

**ITEM 8**  
**PROPOSED DECISION**  
**PARAMETERS AND GUIDELINES AMENDMENT**

Education Code Section 48260.5

Statutes 1983, Chapter 498; Statutes 1994, Chapter 1023;  
Statutes 1995, Chapter 19; Statutes 2007, Chapter 69

*Notification of Truancy*

11-PGA-01 (07-PGA-01, 05-PGA-56, CSM-4133)

State Controller's Office, Requester

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**EXECUTIVE SUMMARY**

The State Controller's Office (SCO) filed this request to amend the parameters and guidelines for the *Notification to Truancy* program based on Statutes 2010, chapter 724, which amended Education Code section 48260.5. A summary of the mandate and the SCO's request to amend the parameters and guidelines are described below.

**I. Summary of the Mandate**

On November 29, 1984, the State 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, constitutes a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians upon the student's initial classification of truancy.

The original parameters and guidelines for this program were adopted by the Commission on August 29, 1987. The parameters and guidelines have been amended several times. As relevant to this item, the Commission amended the parameters and guidelines on July 22, 1993, 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 all reimbursable activities based on each initial notification of truancy distributed pursuant to the test claim statute, in lieu of requiring the claimant to provide detailed documentation of actual costs with the SCO. 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."

In addition, the Legislature enacted Statutes 2007, chapter 69 (AB 1698), effective January 1, 2008, to require the Commission to amend the parameters and guidelines 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 Statutes 1995, chapter 19, effective July 1, 2006. In 2008, the Commission amended the parameters and guidelines as directed by the Legislature.<sup>1</sup>

The parameters and guidelines currently authorize reimbursement to school districts and county offices of education for the one-time activities to plan the method of implementation, revise school district policies, and design and print notification forms. Ongoing reimbursement is authorized to identify the truant pupils to receive the notification, prepare and distribute by first class mail or other reasonable means the forms to parents and guardians, and associated recordkeeping.<sup>2</sup>

#### Statutes 2010, chapter 724 amendment to Education Code section 48260.5

Before the 2010 amendment, Education Code section 48260.5 required the district to notify the parent by “first class mail or other reasonable means” upon the pupil’s initial classification as a truant, and the Board of Control determined that providing *written* notice of truancy was mandated by the state.<sup>3</sup>

Statutes 2010, chapter 724 amended Education Code section 48260.5 to alter the manner of notification, but not the content, to state the following:

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~~ using the most cost-effective method possible, which may include electronic mail or a telephone call:

The legislative history indicates that the purpose of this amendment was to reduce the cost of the *Notification of Truancy* program,<sup>4</sup> which the Legislative Analyst’s Office (LAO) had estimated at roughly \$17 per notification in a 2009-2010 budget analysis.<sup>5</sup>

## **II. Summary of the Request**

The SCO requests that the parameters and guidelines be updated and amended to reflect the Statutes 2010, chapter 724 amendment to section 48260.5, beginning October 19, 2010 (the

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<sup>1</sup> Exhibit F, Parameters and Guidelines as Amended May 27, 2010 (note that the only amendment to the Parameters and Guidelines after 2008 was in 2010, and changed only boilerplate).

<sup>2</sup> *Id.*

<sup>3</sup> Exhibit F, Brief Written Statement for Adopted Mandate Issued by the Board of Control for *Notification of Truancy* (SB 90-4133).

<sup>4</sup> Exhibit F, Senate Rules Committee, Office of Senate Floor Analysis, Analysis of AB 1610 (2010 Reg. Sess.) amended October 7, 2010, page 4; Assembly, Concurrence in Senate Amendments, Analysis of AB 1610 (2009-2010 Reg. Sess.) amended October 7, 2010, page 3.

<sup>5</sup> Exhibit F, LAO report, “2009-2010 Budget Analysis Series: Proposition 98 Education Programs,” page 37, [http://www.lao.ca.gov/analysis\\_2009/education/ed\\_anl09.pdf](http://www.lao.ca.gov/analysis_2009/education/ed_anl09.pdf) (accessed June 30, 2014).

effective date of the 2010 statute). The substantive changes include adding activities for one-time reimbursement to identify the most cost-effective notification method by comparative analysis, and designing standardized electronic mail notifications and records to support notifications made by methods other than forms. The SCO also proposes to limit the current uniform cost allowance to only written initial truancy notification forms by first class mail or other reasonable means, if it is the most cost-effective method. The SCO proposes that the unit cost would not be available for districts that notify parents or guardians by other unwritten methods, but that actual costs for those activities could be claimed. The SCO also proposes related claim submission and boilerplate changes.

