

ITEM 7
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Education Code Section 48260.5
Statutes 1983, Chapter 498

Notification of Truancy

Fiscal Years 1998-1999, 1999-2000, and 2000-2001

05-904133-I-02

Los Angeles Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (Controller) to reimbursement claims filed by the Los Angeles Unified School District (claimant) for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Notification of Truancy* program. The Controller reduced the following costs claimed: \$712,167 for 1998-1999 (reduced to zero), \$915,904 for 1999-2000 (\$5,345 was allowed of \$921,249 claimed), and \$961,179 for 2000-2001 (\$13,061 was allowed of \$974,240 claimed).

The Controller audited a sample of claimant's school sites and extrapolated the findings from the sample to all costs claimed for all schools in the district. The Controller's reduction of costs claimed raises the following disputed issues:

1. Whether the mandate requires school districts to provide *written* notification to parents or guardians upon a pupil's initial classification as a truant.
2. Whether claimant provided documentation, in accordance with the requirements in the parameters and guidelines, sufficient to support the reductions by the Controller.
3. Whether the Controller's reduction of costs claimed for truancy notifications at the school sites not included in the audit sample is correct.

For the reasons below, staff finds that the Controller's reductions are partially correct.

Notification of Truancy Program

Under California's compulsory education laws, children between the ages of six and 18 are required to attend school full-time, with a limited number of specified exceptions.¹ Statutes 1983, chapter 498 added Education Code section 48260.5 which specified as follows:

§ 48260.5. Notice to parent or guardian; alternative educational programs; solutions

(a) Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:

(1) That the pupil is truant.

(2) That the parent or guardian is obligated to compel the attendance of the pupil at school.

(3) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.

(b) The district also shall inform parents or guardians of the following:

(1) Alternative educational programs available in the district.

(2) The right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

On November 29, 1984, the Board of Control, the predecessor to the Commission on State Mandates (Commission), determined that Education Code section 48260.5, as added by Statutes 1983, chapter 498, imposed a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy.²

Accordingly, the Board of Control's test claim decision and the parameters and guidelines adopted by the Commission, found that section 48260.5 imposed a state-mandated program requiring that upon a student's classification as a truant, the school must notify the pupil's parent or guardian. At the time of the test claim decision and adoption of the parameters and guidelines, section 48260 as enacted in 1983, which was found not to impose any mandated activities, provided that a truancy occurs when a student is "absent from school without valid excuse *more than three days* or tardy in excess of 30 minutes on each of *more than three days* in one school year..."³

The original parameters and guidelines were adopted by the Commission on August 27, 1987, and authorized reimbursement for the one-time activities of planning implementation, revising

¹ Education Code section 48200.

² Exhibit G, Board of Control, Brief Written Statement for Adopted Mandate on the *Notification of Truancy* test claim (SB 90-4133).

³ Education Code section 48260 (Stats. 1983, ch. 498).

school district policies and procedures, and designing and printing the notification forms. Reimbursement was also authorized for ongoing activities to identify pupils to receive the initial notification and prepare and distribute the notification by first class mail or other reasonable means.

The Commission amended the parameters and guidelines on July 22, 1993, effective beginning July 1, 1992, to add a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed in lieu of requiring the claimant to provide documentation of actual costs to the Controller. The parameters and guidelines further provide that “school districts incurring unique costs within the scope of the reimbursable mandated activities may submit a request to amend the parameters and guidelines to the Commission for the unique costs to be approved for reimbursement.”⁴ These are the parameters and guidelines applicable to this claim.⁵

As later amended by Statutes 1994, chapter 1023 (SB 1728) and Statutes 1995, chapter 19 (SB 102), section 48260 provided that a pupil would be classified a truant “who is absent from school without valid excuse *three full days* in one school year, or tardy or absent for more than any 30-minute period during the school day without a valid excuse on *three occasions* in one school year, or any combination thereof...”⁶ At the same time, the Legislature amended section 48260.5 to require the school to also notify parents that a pupil may be subject to prosecution under section 48264; that a pupil may be subject to suspension or restriction of driving privileges under section 13202.7 of the Vehicle Code; and that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.⁷ Those amendments were incorporated into the parameters and guidelines on January 31, 2008, effective July 1, 2006, at the Legislature’s direction.⁸

Procedural History

Claimant signed its 1998-1999 reimbursement claim on January 14, 2000,⁹ its 1999-2000 reimbursement claim on January 12, 2001,¹⁰ and its 2000-2001 reimbursement claim on December 20, 2001.¹¹

⁴ Exhibit A, IRC, page 69.

⁵ The parameters and guidelines as amended in 2008 are not applicable to this IRC.

⁶ Education Code section 48260, as amended by Stats. 1994, ch. 1023 and Stats. 1995, ch. 19.

⁷ Education Code section 48260.5, as amended by Stats. 1994, ch. 1023 and Stats. 1995, ch. 19.

⁸ Statutes 2007, chapter 69 (AB 1698).

⁹ Exhibit A, IRC, page 46.

¹⁰ Exhibit A, IRC, page 54.

¹¹ Exhibit A, IRC, page 60.

The Controller issued the draft audit report for the 1999-2001 audit on October 3, 2002,¹² and the draft audit report for the 1998-1999 audit on November 1, 2002.¹³ Claimant submitted comments on the 1999-2001 draft audit report on November 14, 2002¹⁴ and the 1998-1999 draft audit report on November 25, 2002.¹⁵ The Controller issued final audit reports for the 1998-1999 and the 1999-2001 audits on December 13, 2002.¹⁶

Claimant filed this IRC on December 12, 2005,¹⁷ and submitted a supplemental filing on January 23, 2006.¹⁸ The Controller filed late comments on the IRC on December 11, 2007.¹⁹

On July 16, 2015, Commission staff issued the draft proposed decision.²⁰ Claimant filed a request for an extension of time to file comments on August 4, 2015 which was approved. The Controller filed comments on August 5, 2015, concurring with the draft proposed decision.²¹ On August 14, 2015, claimant filed comments concurring with the draft proposed decision.²²

Commission Responsibilities

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

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9

¹² Exhibit A, IRC, page 31.

¹³ Exhibit A, IRC, page 14.

¹⁴ Exhibit A, IRC, pages 39-40.

¹⁵ Exhibit A, IRC, pages 22-23.

