim  
20 for 2012-13 until next February 2014.

21 MS. McDONOUGH: Oh, so you're saying, it would  
22 include 2011-12?

23 MS. SHELTON: It would include 2011-12, but not  
24 2012-13.

25 MS. McDONOUGH: Right, 2012-13 being the year

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1 we are now in.

2 CHAIR REYES: Yes.

3 MS. McDONOUGH: Okay.

4 MS. SHELTON: Is that right?

5 MS. McDONOUGH: Let me check the date.

6 Okay, I think I'm understanding it. Yes, we  
7 would like it to be June 2013; but, okay, we understand  
8 what you're talking about.

9 CHAIR REYES: All right.

10 So with that, there's been a motion and a  
11 second.

12 Any additional comments, Finance?

13 *(No response)*

14 CHAIR REYES: Controller's office?

15 *(No response)*

16 CHAIR REYES: LAO?

17 *(No response)*

18 CHAIR REYES: Elevator operator?

19 Okay. All in favor, say "aye."

20 *(A chorus of "ayes" was heard.)*

21 CHAIR REYES: Opposed?

22 *(No response)*

23 CHAIR REYES: Abstentions?

24 *(No response)*

25 CHAIR REYES: The "ayes" have it. Thank you.

1           The second issue --

2           *(Applause)*

3           CHAIR REYES: The second issue is the  
4 revenue -- the offsetting revenue issue.

5           Staff made a recommendation on that.

6           Yes?

7           MS. HALSEY: Well, we thought you just adopted  
8 it.

9           MS. SHELTON: We thought your motion included  
10 the proposed --

11          MS. HALSEY: We thought you were done.

12          CHAIR REYES: I purposely asked that it would  
13 be bifurcated. So I think I would not be fair to include  
14 it without specifically pinpointing it out.

15          MS. HALSEY: Okay.

16          CHAIR REYES: Comments were made on both sides.  
17 Finance supports staff. Claimants do not  
18 support staff.

19          MS. McDONOUGH: But I did understand  
20 Mr. Saylor's motion to include Option A.

21          CHAIR REYES: To include?

22          MEMBER SAYLOR: Yes.

23          CHAIR REYES: Well, we can clarify that.

24          MS. McDONOUGH: And the offsets as proposed.

25          CHAIR REYES: It does? Okay.



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1 Is everybody in agreement with that?

2 MEMBER RIVERA: Yes, that's fine.

3 CHAIR REYES: So I apologize, the motion  
4 included that.

5 MS. SHELTON: So that proposed statement of  
6 decision coming back in April will have an RRM, just like  
7 Option A, up until June 30, 2012.

8 Beginning July 1, 2012, it's for actuals.

9 CHAIR REYES: Right.

10 MS. SHELTON: Okay, and during all times, it  
11 has the potential and required offsetting revenues  
12 identified.

13 CHAIR REYES: Correct.

14 MS. SHELTON: Okay.

15 CHAIR REYES: And then in the future, if  
16 somebody wants to submit a request to amend parameters  
17 and guidelines, at that point we'll have better data, and  
18 we'd be happy to consider that as any other request that  
19 comes to the board.

20 Thank you.

21 All right, moving on to the next item.

22 MS. KLUDET: Thank you very much on behalf of  
23 San Joaquin County SELPA.

24 MEMBER OLSEN: Happy retirement.

25 CHAIR REYES: It's about time.

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1 MS. KLUDET: Thank you.

2 CHAIR REYES: No, not quite yet. We still have  
3 the year. All right.

4 MS. HALSEY: Item 10 is reserved for county  
5 applications for a finding of significant financial  
6 distress or SB 1033 applications.

7 No SB 1033 applications have been filed.

8 Item 11, Chief Legal Counsel Camille Shelton  
9 will present the Chief Legal Counsel's report.

10 MS. SHELTON: The only thing to report at this  
11 time is the hearing set on the petition for writ of  
12 mandate filed by the Department of Finance on the  
13 *Graduation Requirements P's & G's* amendment, set for  
14 February 15<sup>th</sup>.

15 CHAIR REYES: Okay, thank you.

16 The next item.

17 MS. HALSEY: Item 12 is the Executive Director  
18 Report.

19 If you take a look at my report, I have the  
20 update of our completed workload thus far this year and  
21 an update on what we have pending. And I also have a  
22 budget update.

23 The Governor on January 10<sup>th</sup>, 2013, released  
24 the proposed State budget and it includes appropriation  
25 of \$1.873 to fund the Commission. And that includes a

1 budget change proposal for an addition of \$245,000 in  
2 order to hire a staff counsel III and a senior legal  
3 analyst.