### **III. Procedural History**

On July 1, 2011, the SCO filed the request to amend the parameters and guidelines. On August 15, 2011, School Innovations and Advocacy filed comments on the SCO's request, contending the "cost-effective" method of distribution should not be interpreted as the cheapest method. On November 8, 2011, SCO filed a revised request to amend the parameters and guidelines. On July 2, 2014, a draft proposed decision on the request was issued for comment. On July 24, 2014, the SCO filed comments on the draft proposed decision, agreeing that the Commission does not have the authority to amend the parameters and guidelines relating to the enactment of the 2010 statute absent the submission of a new test claim. The SCO also clarified its request and interpretation of the statutes.

### **IV. Discussion**

#### **A. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines to Add, as a One-Time Activity, "Identifying the Most Cost-Effective Notification Method by Comparative Analysis," Since That Activity is Required by a Subsequent Statute That Has Not Been the Subject of a Test Claim.**

The parameters and guidelines authorize one-time reimbursement for the following activities:

Planning and Preparation – One-time

Planning the method of implementation, revising school district policies, and designing and printing the forms.<sup>6</sup>

The SCO requests that the Commission add the following activity for one-time reimbursement: "Identifying the most cost-effective notification method by comparative analysis." The SCO further requests that the Commission "clarify the definition of 'most cost-effective.'"

Staff recommends that the Commission deny this request. Statutes 2010, chapter 724 amended Education Code section 48260.5 to require school districts to use the most cost-effective method of notification possible, which may include providing unwritten notice with a telephone call to the parent or guardian. The 2010 amendment does not clarify existing law, but materially changes the law. The SCO's request to add the activity of "identifying the most cost-effective notification method by comparative analysis," would increase state reimbursement for the one-time activities based on the 2010 statute. However, the law does not give the Commission the

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<sup>6</sup> Exhibit F, Parameters and Guidelines amended May 27, 2010.

authority to amend the parameters and guidelines to increase reimbursement by adding new reimbursable activities based on the enactment of a subsequent statute which has not been the subject of a test claim.

The Commission's authority to amend parameters and guidelines in this case is governed by Government Code section 17557(d)(2)(D) and section 1183.17(a) of the Commission's regulations. Pursuant to this authority, the Commission has jurisdiction and is authorized to amend the parameters and guidelines to "*clarify what constitutes reimbursable activities.*"<sup>7</sup> Specifically, "[a] request to amend parameters and guidelines may be filed to make any of the following changes to the parameters and guidelines: . . . (4) *Clarify reimbursable activities consistent with the original decisions on the test claim and parameters and guidelines.*"<sup>8</sup> In addition, the Commission has the authority to add reimbursable activities to existing parameters and guidelines that may be "reasonably necessary" to comply with a mandated program, but that authority is limited. The Commission, following a hearing and findings on the record, may only add "activities that are reasonably necessary for the performance of the *original* state-mandated program."<sup>9</sup>

However, Government Code section 17557(d) does not give the Commission jurisdiction to amend the parameters and guidelines to authorize new reimbursement for additional activities required by a subsequent statute, or for new activities that may be reasonably necessary to comply with a subsequent statute. That action would violate the statutory mandates scheme by allowing reimbursement for new activities without the filing of a test claim and a decision by the Commission that the subsequent statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6. Government Code section 17521 defines a "test claim" to mean "the first claim filed with the commission alleging that *a particular statute or executive order* imposes costs mandated by the state ...."

In this case, the original *Notification of Truancy* program did not require school districts to use the most cost-effective method of notifying the pupil's parent or guardian of the initial truancy classification. Cost was not a factor that had to be considered. Rather, prior section 48260.5 required notification to the parent or guardian of their rights and responsibilities under the law and to get parents involved in order to provide intensive guidance and coordinated community services to meet the special needs of pupils with school attendance problems. And the Board of Control concluded that the test claim statute mandated school districts to provide written notification to the parent or guardian under these circumstances.<sup>10</sup>

Accordingly, the Commission does not have jurisdiction to amend the parameters and guidelines to add the one-time activity of "identifying the most cost-effective notification method by comparative analysis."