¹⁶ Exhibit A, IRC, pages 9-24, 25-45.

¹⁷ Exhibit A, IRC.

¹⁸ Exhibit B, IRC Supplemental filing.

¹⁹ Exhibit C, Controller's Late Comments on the IRC. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and proposed decision.

²⁰ Exhibit D.

²¹ Exhibit E.

²² Exhibit F.

of the Commission's regulations requires the Commission to send the decision to the Controller and request that the incorrectly reduced costs be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²³ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²⁴

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²⁵

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²⁶ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.²⁷

Claims

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

²³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁴ *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁵ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁷ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Issue	Description	Staff Recommendation
<p>The Controller's reduction of \$712,167 claimed for 1998-1999.</p>	<p>The Controller found that claimant did not provide any documentation to support the claimed number of initial truancy notifications distributed for the 79 school sites sampled. The Controller also found that the district's truancy notifications were not provided by letter or any other official written document to the parent or guardian during this fiscal year.</p> <p>Claimant argues that the test claim statute does not require the notification to be in writing; rather it requires notification "by first-class mail or other reasonable means." Claimant argues that it satisfied the requirements of the test claim statute by means other than a letter or other writing, providing effective notice of the pupil's attendance issues to the parents or guardians, and that it should be reimbursed for unwritten notifications claimed based on telephone calls, attendance records, and other documentation.</p>	<p><i>Correct</i> - The mandate approved by the Board of Control is to provide <i>written</i> notification to the parent or guardian containing the required information upon the pupil's initial classification as a truant. Neither the test claim decision, nor the parameters and guidelines, authorize reimbursement for providing unwritten notifications of truancy. The Board of Control's test claim decision and the adopted parameters and guidelines are quasi-judicial decisions interpreting the reimbursement requirements of article XIII B, section 6 of the California Constitution and are binding.</p> <p>Moreover, the claimant has provided no evidence to support its claim that it incurred any costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of truant pupils.</p>
<p>The Controller's reduction of \$1,877,083 claimed for fiscal years 1999-2000 and 2000-2001.</p>	<p>The Controller randomly sampled the records of 56 percent of the claimant's school sites (67 of the 120 school sites) for fiscal years 1999-2000 and 2000-2001. Unlike fiscal year 1998-1999, the claimant provided the Controller with 286 truancy notification letters sent by the sampled school sites in fiscal year 1999-2000 and 598 written notifications sent by the sampled school sites in fiscal year 2000-2001. The Controller extrapolated the percentage of unsupported</p>	<p><i>Partially Correct</i> – The reduction of \$1,173,865 claimed for truancy notices of the 67 sampled school sites that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. Claimant has not filed any supporting documentation in accordance with the parameters and guidelines, or evidence to support the costs claimed in this case. Pursuant to Government</p>

	<p>notices claimed by the sampled school sites for each fiscal year (99.42% and 98.66%) to reduce costs claimed by all school sites in the district, including the 53 school sites that were not sampled.</p> <p>Claimant argues that written truancy notifications are not required by the test claim statute and that the Controller disregarded all evidence that claimant had satisfied the requirements of the statute by means other than a written notification to the parent or guardian.</p>	<p>Code section 17559 and section 1187.5 of the Commission's regulations, all assertions of fact must be supported with substantial evidence in the record.</p> <p>However, the Controller's extrapolation of its findings from the 67 sampled school sites to the remaining 53 school sites that were not sampled is not supported by evidence in the record because there is no showing that the audit results from the sampled schools is representative of the schools not sampled. The record indicates that claimant's school sites did not comply with the mandate in the same way. Accordingly, staff finds that the Controller's reduction of \$721,623 for the 53 school sites not sampled, is entirely lacking in evidentiary support and should be reinstated to the claimant.</p>
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Staff Analysis

A. The Reductions for Fiscal Year 1998-1999 Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller randomly sampled 79 of the 165 school sites for which costs were claimed in fiscal year 1998-1999. The sampled school sites claimed that 27,702 initial truancy notifications were distributed to the pupils' parents or guardians. The Controller found, however, that claimant did not provide any documentation to support the claimed number of initial truancy notifications distributed for the 79 schools sampled. The Controller also found that the district's truancy notifications were not provided by letter or any other official written document to the parent or guardian during this fiscal year. Rather, the claimant provided notification by phone, based on attendance logs and permits to return to the classroom.²⁸

The claimant does not dispute these findings, but alleges that the test claim statute, with language that allows notification by "first-class mail or other reasonable means," does not require the

²⁸ Exhibit A, IRC, page 16.

notification to be in writing. Claimant argues that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian, thereby providing effective notice of the pupil's truancy to the parents or guardians, and that it should be reimbursed for the number of unwritten notifications to parents or guardians claimed based on telephone calls, attendance records, and other documentation.

The Commission finds that the Controller's reduction of all costs claimed for fiscal year 1998-1999 is correct as a matter of law.

The test claim decision adopted by the Board of Control concluded that the Education Code section 48260.5 mandated school districts to provide *written* notification to the parent or guardian containing the required information upon the pupil's initial classification as a truant.²⁹ In addition, the parameters and guidelines limit the use of the unit cost to only those districts that provide initial truancy notification forms in writing.³⁰

Thus, neither the test claim decision, nor the parameters and guidelines, authorize reimbursement for providing unwritten notifications of truancy. The Board of Control's test claim decision and the adopted parameters and guidelines are quasi-judicial decisions interpreting the reimbursement requirements of article XIII B, section 6 of the California Constitution and are therefore binding in later actions including this IRC.³¹

Moreover, the claimant has provided no evidence to support a claim for reimbursement that it incurred any costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of pupils identified as truants in accordance with the test claim decision and parameters and guidelines.

Therefore, the Commission finds that the Controller's reduction of all costs claimed for fiscal year 1998-1999 totaling \$712,167 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

B. Reductions for School Sites Included in the Audit Sample for Fiscal Years 1999-2001 Are Supported by Evidence in the Record. But Reductions for School Sites Not Included in the Audit Sample for Fiscal Years 1999-2001 Are Entirely Lacking in Evidentiary Support.