4 The additional staffing will enable the  
5 Commission to better comply with statutory time frames  
6 and accelerate the reduction of our backlog.

7 CHAIR REYES: Thank you, Finance.

8 MS. HALSEY: Yes, thank you, Finance.

9 CHAIR REYES: They left.

10 MS. HALSEY: And they left.

11 Also, on mandate funding, the Administration  
12 proposed some changes in education, an increase of  
13 \$100 million to the K-12 mandates block grant in support  
14 of *Graduation Requirements* and *BIPs*. They're also saying  
15 that they intend to restructure *BIPs*, which would  
16 eliminate most of the reimbursable costs.

17 Also, the proposed budget suspends nine new  
18 local agency mandates: *Modified Primary Elections*,  
19 *Domestic Violence Background Checks*, *Permanent Absentee*  
20 *Voters*, *Identity Theft*, *California Public Records Act*,  
21 *Local Agency Ethics*, *TB Control*, and *ICAN and Voter ID*  
22 *Procedures*.

23 We have detail attached here, if you're  
24 interested, to my report on all of the programs and on  
25 the funding proposed.

1 CHAIR REYES: Okay.

2 MS. HALSEY: And then I have listed our  
3 tentative agenda items for the upcoming hearings.

4 If you are a party generally that comes before  
5 us, please take a look and see if one of your items is  
6 coming up shortly.

7 And that's all I have today, unless you have  
8 any questions for me.

9 CHAIR REYES: No.

10 Most of the folks here are aware that they're  
11 subject to the 700 form, so just kind of a reminder.

12 Ms. Olsen, since you're not in a standing  
13 office -- you're in this office, you're required to do  
14 the 700. And everybody else, I think, by virtue of the  
15 position they hold, they have it. But that would be good  
16 to remind folks.

17 Thank you.

18 MS. HALSEY: Oh, I did forget one thing. I  
19 didn't have it in my report because it happened since  
20 I prepared the involvement.

21 We did get our first mandate redetermination  
22 request submitted to us by the Department of Finance.  
23 And that's on *Sexually Violent Predators*.

24 CHAIR REYES: Okay.

25 MS. HALSEY: So I just wanted to let you know

1       that.

2                   CHAIR REYES: All right, are we done?

3                   MS. HALSEY: Yes, thank you.

4                   CHAIR REYES: Any comments or questions from  
5 board members?

6                   *(No response)*

7                   CHAIR REYES: Are there any public comments?

8                   MR. BURDICK: Chairman Reyes and Members,  
9 Allan Burdick on behalf of CSAC and League of Cities  
10 Advisory Committee on State Mandates.

11                   My only point is that you just dealt with and  
12 set a lot of groundwork for RRM's. I would hope, when  
13 you adopt your April statement, that these not all be  
14 precedent-setting; that part of this be somewhat unique  
15 to the particular case and situation.

16                   Some of the stuff that went on there, I think  
17 as we look at it from a city and county standpoint, would  
18 have some of the issues with that. We didn't want to get  
19 involved with that particular mandate. But it did seem  
20 to be somewhat unique in some of the decisions, and the  
21 processes and things I think were specific to that.

22                   So I'm just more concerned about staff having  
23 to rely on everything that was done on there for the now  
24 six reasonable reimbursement methodologies that local  
25 agencies have before you.

1           And I'd also like to just comment that our  
2           December meeting with the Commission, they approved and  
3           said it was clearly legal to do your Option C, which we  
4           plan to propose for the *Public Records Act* later this  
5           year.

6           Thank you very much.

7           CHAIR REYES: Thank you.

8           Anybody else?

9           (*No response*)

10          CHAIR REYES: Seeing none, the Commission will  
11          meet in closed executive session pursuant to Government  
12          Code section 11126, subdivision (e), to confer and  
13          receive advice from legal counsel for consideration and  
14          action, as necessary and appropriate, upon the pending  
15          litigation listed in the published notice and agenda, and  
16          to confer with and receive advice from legal counsel  
17          regarding potential litigation.

18          The Commission will also confer on personnel  
19          matters pursuant to Government Code sections 11126,  
20          subdivision (a), paragraph (1).

21          We will reconvene in open session in  
22          approximately 30 minutes.

23          And we will have a five-minute break before we  
24          go there.

25          Thank you.

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1                   *(Brief break from 11:57 a.m. to 12:03 p.m.)*

2                   *(The Commission met in closed executive*  
3                   *session from 12:03 p.m. to 12:19 p.m.)*

4                   *(At 12:19 p.m. the Commission reconvened*  
5                   *in open session after having met in closed*  
6                   *executive session pursuant to Government*  
7                   *Code section 11126(e)(2) to confer with*  
8                   *and receive advice from legal counsel, for*  
9                   *consideration and action, as necessary and*  
10                  *appropriate, upon the pending litigation*  
11                  *listed on the published notice and agenda;*  
12                  *and to confer with and receive advice from*  
13                  *legal counsel regarding potential*  
14                  *litigation; and pursuant to Government*  
15                  *Code section 11126, subdivision (a)(1), to*  
16                  *confer on personnel matters.)*

17                  CHAIR REYES: We're coming back from closed  
18                  session where we were advised by counsel, and we did take  
19                  some personnel actions.