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<sup>7</sup> Government Code section 17557(d)(2)(D).

<sup>8</sup> California Code of Regulations, title 2, section 1183.17(a)(4).

<sup>9</sup> California Code of Regulations, title 2, section 1183.17(a)(5).

<sup>10</sup> Exhibit F, Brief Written Statement for Adopted Mandate Issued by the Board of Control for *Notification of Truancy* (SB 90-4133).

**B. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines To Add As One-Time Activities “Designing Standardized Electronic Mail Notifications, and Designing Records to Support Notifications Made by Methods Other Than Forms,” Since Those Activities Conflict With the Original Decisions on the Test Claim and Parameters and Guidelines and Are Not Reasonably Necessary for the Performance of the State-Mandated Program.**

The current parameters and guidelines authorize one-time reimbursement for “planning the method of implementation, revising school district policies, and designing and printing the forms.” These activities have been eligible for reimbursement since the original parameters and guidelines were adopted with period of reimbursement beginning July 28, 1983.

The SCO requests the Commission to amend the parameters and guidelines to add the following activities for one-time reimbursement: “designing standardized electronic mail notifications and designing records to support notifications made by methods other than forms.”

The activities proposed by the SCO are not required by the plain language of Education Code section 48260.5 as added by the test claim statute (Stats. 1983, ch. 498) or amended by Statutes 2010, chapter 724. Thus, the proposal must be considered as adding activities that are “reasonably necessary” to comply with the mandated program. The Commission’s authority to add activities to existing parameters and guidelines that may be considered “reasonably necessary” to comply with a mandated program, however, is limited. The proposed activities must be reasonably necessary for the performance of the *original* state-mandated program.”<sup>11</sup>

Staff recommends that the Commission deny the SCO’s request. The proposed activity to “design records to support notifications made *by methods other than forms*” may be reasonably necessary for the implementation of Statutes 2010, chapter 724 to allow school districts to provide unwritten notices of truancy, but the proposal conflicts with the Board of Control’s decision on the test claim. The Board of Control found that the test claim statute mandates school districts to develop notification forms and provide written notice to the parents or guardians of the truancy classification.<sup>12</sup> Neither the test claim decision, nor the existing parameters and guidelines, authorize reimbursement for providing notice in an unwritten manner.<sup>13</sup> The Board of Control’s decision on the scope of the mandate was a quasi-judicial decision interpreting the reimbursement requirements of article XIII B, section 6 of the California Constitution and is, therefore, binding in later actions.<sup>14</sup> Thus, authorizing reimbursement to design records to support unwritten notifications (i.e., by telephone call), conflicts with the original decision and, therefore, is not reasonably necessary for the performance of the original state-mandated program.

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<sup>11</sup> California Code of Regulations, title 2, section 1183.17(a)(5).

<sup>12</sup> Exhibit F, Brief Written Statement for Adopted Mandate Issued by the Board of Control for *Notification of Truancy* (SB 90-4133).

<sup>13</sup> *Id.*

<sup>14</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

In addition, both of the proposed activities conflict with the existing parameters and guidelines and, therefore, are not necessary for the performance of the original state-mandated program. The existing parameters and guidelines authorized one-time reimbursement to school districts to plan the method of implementation, revise school district policies, and design and print the forms. These activities were approved with a reimbursement period beginning in 1983. Although the forms may have changed over the last thirty years (i.e., to reflect written notices by email), adding new language that requires additional reimbursement to amend the existing designs and forms, conflicts with the Commission's decision to limit reimbursement for these types of activities to a one-time occurrence. While the proposed activities may be reasonably necessary to comply with Statutes 2010, chapter 724, the Commission cannot amend the parameters and guidelines to increase reimbursement by adding new reimbursable activities based on the enactment of a subsequent statute.<sup>15</sup>

Accordingly, the SCO's proposal to add "designing standardized electronic mail notifications, and designing records to support notifications made by methods other than forms" as additional one-time activities, conflicts with the original decisions on the test claim and parameters and guidelines and is, therefore, not reasonably necessary for the performance of the state-mandated program.