The Controller audited the fiscal year 1999-2000 and 2000-2001 claims by randomly sampling claimant's school sites (67 of the 120 school sites) representing 56 percent of the pupil population. Unlike fiscal year 1998-1999, however, the Controller found evidence that the claimant provided written truancy letters to the parents or guardians in these two subsequent fiscal years. Claimant provided the Controller with 286 truancy notification letters distributed by

²⁹ Exhibit G, Board of Control, Brief Written Statement for Adopted Mandate on the *Notification of Truancy* test claim (SB 90-4133), page 4.

³⁰ Exhibit A, IRC, pages 68 - 69.

³¹ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, where the court states that the Commission's parameters and guidelines are "regulatory."

the sampled school sites in fiscal year 1999-2000 and 598 written notifications distributed by the sampled school sites in fiscal year 2000-2001. Based on this information, the Controller found that 0.58 percent of the sampled notices for 1999-2000 and 1.34 percent of the sampled notices for 2000-2001 were supported by documentation. The Controller then extrapolated the percentage of unsupported notices claimed by the sampled school sites for each fiscal year (99.42 percent and 98.66 percent, respectively) to reduce costs claimed by all school sites in the district, including the 53 school sites that were not sampled.

The claimant argues that written truancy notifications are not required by the test claim statute and that the Controller disregarded all evidence it presented to demonstrate it had satisfied the requirements of the statute by means other than a written notification to the parent or guardian. Although the claimant did not provide truancy letters in all cases, the claimant alleges it tracked the number of truancy notices provided through phone logs, attendance records, and return to classroom permits, and provided this type of documentation in support of the number of notices claimed. The Controller, however, rejected this documentation.³²

The audit report states, in response, that it did review telephone logs, attendance records, and return to classroom permits. However, these records did not provide evidence that claimant complied with the parameters and guidelines by sending written notifications to the parents or guardians that contained the information required.

1) The reduction of costs claimed for the 67 sampled school sites is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff finds that the Controller's reduction of costs claimed for truancy notices of the 67 sampled school sites that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The mandate approved by the Board of Control is to prepare and distribute written truancy notifications to the parent or guardian and include the information specified by the original test claim statute. The parameters and guidelines authorize reimbursement to mail the notification "forms" to parents/guardians with the information required by the test claim statute. The parameters and guidelines further require that each claim for reimbursement "provide documentation in support of the reimbursement claimed for this mandated program," and that when using the uniform cost allowance, "Documentation [must be provided] which indicates the total number of initial notifications of truancy distributed."³³

Claimant is correct that the parameters and guidelines do not require copies of the truancy forms or letters actually distributed to support the costs claimed. The parameters and guidelines do not limit the type of supporting documentation required, but simply require "documentation in support of the reimbursement claimed for this mandated program," and documentation that "indicates the total number of initial notifications of truancy distributed." Thus, under the parameters and guidelines, telephone logs, attendance records, and return to classroom permits may be sufficient documentation to support the costs claimed *if* these records show that the

³² Exhibit B, IRC Supplemental Filing, pages 6-7.

³³ Exhibit A, IRC, pages 68-70.

claimant complied with the mandate to provide written notice to the parent or guardian of the information required by the test claim statute and the documentation verifies the number of notifications provided in a fiscal year.

However, no documentation or evidence has been filed with the Commission to support the costs claimed in this case. Thus, the Commission cannot determine if the documentation the claimant relies on complies with the parameters and guidelines. Pursuant to Government Code section 17559 and section 1187.5 of the Commission's regulations, all assertions of fact must be supported with substantial evidence in the record.

Therefore, staff finds that the Controller's reduction of costs claimed for truancy notifications of the 67 sampled school sites that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

2) *The reduction of costs resulting from the Controller's extrapolation of findings to the school sites that were not included in the audit sample is not supported by evidence in the record.*

However, the Controller's extrapolation of its findings from the 67 sampled school sites to the remaining 53 school sites that were not included in the Controller's audit sample is not supported by any evidence in the record. There is no showing in the record that the audit results from the sampled schools accurately reflects and is representative of the schools not sampled. And there is evidence that school sites in the claimant's district complied with the mandate in different ways. As indicated above, some school sites sampled provided truancy notification letters to support the costs claimed and some did not. Thus, the Controller's finding that the costs claimed by the 53 school sites not sampled were not supported by documentation is not supported by any evidence in the record as required by Government Code section 17559 and section 1187.5 of the Commission's regulations.

Accordingly, staff finds that the Controller's reduction of \$721,623 claimed for the 53 school sites that were not included in the sample, is entirely lacking in evidentiary support.

Conclusion

Based on the foregoing, staff concludes that the following reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support:

- All costs claimed for fiscal year 1998-1999 totaling \$712,167. Claimant's argument that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian is not correct as a matter of law. Reimbursement is only required for written notifications of truancy. In addition, claimant has provided no evidence that it incurred costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of pupils identified as truants in accordance with the test claim decision and parameters and guidelines.
- Costs claimed for fiscal years 1999-2000 and 2000-2001, totaling \$1,173,865, for notifications at the 67 school sites sampled are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support because claimant did not provide source documentation to support all of the costs claimed.

However, the following reduction of costs claimed is incorrect because the reduction is entirely lacking in evidentiary support:

- A total of \$721,623 for fiscal years 1999-2000 and 2000-2001 for truancy notifications at the school sites not included in the audit sample.

Therefore, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, staff recommends that the Commission request the Controller to reinstate \$721,623 to the claimant, consistent with these findings.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 1998-1999, 1999-2000, and
2000-2001

Los Angeles Unified School District, Claimant

Case No.: 05-904133-I-02

Notification of Truancy

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

(Adopted September 25, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on September 25, 2015. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This IRC challenges reductions made by the State Controller's Office (Controller) to reimbursement claims filed by the Los Angeles Unified School District (claimant) for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Notification of Truancy* program. For each of the fiscal years at issue, the Controller randomly sampled schools that contained roughly half of the district's pupil population and extrapolated the findings to the schools not sampled.

The Commission concludes that the following reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support:

- All costs claimed for fiscal year 1998-1999 totaling \$712,167. Claimant's argument that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian is not correct as a matter of law. Reimbursement is only required for written notifications of truancy. In addition, claimant has provided no evidence that it incurred costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of pupils identified as truants in accordance with the test claim decision and parameters and guidelines.

- Costs claimed for fiscal years 1999-2000 and 2000-2001, totaling \$1,173,865, for notifications at the 67 school sites sampled are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant did not provide source documentation to support all of the costs claimed.