20                  Mr. Hone, would you please tell us what the  
21                  motion looked like?

22                  MR. HONE: Certainly.

23                  Regarding Item 13, the Chief Legal Counsel's  
24                  position --

25                  CHAIR REYES: Is your mike on?

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1 Thank you.

2 MR. HONE: For Item 13, the Chief Legal Counsel  
3 position is established at a CA4 Level. Ms. Shelton was  
4 appointed on December 9<sup>th</sup>, 2005. She last received a  
5 salary adjustment in January 2008. It should be noted  
6 that the Commission approved a salary adjustment in  
7 March 2010. However, the adjustment required approval of  
8 the Governor's office and the Department Personnel  
9 Administration, and approval was not granted at that  
10 time.

11 The Commission may take action to adjust the  
12 Chief Legal Counsel's salary by designating an adjustment  
13 amount and effective date.

14 So if the Commission decides to adjust the  
15 Chief Legal Counsel's salary, the following motion action  
16 should be taken: "I move to adjust the Chief Legal  
17 Counsel's salary by X percent, effective...", and you would  
18 insert the date.

19 MEMBER OLSEN: Mr. Chairman?

20 CHAIR REYES: Ms. Olsen?

21 MEMBER OLSEN: I move to adjust the Chief Legal  
22 Counsel's salary by 5 percent effective March 1<sup>st</sup>.

23 MEMBER RIVERA: I second.

24 CHAIR REYES: Thank you.

25 MEMBER OLSEN: And that would be of 2013. I



1       should probably specify the year.

2               MR. HONE:   Yes.

3               CHAIR REYES:   And so we would ask Mr. Hone to  
4       take all the necessary administrative actions to make  
5       that happen.

6               Thank you.

7               MEMBER RAMIREZ:   Do we need to vote?

8               CHAIR REYES:   So there's a motion and a second.  
9       All in favor, say "aye."

10              *(A chorus of "ayes" was heard.)*

11              CHAIR REYES:   Opposed?

12              *(No response)*

13              CHAIR REYES:   Abstentions?

14              *(No response)*

15              CHAIR REYES:   Thank you.

16              The "ayes" have it.

17              The next item, please.

18              The Executive Director position is established  
19       at level D of the exempt-salary schedule. Ms. Halsey was  
20       appointed on March 23<sup>rd</sup>, 2012.

21              At its current level, Ms. Halsey's salary will  
22       be less than the maximum salary of an Attorney 3 as of  
23       July 1<sup>st</sup>, 2013.

24              There are currently two Attorney 3 positions on  
25       Commission staff, one of which was held by Ms. Halsey

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1 prior to her appointment as Executive Director.

2 The Commission may take action to adjust the  
3 Executive Director's salary by designating an adjustment  
4 amount and effective date similar to the last item.

5 CHAIR REYES: Is there a motion?

6 MEMBER OLSEN: Do you want me to do it?

7 Mr. Chairman, I move to adjust the Executive  
8 Director's salary by 5 percent effective on her  
9 anniversary date of March 23<sup>rd</sup>, 2013.

10 CHAIR REYES: Thank you.

11 Is there a second?

12 MEMBER RIVERA: Second.

13 CHAIR REYES: It's been moved and seconded.

14 Any questions? Comments?

15 *(No response)*

16 CHAIR REYES: Seeing none -- Ms. Shelton?

17 MS. SHELTON: Did you read your script coming  
18 out of closed session?

19 CHAIR REYES: Yes.

20 MS. SHELTON: You did?

21 CHAIR REYES: All in favor, say "aye."

22 *(A chorus of "ayes" was heard.)*

23 CHAIR REYES: Opposed?

24 *(No response)*

25 CHAIR REYES: Abstentions?

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*(No response)*

CHAIR REYES: Thank you.

All right, we are adjourned.

*(The meeting concluded at 12:21 p.m.)*



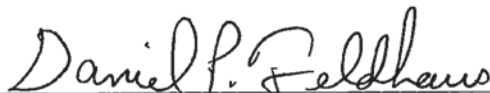
**REPORTER'S CERTIFICATE**

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 12<sup>th</sup> of February 2012.



Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomat Reporter  
Certified Realtime Reporter