**C. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines to Approve Ongoing Reimbursement for Unwritten Truancy Notifications and to Make Related Changes to the Uniform Cost Allowance, Since the Proposal Conflicts with the Board of Control's Test Claim Decision.**

The existing parameters and guidelines contain a unit cost of \$10.21 based on each initial notification of truancy distributed "pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983," adjusted each subsequent year by the Implicit Price Deflator. The parameters and guidelines also authorize "unique costs" for school districts that incur additional reasonable expenses to implement the program beyond the unit cost provided, if the district files a request to amend the parameters and guidelines for the unique costs with the Commission.<sup>16</sup>

The SCO requests that the Commission amend the parameters and guidelines by adding language to Section IV, Reimbursable Activities, to provide that the parent or guardian shall be notified of the truancy classification "using the most cost-effective method possible;" and then limiting the use of the \$10.21 unit cost to only those districts that provide initial truancy notification forms in writing "by first class mail or other reasonable means, if it is the most cost-effective method." The SCO interprets the phrase "first class mail or other reasonable means" to mean the method of distributing *written* notification truancy forms (by first class mail, second class mail, hand-delivered, or email, for example). The unit cost would not be available for districts that notify parents or guardians by other unwritten methods, including telephone calls and meetings. Claimants who notify parents or guardians by unwritten methods must claim actual costs and maintain documentation that supports the number of notifications made by a method other than a written initial truancy notification form, shows that the district directly notified the parent or

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<sup>15</sup> Government Code section 17557(d).

<sup>16</sup> Exhibit F, Parameters and Guidelines amended May 27, 2010, p. 4.

guardian, and shows that the district notified the parent or guardian of the information required in the statute. Documentation may include detailed time logs and the district's policies and procedures.

Staff recommends that the Commission deny this request. As stated above, the law provides that a request to amend parameters and guidelines may be filed to “*clarify reimbursable activities consistent with the original decisions on the test claim and parameters and guidelines.*”<sup>17</sup> The existing parameters and guidelines authorize reimbursement based on Education Code section 48260.5, as that statute existed *before* the 2010 amendment. Although there was no analysis in the decision on the test claim of the phrase “by first class mail or other reasonable means” for providing the notice in section 48260.5, the Board of Control determined that section 48260.5 mandated school districts to provide *written* notification to the parent or guardian upon the initial classification of the student as a truant. The Board of Control's decision is a final, binding decision.<sup>18</sup>

Moreover, the parameters and guidelines are consistent with the test claim decision and authorize reimbursement for written notifications only. In this respect, one-time reimbursement was authorized to develop notification forms and reimbursement for the program is based on the unit cost per notification distributed; phrases that are consistent with a written notice of truancy. In addition, the parameters and guidelines already limit the use of the unit cost to only those districts that provide initial truancy notification forms in writing. Section IV(C) of the parameters and guidelines states that “[t]he uniform cost allowance is based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983,” which, as determined by the Board of Control, mandates the distribution of a written notice. Section V(A) of the parameters and guidelines directs eligible claimants to “[r]eport the number of initial notifications of truancy distributed during the year,” and further directs school district 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.”

Reimbursement was not approved for providing notice based on the most cost-effective method, or to provide notice using an unwritten method like a telephone call. Thus, the request to add language requiring that school districts be reimbursed based on the most cost-effective method of providing notice, including the option of providing a verbal notice by telephone or meeting is not consistent with the Board of Control's original decision on the test claim. Since the Board of Control's decision limited the mandate to written notifications, the Commission cannot later authorize reimbursement to distribute an unwritten notice, absent a new test claim filing, since that change would not clarify or be consistent with the original decision.

Therefore, staff recommends that the Commission deny the SCO's requests to authorize reimbursement for unwritten notifications and to amend the unit cost language. Staff further recommends that the related proposed amendments to add time study language and boilerplate

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<sup>17</sup> California Code of Regulations, title 2, section 1183.17(a)(4); Government Code section 17557(d)(2)(D).

<sup>18</sup> *California School Boards Assoc.*, *supra*, 171 Cal.App.4th 1183, 1200.

language for filing reimbursement claims based on actual costs for unwritten notifications be denied.