However, the following reduction of costs claimed is incorrect because the reduction is entirely lacking in evidentiary support:

- A total of \$721,623 for fiscal years 1999-2000 and 2000-2001 for truancy notifications at the school sites not included in the audit sample.

Therefore, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Controller is requested to reinstate \$721,623 to the claimant, consistent with these findings.

COMMISSION FINDINGS

I. Chronology

01/14/00	Claimant signed the reimbursement claim for fiscal year 1998-1999. ³⁴
01/12/01	Claimant signed the reimbursement claim for fiscal year 1999-2000. ³⁵
12/20/01	Claimant signed the reimbursement claim for fiscal year 2000-2001. ³⁶
10/03/02	Controller issued the draft audit report for the 1999-2001 claims. ³⁷
11/01/02	Controller issued the draft audit report for the 1998-1999 claim. ³⁸
11/14/02	Claimant submitted comments on the 1999-2001 draft audit report. ³⁹
11/25/02	Claimant submitted comments on the 1998-1999 draft audit report. ⁴⁰
12/13/02	Controller issued the final audit report for the 1998-1999 audit. ⁴¹
12/13/02	Controller issued the final audit report for the 1999-2001 audits. ⁴²

³⁴ Exhibit A, IRC, page 46.

³⁵ Exhibit A, IRC, page 54.

³⁶ Exhibit A, IRC, page 60.

³⁷ Exhibit A, IRC, page 31.

³⁸ Exhibit A, IRC, page 14.

³⁹ Exhibit A, IRC, pages 39-40.

⁴⁰ Exhibit A, IRC, pages 22-23.

⁴¹ Exhibit A, IRC, pages 9-24.

⁴² Exhibit A, IRC, pages 25-45.

12/12/05 Claimant filed this IRC.⁴³
01/23/06 Claimant filed supplemental filing to the IRC.⁴⁴
12/11/07 Controller filed late comments on the IRC.⁴⁵
07/16/15 Commission staff issued the draft proposed decision.⁴⁶
08/04/15 Claimant filed a request for an extension of time to file comments on the draft proposed decision.
08/05/15 Controller filed comments on the draft proposed decision.⁴⁷
08/14/15 Claimant filed comments on the draft proposed decision.⁴⁸

II. Background

The Notification of Truancy Program

Under California's compulsory education laws, children between the ages of six and 18 are required to attend school full-time, with a limited number of specified exceptions.⁴⁹ Statutes 1983, chapter 498 added Education Code section 48260.5 which specified as follows:

§ 48260.5. Notice to parent or guardian; alternative educational programs; solutions

(a) Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:

(1) That the pupil is truant.

(2) That the parent or guardian is obligated to compel the attendance of the pupil at school.

⁴³ Exhibit A, IRC.

⁴⁴ Exhibit B, IRC supplemental filing.

⁴⁵ Exhibit C, Controller's Late Comments on the IRC. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and proposed decision.

⁴⁶ Exhibit D.

⁴⁷ Exhibit E.

⁴⁸ Exhibit F.

⁴⁹ Education Code section 48200.

(3) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.

(b) The district also shall inform parents or guardians of the following:

(1) Alternative educational programs available in the district.

(2) The right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

On November 29, 1984, the Board of Control determined that Education Code section 48260.5, as added by Statutes 1983, chapter 498 imposed a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy. The decision was summarized as follows:

The Board determined that the statute imposes costs by requiring school districts to develop a notification form, and provide written notice to the parents or guardians of students identified as truants of this fact. It requires that notification contain other specified information and, also, to advise the parent or guardian of their right to meet with school personnel regarding the truant pupil. The Board found these requirements to be new and not previously required of the claimant.⁵⁰

The original parameters and guidelines were adopted on August 27, 1987, and authorized reimbursement for the one-time activities of planning implementation, revising school district policies and procedures, and designing and printing the forms. Reimbursement was also authorized for ongoing activities to identify pupils to receive the initial notification and prepare and distribute the notification by first class mail or other reasonable means.

The Commission amended the parameters and guidelines on July 22, 1993, effective for reimbursement claims filed beginning in fiscal year 1992-1993, to add a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed in lieu of requiring the claimant to provide documentation of actual costs to the Controller. The parameters and guidelines further provide that "school districts incurring unique costs within the scope of the reimbursable mandated activities may submit a request to amend the parameters and guidelines to the Commission for the unique costs to be approved for reimbursement."⁵¹ These are the parameters and guidelines applicable to this claim.⁵²

The Legislature enacted Statutes 2007, chapter 69, effective January 1, 2008, which was sponsored by the Controller to require the Commission to amend the parameters and guidelines, effective July 1, 2006, to modify the definition of a truant and the required elements to be included in the initial truancy notifications in accordance with Statutes 1994, chapter 1023, and

⁵⁰ Exhibit G, Board of Control, Brief Written Statement for Adopted Mandate on the *Notification of Truancy* test claim (SB 90-4133).

⁵¹ Exhibit A, IRC, page 69.

⁵² The parameters and guidelines as amended in 2008 are not applicable to this IRC.

Statutes 1995, chapter 19.⁵³ These statutes require school districts to add the following information to the truancy notification: that the pupil may be subject to prosecution under section 48264; that the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to section 13202.7 of the Vehicle Code; and that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. The definition of truant was also changed from a pupil absent for "more than three days" to a pupil absent for "three days." In 2008, the Commission amended the parameters and guidelines, for costs incurred beginning July 1, 2006, as directed by the Legislature.

Controller's Audit and Summary of the Issues

For fiscal year 1998-1999, the claimant submitted a reimbursement claim for \$712,167 based on 60,869 truancy notifications.⁵⁴ On December 13, 2002, the Controller issued its final audit report for the 1998-1999 reimbursement claim, reducing all costs claimed to zero.⁵⁵ The Controller sampled 79 of the claimant's 165 school sites that had claimed costs and found that the claimant did not provide any documentation, as required by the parameters and guidelines, to support the number of notifications distributed for the 79 schools sampled. The audit report further states that the Pupil Service Attendance Coordinator for the schools sampled said that the district did not issue any initial truancy forms to parents until February 2001, but contacted parents by phone based on a review of attendance records and return to classroom permits. The audit report states:

The SCO auditors randomly sampled 79 of the 165 school sites that claimed initial truancy notification, representing 48% of the population. The sampled school sites claimed that 27,702 initial truancy notifications were distributed to the pupil's parent or guardian. The district did not provide any documentation to support the claimed number of initial truancy notifications distributed for all the 79 schools sampled. Consequently, the entire claimed number of initial truancy notification is unsupported and, therefore, unallowable.