School districts are required by law to comply with Education Code section 48260.5, as amended in 2010, and use “the most cost-effective method possible, which may include electronic mail or a telephone call” when providing the required notice of truancy. However, school districts are not eligible to claim reimbursement under the existing parameters and guidelines to determine the most cost-effective method of notification or to claim reimbursement based on unwritten notifications since a test claim was not filed on the 2010 statute.

If the actual costs of the program are now less than the unit cost approved in the parameters and guidelines as a result of the subsequent 2010 statute, as suggested in the legislative history of the bill, the Government Code does authorize two alternative processes that may be applicable here. If it is contended that the state’s liability for the *Notification of Truancy* program has been modified by a subsequent change in law (Stats. 2010, ch. 724), a request for a new test claim decision pursuant to Government Code section 17570 may be filed. Under section 17570, the Commission “may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified by a subsequent change in law.”<sup>19</sup> However, all representations of fact must be supported by documentary evidence filed in the record to support the requested findings.<sup>20</sup>

Alternatively, if the allegation is that the unit cost does not currently reflect the actual reasonable costs incurred to comply with the original mandated program, a parameters and guidelines amendment proposing a new reasonable reimbursement methodology (RRM) could be filed pursuant to Government Code section 17557(d)(2)(C). Any request to change an existing unit cost must comply with the requirements in Government Code section 17518.5.<sup>21</sup> As determined by the Commission, a unit cost RRM must represent a reasonable approximation of the actual costs incurred by each eligible claimant to comply with the state-mandated program, in order to fulfill the constitutional requirement that all costs mandated by the state be reimbursed to a local governmental entity. In addition, the unit cost proposal must be based on substantial evidence in the record.<sup>22</sup>

For the reasons stated above, however, staff finds that the Commission does not have the authority to adopt the SCO’s proposed amendments to these parameters and guidelines.

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<sup>19</sup> Government Code section 17570(b).

<sup>20</sup> Government Code section 17559; California Code of Regulations, title 2, section 1187.5.

<sup>21</sup> Government Code section 17557(d)(2)(C).

<sup>22</sup> Article XIII B, section 6 of the California Constitution; Government Code sections 17518.5, 17557, and 17559; Evidence Code section 1280; California Code of Regulations, title 2, section 1187.5; *Chesney v. Byram* (1940) 15 Cal.2d 460, 465; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.



## **V. Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision to deny the request to amend the parameters and guidelines. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
AMENDMENT FOR:

Education Code Section 48260.5

Statutes 1983, Chapter 498; Statutes 1994,  
Chapter 1023; Statutes 1995, Chapter 19;  
Statutes 2007, Chapter 69

State Controller's Office, Requester.

Case No.: 11-PGA-01 (07-PGA-01,  
05-PGA-56, CSM-4133)

*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 26, 2014)*

**DECISION**

The Commission on State Mandates (Commission) adopted this decision on the request to amend the parameters and guidelines during a regularly scheduled hearing on September 26, 2014. [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 at the hearing by a vote of [vote count will be included in the adopted decision], and denied the request to amend the parameters and guidelines.

**I. Chronology**

- 11/29/1984    The Board of Control adopted the test claim decision.<sup>23</sup>
- 08/27/1987    The Commission adopted the parameters and guidelines.
- 07/28/1988    The Commission amended the parameters and guidelines.
- 07/22/1993    The Commission amended the parameters and guidelines to add a unit cost.
- 01/31/2008    The Commission amended the parameters and guidelines.
- 05/27/2010    The Commission amended parameters and guidelines.<sup>24</sup>

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<sup>23</sup> Exhibit F.

<sup>24</sup> Exhibit F.

- 07/01/2011 The State Controller's Office (SCO) filed the request to amend the parameters and guidelines.<sup>25</sup>
- 08/15/2011 School Innovations and Advocacy filed comments on the request to amend parameters and guidelines.<sup>26</sup>
- 11/08/2011 The SCO filed revised request to amend parameters and guidelines.<sup>27</sup>
- 07/ 02/2014 Commission staff issued the draft proposed decision for comment.<sup>28</sup>
- 07/24/2014 The SCO filed comments on the draft proposed decision.<sup>29</sup>

## **II. Summary Of The Mandate**

### The Board of Control and Commission decisions on the *Notification of Truancy* program

Under California's compulsory education laws, children between the ages of six and eighteen years of age are required to attend school full-time, with a limited number of specified exceptions.<sup>30</sup> A pupil who, without a valid excuse, is absent from school for three full days in one school year, or is tardy or absent for more than a 30-minute period during the schoolday on three occasions in one school year, is considered a truant.<sup>31</sup> Once a student is designated a truant, state law requires schools, districts, counties, and the courts to take progressive intervention measures to ensure that parents and pupils receive services to assist them in complying with the compulsory attendance laws.

The first intervention is required by Education Code section 48260.5 as enacted by Statutes 1983, chapter 498. Education Code section 48260.5 requires school districts, upon a pupil's initial classification as a truant, to notify the pupil's parent or guardian "by first class mail or other reasonable means" that (1) the pupil is truant; (2) parents or guardians are obligated to compel the attendance of the pupil at school; (3) parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution; (4) alternative educational programs are available; (5) parents or guardians have the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy; (6) the pupil may be subject to prosecution, suspension, restriction, or delay of the pupil's driving privilege; and (7) that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.<sup>32</sup>

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<sup>25</sup> Exhibit A.

<sup>26</sup> Exhibit B.

<sup>27</sup> Exhibit C.

<sup>28</sup> Exhibit D.

<sup>29</sup> Exhibit E.

<sup>30</sup> Education Code section 48200.

<sup>31</sup> Education Code section 48260.

<sup>32</sup> Statutes 1983, chapter 498.

On August 25, 1984, San Diego Unified School District filed the test claim with the Board of Control, the predecessor to the Commission. The test claim alleged that the district “implemented a program in compliance” with section 48260.5 (Stats. 1983, ch. 498) to “develop a new notification form, duplicating of the notification forms, clerical costs for typing, mailing, recording, and filing of the notifications, first class postage for mailing the notifications, and district counselor time impacted as a result of increased responsibilities and counseling loads.”<sup>33</sup> On November 29, 1984, the Board of Control determined that Education Code section 48260.5, as added by Statutes 1983, chapter 498 constitutes a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy 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.<sup>34</sup>

The original parameters and guidelines for this program were adopted by the Commission on August 27, 1987. The parameters and guidelines have been amended several times. As relevant to this item, the Commission amended the parameters and guidelines on July 22, 1993, effective for reimbursement claims filed beginning in fiscal year 1992-1993. The 1993 amendment added a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed pursuant to the test claim statute, in lieu of requiring the claimant to provide detailed documentation of actual costs with the SCO. This unit cost was prepared by the SCO using audited cost data for the costs incurred by schools per notice, and was intended to constitute full reimbursement for all of the reimbursable activities. 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.”<sup>35</sup>

In addition, the Legislature enacted Statutes 2007, chapter 69, effective January 1, 2008, to require the Commission to amend the parameters and guidelines 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 Statutes 1995, chapter 19, effective July 1, 2006. In 2008, the Commission amended the parameters and guidelines as directed by the Legislature.

The parameters and guidelines currently authorize reimbursement to school districts and county offices of education for the following activities:

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<sup>33</sup> Exhibit F, Attachment A to Test Claim filed by San Diego Unified School District (SB 90-4133).

<sup>34</sup> Exhibit F, Brief Written Statement for Adopted Mandate issued by the Board of Control on the *Notification of Truancy* test claim (SB 90-4133).

<sup>35</sup> Exhibit F, Parameters and Guidelines amended May 27, 2010, p. 4.

1. Planning and Preparation – One-time

Planning the method of implementation, revising school district policies, and designing and printing the forms.

2. Notification process – On-going

Identifying the truant pupils to receive the notification, preparing and distributing by first-class mail or other reasonable means the forms to parents/guardians, and associated recordkeeping to provide parents/guardians with the following required information upon a pupil's initial classification as a truant:

- a. That the pupil is truant.
- b. That the parent or guardian is obligated to compel the attendance of the pupil at school.
- c. 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 48260) of Chapter 2 of Part 27.
- d. That alternative educational programs are available in the district.
- e. That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.
- f. That the pupil may be subject to prosecution under Section 48264.
- g. That the pupil may be subject to suspension, restriction, or delay of the pupil's driving privileges pursuant to Section 13202.7 of the Vehicle Code.
- h. That it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.