The Pupil Service Attendance (PSA) coordinator of the school sites sampled indicated that the district implemented the notification forms for truancy in February 2001. The coordinator advised that prior to that month, PSA counselors contacted parents or guardians through other means such as telephone logs, attendance records, and permits to return to classroom (PRC). The district did not notify pupils' parents or guardians of initial truancy via letter or any other official documents as required by Parameters and Guidelines.⁵⁶

The claimant submitted a reimbursement claim for \$921,249 for 1999-2000 based on 75,327 truancy notifications. For 2000-2001 claimant submitted a claim for \$974,240 based on 76,531

⁵³ Exhibit G, State Controller's Office, Letter to School Districts re AB 1698, July 17, 2007.

⁵⁴ Exhibit B, IRC Supplemental Filing, page 4.

⁵⁵ Exhibit B, IRC Supplemental Filing, beginning on page 16.

⁵⁶ Exhibit A, IRC, page 16.

truancy notifications.⁵⁷ The Controller issued a separate final audit report for the fiscal year 1999-2000 and 2000-2001 reimbursement claims on December 13, 2002.⁵⁸ Of the combined amount requested for these fiscal years (\$1,895,498), the Controller found that \$18,406 is allowable and supported by written letters notifying the parent or guardian of the initial truancy, and that \$1,877,083 is unallowable because the costs were not supported by documentation. The audit report explains that the Controller sampled a percentage of the claimant's school sites to see if the costs claimed for the sample were supported by documentation, and then extrapolated those findings to all costs claimed by the district. The audit report states the following for the 1999-2000 reimbursement claim:

For FY 1999-2000, the SCO auditors randomly sampled 67 of the 120 school sites that claimed initial truancy notifications, representing 56% of the population. The sampled school sites claimed that 49,480 initial truancy notifications were distributed to the pupil's parent or guardian. The district did not provide any documentation to support the claimed number of initial truancy notifications distributed at 55 of the 67 school sampled. For the remaining 12 schools sampled, the district provided 286 letters that contained the required elements identified in the *Parameters and Guidelines*. Consequently, the percentage of supported notifications distributed to the pupil's parent or guardian by the district was 0.58% (286 divided by 49,480). The percentage of initial truancy notifications distributed to the pupil's parent or guardian that was not supported by the district was 99.42%.

For FY 1999-2000, the district claimed that 75,327 initial truancy notifications at the 120 schools were distributed to the pupil's parent or guardian. Based on the results of the SCO sample, the district supported that only 437 notifications were distributed, a difference of 74,890. For FY 1999-2000, *Parameters and Guidelines* allows the district to be reimbursed \$12.23 for every form distributed. Consequently, unallowable costs total \$915,904 (74,890 multiplied by \$12.23).⁵⁹

Similarly, for the fiscal year 2000-2001 reimbursement claim, the audit report states:

For FY 2000-01, the SCO auditors randomly sampled 67 of the 120 school sites that claimed initial truancy notifications, representing 56% of the population. The sampled school sites claimed that 44,676 initial truancy notifications were distributed to the pupil's parent or guardian. The district did not provide any documentation to support the claimed notifications distributed at 41 of the 67 schools sampled. For the remaining 26 schools sampled, the district provided 598 letters that contained the required elements identified in *Parameters and Guidelines*. Consequently, the percentage of supported notifications distributed to the pupil's parent or guardian by the district was 1.34% (598 divided by 44,676).

⁵⁷ Exhibit B, IRC Supplemental Filing, page 4.

⁵⁸ Exhibit B, IRC Supplemental Filing, beginning at page 32.

⁵⁹ Exhibit A, IRC, page 32.

The percentage of initial truancy notifications distributed to the pupil's parent or guardian that was not supported by the district was 98.66%.

For FY 2000-02, the district claimed that 76,531 initial truancy notifications at the 120 schools were distributed to the pupil's parent or guardian. Based on the results of the SCO sample, the district supported that only 1,026 notifications were distributed, leaving a difference of 75,505. For FY 2000-01, *Parameters and Guidelines* allows the district to be reimbursed \$12.73 for every form distributed. Consequently, unallowable costs total \$961,179 (75,505 multiplied by \$12.73).⁶⁰

According to the audit, district staff gave various reasons for not distributing initial notification of truancy forms, such as not being aware of the mandate or guidelines for reporting initial truancy notification; not working for the district during the audit period and thus unable to locate records; records had been destroyed (they were not informed to retain records); at some school sites, Pupil Service Attendance coordinators were on duty only once per week, so administrative staff notified parents or guardians but did not retain records; or district staff contacted parents or guardians by telephone logs, attendance records, or permits to return to the classroom rather than notifications sent.⁶¹

The 1999-2001 audit report also contains a chart to explain how the findings from the audited sample were extrapolated to the total number of truancy notifications claimed by the district, resulting in a reduction of \$1,877,083 for fiscal years 1999-2000 and 2000-2001 as follows:⁶²

	<u>FY 1999-2000</u>	<u>FY 2000-2001</u>	<u>Total</u>
Number of notifications claimed	75,327	76,531	
Multiplied by the percentage of unsupported number of notifications (from the sample)	99.42% —————	98.66% —————	
Unsupported number of notifications	(74,890)	(75,505)	
Multiplied by Unit Cost	\$12.23	\$12.73	
Audit Adjustment	\$(915,904)	\$(961,179)	\$(1,877,083)

⁶⁰ *Id.* at pages 32-33.

⁶¹ Exhibit A, IRC, page 33.

⁶² *Ibid.*

III. Positions of the Parties

A. Claimant's Position

It is claimant's position that the audit is incorrect and all reduced amounts should be reinstated. Claimant argues that the test claim statute does not require the initial notification of truancy to be by letter or in writing. Rather, it requires the method of notification to be "by first-class mail or other reasonable means." Claimant also asserts that the parameters and guidelines do not explicitly require the notifications to be in writing, and that the Controller ignored the evidence provided (such as phone logs, attendance records, and other documentation) to support the district's claims. Claimant states:

The [test claim] statute does not explicitly require that the notification be by letter or other written document. Section 48260.5 provides: "Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following ..."
(Emphasis added.) The Parameters and Guidelines arguably presume that the notification will be effected through a written form. ...

[¶]

However, the Parameters and Guidelines also do not explicitly state that the notification must be by letter or other written document. Nevertheless, the SCO, relying on the foregoing language in the Parameters and Guidelines, takes the position that the notification can only be effected and supported by a letter or other written form.

The District contends the SCO's interpretation is inconsistent with the language of the statute. If the Legislature had intended to limit the means of notification to a letter or other "writing" it could have done so. The District believes that the SCO's limited interpretation is inconsistent with the intent of the statute and would in fact frustrate the Legislature's goals in enacting the statute, i.e., to ensure parents and guardians receive effective notice of the pupil's attendance issues.

As a result of its limited and incorrect interpretation of the statute, the SCO effectively disregarded all evidence the District presented to demonstrate it had satisfied the requirements of the statute by means other than a letter or other writing to the parent or guardian. Specifically, the District submitted phone logs, attendance records, and other documentation in support of the claims. While the SCO indicates it "reviewed" this evidence, the audit report suggests that the SCO wholly disregarded and rejected this evidence.⁶³

On August 14, 2015, claimant filed comments concurring with the draft proposed decision.⁶⁴

⁶³ Exhibit B, IRC Supplemental Filing, pages 6-7.

⁶⁴ Exhibit F.

B. Controller's Position

The Controller argues that the audit is correct and that the IRC should be denied. The Controller maintains that the parameters and guidelines and the statutes require that the notification be in writing, and that the parameters and guidelines requires that supporting documents must be kept on file for a period of three years from the date of final payment by the Controller. Although the Controller reviewed documentation such as telephone logs, attendance records and return to classroom permits, these records did not support that the five specified elements in the parameters and guidelines were communicated to pupil's parents or guardians.⁶⁵

In comments filed on August 5, 2015, the Controller concurred with the draft proposed decision, stating:

We agree that the statistical sampling results for FY 1999-2000 and 2000-2001 may not be representative of the schools not sampled. Therefore, applying the sampling results to the non-sampled schools was incorrect. Subsequent to this audit, we revised our statistical sampling methodologies for this program to stratify the sample between daily and period attendance accounting methods and to sample from the entire initial truancy notification population, rather than schools.⁶⁶

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁶⁷ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable

⁶⁵ Exhibit C, Controller's comments on the IRC, pages 17-19.

⁶⁶ Exhibit E, Controller's comments on the draft proposed decision, pages 1-2.

⁶⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶⁸

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁶⁹ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]”⁷⁰

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁷¹ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁷²

A. The Reductions for Fiscal Year 1998-1999 Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As indicated above, the Controller randomly sampled 79 of the 165 school sites that claimed costs for initial truancy notification for fiscal year 1998-1999. The sampled school sites claimed that 27,702 initial truancy notifications were distributed to the pupils’ parents or guardians. The Controller found, however, that claimant did not provide any documentation to support the number of claimed initial truancy notifications distributed for the 79 schools sampled. And based on statements made by the claimant during the audit, the audit report states that the

⁶⁸ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶⁹ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁷⁰ *American Bd. of Cosmetic Surgery, Inc., supra*, 162 Cal.App.4th at pages 547-548.

⁷¹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁷² Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

district's truancy notifications were not provided by letter or any other official written document to the parent or guardian during this fiscal year. Rather, the claimant provided notification by phone, based on attendance logs and permits to return to the classroom.⁷³

The claimant's IRC filings do not dispute these findings, but allege that the test claim statute, with language that allows notification by "first-class mail or other reasonable means," does not require the notification to be in writing. The claimant states:

Nevertheless, the SCO, relying on the foregoing language in the Parameters and Guidelines, takes the position that the notification can only be effected and supported by a letter or other written form.

The District contends the SCO's interpretation is inconsistent with the language of the statute. If the Legislature had intended to limit the means of notification to a letter or other "writing" it could have done so. The District believes that the SCO's limited interpretation is inconsistent with the intent of the statute and would in fact frustrate the Legislature's goal in enacting the statute, i.e., to ensure parents and guardians receive effective notice of the pupil's attendance issues.

As a result of its limited and incorrect interpretation of the statute, the SCO effectively disregarded all evidence the District presented to demonstrate it had satisfied the requirements of the statute by means other than a letter or other writing to the parent or guardian. Specifically, the District submitted phone logs, attendance records and other documentation in support of the claims. While the SCO indicates it "reviewed" this evidence, the audit reports suggest that the SCO wholly disregarded and rejected this evidence.⁷⁴

The Commission finds that the Controller's reduction of all costs claimed for fiscal year 1998-1999 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The test claim decision adopted by the Board of Control concluded that the Education Code section 48260.5 mandated school districts to provide written notification to the parent or guardian containing the required information upon the pupil's initial classification as a truant as follows:

The Board determined that the statute imposes costs by requiring school districts to develop a notification form, and provide *written* notice to the parents or guardians of students identified as truants of this fact. It requires that notification contain other specified information and, also, to advise the parent or guardian of their right to meet with school personnel regarding the truant pupil. The Board found these requirements to be new and not previously required of the claimant.⁷⁵

⁷³ Exhibit A, IRC, page 16.

⁷⁴ Exhibit B, IRC Supplemental Filing, pages 6-7.

⁷⁵ Exhibit G, Board of Control, Brief Written Statement for Adopted Mandate on the *Notification of Truancy* test claim (SB 90-4133). Emphasis added.

The parameters and guidelines, under section V. Reimbursable Costs, also require written notification, stating that an “eligible claimant shall be reimbursed for only those costs incurred for planning the notification process, revising district procedures, *the printing and distribution of notification forms*, and associated record keeping.”⁷⁶ The notification process is described as “preparing and distributing by mail or other method *the forms* to parents/guardians.”⁷⁷ In addition, the uniform cost allowance is “based on the number of initial notifications of truancy distributed.”⁷⁸ Section VI. of the parameters and guidelines expressly requires claimants to provide documentation in support of the initial notifications of truancy distributed during the year. Section VI.(A) directs eligible claimants to “[r]eport the number of initial notifications of truancy distributed during the year,” and further directs school districts to “not include in that count the number of notifications or other contacts which may result from the initial notification to the parent or guardian.”⁷⁹

Here, the claimant argues that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian, thus providing effective notice of the pupil’s truancy to the parents or guardians, and that it should be reimbursed for the number unwritten notifications to parents or guardians claimed based on telephone calls, attendance records, and other documentation.⁸⁰

However, neither the test claim decision, nor the parameters and guidelines, authorize reimbursement for providing unwritten notifications of truancy. The Board of Control’s test claim decision and the adopted parameters and guidelines, which provide that the mandate requires written notification, are quasi-judicial decisions interpreting the reimbursement requirements of article XIII B, section 6 of the California Constitution and are therefore binding in later actions including this IRC.⁸¹

Moreover, the claimant has provided no evidence to support a claim for reimbursement that it incurred any costs in fiscal year 1998-1999 to provide written notice to the parents or guardians

⁷⁶ Exhibit A, IRC, page 68. Emphasis added.

⁷⁷ *Ibid.*

⁷⁸ Exhibit A, IRC, page 69.

⁷⁹ Exhibit A, IRC, page 69. Emphases added.

⁸⁰ Exhibit B, IRC Supplemental Filing, pages 6-7.

⁸¹ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated: “[U]nless a party to a quasi-judicial proceeding challenges the agency’s adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.” [Citation omitted.] Therefore, like a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure.” See also, *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, where the court states that the Commission’s parameters and guidelines are “regulatory.”

of pupils identified as truants, which contain the information required by the test claim statute, in accordance with the test claim decision and parameters and guidelines.

Therefore, the Commission finds that the Controller's reduction of all costs claimed for fiscal year 1998-1999, totaling \$712,167, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

B. Reductions for School Sites Included in the Audit Sample for Fiscal Years 1999-2001 Are Supported by Evidence in the Record. But Reductions for School Sites Not Included in the Audit Sample for Fiscal Years 1999-2001 Are Entirely Lacking in Evidentiary Support.

The Controller also audited the fiscal year 1999-2000 and 2000-2001 claims by randomly sampling the claimant's school sites (67 of the 120 school sites) representing 56 percent of the pupil population. But unlike the findings for fiscal year 1998-1999, the claimant provided the Controller with 286 truancy notification letters distributed by the sampled school sites in fiscal year 1999-2000 and 598 written notifications distributed by the sampled school sites in fiscal year 2000-2001. Based on this information, the Controller found that 0.58 percent of the sampled notices for 1999-2000, and 1.34 percent of the sampled notices for 2000-2001, were supported by documentation. The Controller then extrapolated the percentage of unsupported notices claimed by the sampled school sites for each fiscal year (99.42 percent and 98.66 percent, respectively) to reduce costs claimed by all school sites in the district, including the 53 school sites that were not sampled. The audit report explains the methodology as follows:

For FY 1999-2000, the SCO auditors randomly sampled 67 of the 120 school sites that claimed initial truancy notifications, representing 56% of the population. The sampled school sites claimed that 49,480 initial truancy notifications were distributed to the pupil's parent or guardian. The district did not provide any documentation to support the claimed number of initial truancy notifications distributed at 55 of the 67 schools sampled. For the remaining 12 schools sampled, the district provided 286 letters that contained the required elements identified in *Parameters and Guidelines*. Consequently, the percentage of supported notifications distributed to the pupil's parent or guardian by the district was 0.58% (286 divided by 49,480). The percentage of initial truancy notifications distributed to the pupil's parent or guardian that was not supported by the district was 99.42%.

For FY 1999-2000, the district claimed that 75,327 initial truancy notifications at the 120 schools were distributed to the pupil's parent or guardian. Based on the results of the SCO sample, the district supported that only 437 notifications were distributed, a difference of 74,890. For FY 1999-2000, *Parameters and Guidelines* allows the district to be reimbursed \$12.23 for every form distributed. Consequently, unallowable costs total \$915,904 (74,890 multiplied by \$12.23).⁸²

⁸² Exhibit A, IRC, page 32.

For FY 2000-01, the SCO auditors randomly sampled 67 of the 120 school sites that claimed initial truancy notifications, representing 56% of the population. The sampled school sites claimed that 44,676 initial truancy notifications were distributed to the pupil's parent or guardian. The district did not provide any documentation to support the claimed notifications distributed at 41 of the 67 schools sampled. For the remaining 26 schools sampled, the district provided 598 letters that contained the required elements identified in *Parameters and Guidelines*. Consequently, the percentage of supported notifications distributed to the pupil's parent or guardian by the district was 1.34% (598 divided by 44,676). The percentage of initial truancy notifications distributed to the pupil's parent or guardian that was not supported by the district was 98.66%.

For FY 2000-01, the district claimed that 76,531 initial truancy notifications at the 120 schools were distributed to the pupil's parent or guardian. Based on the results of the SCO sample, the district supported that only 1,026 notifications were distributed, leaving a difference of 75,505. For FY 2000-01, *Parameters and Guidelines* allows the district to be reimbursed \$12.73 for every form distributed. Consequently, unallowable costs total \$961,179 (75,505 multiplied by \$12.73).⁸³

The claimant argues that written truancy notifications are not required by the test claim statute and that the Controller disregarded all evidence it presented to demonstrate it had satisfied the requirements of the statute by means other than a written notification to the parent or guardian. Although claimant did not provide truancy letters in all cases, the claimant alleges it tracked the number of truancy notices provided through phone logs, attendance records, and return to classroom permits, and provided this type of documentation in support of the number of notices claimed. The Controller, however, rejected this documentation.⁸⁴

The Controller reviewed telephone logs, attendance records, and return to classroom permits. However, these records did not provide evidence that claimant complied with the parameters and guidelines by sending written notifications to the parents or guardians that contained the information required. Under the 1983 test claim statute truancy notifications must include (1) the pupil's truancy, (2) that the parent or guardian is obligated to compel the attendance of the pupil at school, (3) that parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to article 6 (commencing with section 48290) of chapter 2 of part 27, (4) alternative educational programs available in the district, and (5) the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy. The Controller maintains that there was no documentation provided, except for the very small percentage discussed above, to verify that the claimant performed the mandate.

- 1) *The reduction of costs claimed for the 67 sampled school sites is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.*

⁸³ Exhibit A, IRC, pages 32-33. Emphasis in original.

⁸⁴ Exhibit B, IRC Supplemental Filing, pages 6-7.

The Commission finds that the Controller's reduction of costs claimed for truancy notices of the 67 sampled school sites that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The mandate approved by the Board of Control is to prepare and distribute written truancy notifications to the parent or guardian and include the information for the parent or guardian specified by the original test claim statute. The parameters and guidelines authorize reimbursement to mail the notification "forms" to parents/guardians with the information required by the test claim statute. The parameters and guidelines, in Sections VI., and VII., further require that each claim for reimbursement "provide documentation in support of the reimbursement claimed for this mandated program," and that when using the uniform cost allowance, "Documentation [must be provided] which indicates the total number of initial notifications of truancy distributed." Section VII. of the parameters and guidelines states that "documents must be kept on file for a period of 3 years from the date of final payment by the State Controller."⁸⁵

Claimant does not dispute that it did not provide to the Controller truancy notification forms or letters to support the claimed costs, but alleges that it complied with the parameters and guidelines by providing other documentation in the form of telephone logs, attendance records, and return to classroom permits, to support the number of truancy notices distributed.

Claimant is correct that the parameters and guidelines do not require copies of the truancy forms or letters actually distributed to support the costs claimed. The parameters and guidelines do not limit the type of supporting documentation required and, instead, simply require "documentation in support of the reimbursement claimed for this mandated program," and documentation that "indicates the total number of initial notifications of truancy distributed."⁸⁶ Thus, under the parameters and guidelines, telephone logs, attendance records, and return to classroom permits may be sufficient documentation to support the costs claimed *if* these records show that the claimant complied with the mandate to provide written notice to the parent or guardian of the information required by the test claim statute and the documentation verifies the number of notifications provided in a fiscal year. However, no documentation or evidence has been filed with the Commission to support the costs claimed. Thus, the Commission cannot determine if the documentation the claimant relies on complies with the parameters and guidelines. Pursuant to Government Code section 17559 and section 1187.5 of the Commission's regulations, all assertions of fact must be supported with substantial evidence in the record.

Therefore, the Commission finds that the Controller's reduction of costs claimed for truancy notifications of the 67 sampled school sites that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

- 2) *The reduction of costs resulting from the Controller's extrapolation of findings to the school sites that were not included in the audit sample is entirely lacking in evidentiary support.*

⁸⁵ Exhibit A, IRC, pages 68-70.

⁸⁶ Exhibit A, IRC, pages 69 and 71.

However, the Controller's extrapolation of its findings from the 67 sampled school sites to the remaining 53 school sites that were not included in the Controller's audit sample is not supported by any evidence in the record. There is no showing in the record that the audit results from the sampled schools accurately reflects and is representative of the schools not sampled. There is evidence that school sites in the claimant's district complied with the mandate in different ways. As indicated above, some school sites sampled provided truancy notification letters to support the costs claimed and some did not. The audit report further states the attendance counselors at some school sites were not aware of the mandate or the proper guidelines for reporting initial truancy notifications, some records could not be located, some records were destroyed, and some counselors at school sites were not on duty daily requiring other administrative staff to provide the truancy notifications.⁸⁷ Because the record indicates variation in school compliance, the Controller's use of data from the sampled schools in the district to calculate the percentage of compliance for all schools does not provide any evidence of the validity of the costs claimed by the schools that were not sampled. Thus, the Controller's finding that the costs claimed by the 53 school sites that were not sampled were not supported by documentation, is not supported by any evidence in the record.

Accordingly, the Commission finds that the Controller's reduction of costs claimed for the 53 school sites that were not included in the sample, is entirely lacking in evidentiary support. The claimed costs incorrectly reduced are as follows:

1999-2000	\$316,109	\$12.23 per notification times 25,847 notifications claimed at schools not sampled ⁸⁸
2000-2001	\$405,514	\$12.73 per notification times 31,855 notifications claimed at schools not sampled ⁸⁹
Total	\$721,623	

V. Conclusion

Based on the foregoing, the Commission concludes that the following reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support:

- All costs claimed for fiscal year 1998-1999 totaling \$712,167. Claimant's argument that it satisfied the requirements of the test claim statute by means other than a letter or other writing to the parent or guardian is not correct as a matter of law. Reimbursement is only

⁸⁷ Exhibit B, IRC Supplemental Filing, page 40.

⁸⁸ According to the audit report (Exhibit A, IRC, p. 32), 75,327 total notifications were claimed and 49,480 claimed at sampled schools, so 25,847 were claimed at schools not sampled ($75,327 - 49,480 = 25,847$), at a \$12.23 reimbursement rate: $25,847 \times 12.23 = 316,109$ (rounded up).

⁸⁹ According to the audit report (Exhibit A, IRC, p. 32) 76,531 total notifications were claimed and 44,676 claimed at sampled schools, so 31,855 were claimed at schools not sampled ($76,531 - 44,676 = 31,855$), at a \$12.73 reimbursement rate: $31,855 \times 12.73 = 405,514$.

required for *written* notifications of truancy. In addition, claimant has provided no evidence that it incurred costs in fiscal year 1998-1999 to provide written notice to the parents or guardians of pupils identified as truants in accordance with the test claim decision and parameters and guidelines.

- Costs claimed for fiscal years 1999-2000 and 2000-2001, totaling \$1,173,865,⁹⁰ for notifications at the 67 school sites sampled are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant did not provide source documentation to support all of the costs claimed.

However, the following reduction of costs claimed is incorrect because it is not based on evidence in the record and is therefore entirely lacking in evidentiary support:

- A total of \$721,623 for fiscal years 1999-2000 and 2000-2001 for truancy notifications at the school sites not included in the audit sample.

Therefore, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations the Commission requests that the Controller reinstate \$721,623 to the claimant, consistent with these findings.

⁹⁰ The figures were derived from the 1999-2001 audit report (Exhibit A, IRC, p. 32).

1999-2000	\$605,140	\$12.23 per notification times 49,480 notifications at schools sampled
2000-2001	\$568,725	\$12.73 per notification times 44,676 notifications at schools sampled
Total	\$1,173,865	Total reduced at schools sampled