The unit cost language in the current parameters and guidelines states the following:

IV. REIMBURSABLE COSTS

[¶]

C. Uniform Cost Allowance

Pursuant to Government Code section 17557, the Commission on State Mandates has adopted a uniform cost allowance for reimbursement in lieu of payment of total actual costs incurred. The uniform cost allowance is based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983.

For fiscal year 1992-93, the uniform cost allowance is \$10.21 per initial notification of truancy distributed. The cost allowance shall be adjusted each subsequent year by the Implicit Price Deflator.

D. Unique Costs

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, Pursuant to Section 1185.3, Title 2, California Code of Regulations, such requests must be made by November 30 immediately following the fiscal year of the reimbursement claim in which reimbursement for the costs is requested.

## V. CLAIM PREPARATION

Each claim for reimbursement pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983, must be timely filed and provide documentation in support of the reimbursement claimed for this mandated program.

### A. Uniform Cost Allowance Reimbursement

Report the number of initial notifications of truancy distributed during the year. Do not include in that count the number of notifications or other contacts which may result from the initial notification to the parent or guardian. The agency must maintain documentation that indicates the total number of initial notifications of truancy distributed.

### B. Recognized Unique Costs

As of fiscal year 1992-93, the Commission has not identified any circumstances which would cause a school district to incur additional costs to implement this mandate which have not already been incorporated in the uniform cost allowance.

If and when the Commission recognizes any unique circumstances which can cause the school district to incur additional reasonable costs to implement this mandated program, these unique implementation costs will be reimbursed for specified fiscal years in addition to the uniform cost allowance.

School districts which incur these recognized unique costs will be required to support those actual costs in the following manner:

#### 1. Narrative Statement of Unique Costs Incurred

Provide a detailed written explanation of the costs associated with the unique circumstances recognized by the Commission.

#### 2. Employee Salaries and Benefits

Identify the employee(s) and their job classification, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The staff time claimed must be supported by source documentation, such as time reports, however, the average number of hours devoted to each function may be claimed if supported by a documented time study.

### 3. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandated program can be claimed. List cost of materials which have been consumed or expended specifically for the purposes of this mandated program.

### 4. Allowable Overhead Costs

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education. County offices of education must use the J-73A (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the State Department of Education.<sup>36</sup>

#### 2010 amendment to Education Code section 48260.5

Before Statutes 2010, chapter 724, Education Code section 48260.5 required the district to notify the parent by “first class mail or other reasonable means” upon the pupil’s initial classification as a truant. As indicated above, the Board of Control determined that the test claim statute mandated school districts to develop notification forms and provide written notice to the parents or guardians of the truancy classification.

In its analysis of the 2009-2010 Budget, the Legislative Analyst’s Office (LAO) reviewed the *Notification of Truancy* program finding that:

... districts typically comply with the notification of truancy mandate by sending a letter to the student’s home. Reports from several districts suggest that these letters are formalities and do not increase substantive interaction among educators, parents, and students.

**Reimbursement Rules Create Waste.** Each time a district sends a letter to a parent, the state reimburses that action at a rate of roughly \$17 per letter. This rate was set before the state established mandate review procedures that included a more rigorous process of cost determination. Given the text of the letter changes little if at all from year to year or student to student, the real cost of sending letters is likely far below the \$17 rate.<sup>37</sup>

Statutes 2010, chapter 724 amended Education Code section 48260.5 to alter the manner of notification, but not the content, to state the following:

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~~

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<sup>36</sup> Exhibit F, Parameters and Guidelines amended May 27, 2010.

<sup>37</sup> Exhibit F, LAO report, “2009-2010 Budget Analysis Series: Proposition 98 Education Programs,” p. 37. Accessed at [http://www.lao.ca.gov/analysis\\_2009/education/ed\\_anl09.pdf](http://www.lao.ca.gov/analysis_2009/education/ed_anl09.pdf), on June 30, 2014.

following using the most cost-effective method possible, which may include electronic mail or a telephone call:

The legislative history indicates that the purpose of this amendment was to reduce the cost of the *Notification of Truancy* program. The Senate Rules Committee stated:

Modification of K-12 Mandates to Preserve Underlying Statutes, While Eliminating or Reducing State Mandate Costs. Makes statutory changes to several mandates including National Board Certification, Pupil Promotion/Retention, Pupil Truancy Notifications, and School Accountability Report Card in order to continue programs, but remove unnecessary state costs.<sup>38</sup>

Likewise, the Assembly Floor Analysis described the amendment as follows:

Limit state mandate costs for the existing truancy mandate, under which the state pays districts \$17 each, or about \$15.9 million annually, to send form letters to parents of truants, by amending the mandate to require schools to use the most cost-effective method possible for notification, which may include electronic mail or a telephone call.<sup>39</sup>

The express purpose of the 2010 statutory amendment, therefore, was to “remove unnecessary state costs” or “limit state mandate costs” by “requiring school districts to use the most cost-effective method possible for notification.”

### **III. The Request to Amend the Parameters and Guidelines**

The SCO requests that the parameters and guidelines be updated and amended to reflect the 2010 amendment to section 48260.5, beginning October 19, 2010 (the effective date of the 2010 statute). The substantive changes include the following:

- Add the following activities for one-time reimbursement: (1) identifying the most cost-effective notification method by comparative analysis, (2) designing standardized electronic mail notifications, and (3) designing records to support notifications made by methods other than forms.
- Amend the uniform cost allowance to limit its availability only to districts that “distribute [written] initial truancy notification forms by first class mail or other reasonable means, if it is the most cost-effective method.” The unit cost would not be available for districts that notify parents or guardians by other unwritten methods. Claimants who notify parents or guardians by unwritten methods must claim actual costs and maintain documentation that supports the number of notifications made by a method other than an initial truancy notification form, shows that the district directly notified the parent or guardian, and shows that the district notified the parent or guardian of the information

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<sup>38</sup> Exhibit F, Senate Rules Committee, Office of Senate Floor Analysis, Analysis of AB 1610 (2010 Reg. Sess.) amended October 7, 2010, page 4.

<sup>39</sup> Exhibit F, Assembly Concurrence in Senate Amendments, Analysis of AB 1610 (2009-2010 Reg. Sess.) amended October 7, 2010, page 3.



required in the statute. Documentation may include detailed time logs and the district's policies and procedures.

- Add a paragraph stating that claimants may use time studies to support salary and benefit costs when an activity is task-repetitive.
- Add language to the claim preparation and submission section of the parameters and guidelines consistent with the proposal to require actual cost claiming for districts that use unwritten methods of notification other than “first class mail or other reasonable means” to notify the parent or guardian.<sup>40</sup>

#### **IV. Position of the Parties**

##### State Controller's Office

The SCO requests that the Commission adopt the proposed amendments, consistent with Statutes 2010, chapter 724.

On July 24, 2014, the SCO filed comments on the draft proposed decision, stating that it agreed with the conclusion in the draft decision that the Commission cannot amend the parameters and guidelines relating to the enactment of the 2010 statute absent the submission of a new test claim.

The SCO, however, disagrees with the interpretation in the draft decision of Education Code section 48260.5 before it was amended in 2010, which requires a district to notify the parent by “first class mail or other reasonable means” upon the pupil's initial classification as a truant. The draft decision interpreted “other reasonable means” to be broad and include a telephone call, an email, a meeting with the parent, or any other reasonable method of notification. The SCO states, however, that the phrase “first class mail or other reasonable means” refers only to the method of distributing *written* notification truancy forms (by first class mail, second class mail, hand-delivered, or email, for example), and does not include telephone calls, meetings, unwritten notices. The SCO bases its interpretation on the existing parameters and guidelines, which refer to notification “forms,” and on Education Code section 70, which states that “whenever any notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.” The SCO requests that the Commission “correct its reference of ‘other reasonable means’ to include only various methods to distribute [written] notification forms.”<sup>41</sup>

##### School Innovations and Advocacy

School Innovations and Advocacy filed comments stating in relevant part the following:

“Most cost-effective” does not mean “cheapest” and should not require districts to adopt least-effective methodologies without regard to outcomes. Education Codes 48260 and 48260.5 exist to abate truancy. Coercing less effective methodologies may decrease program costs but it will increase truancy rates. The

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<sup>40</sup> Exhibit C, Revised Request to Amend Parameters and Guidelines.

<sup>41</sup> Exhibit E.

extraordinary diversity of this state, including economic conditions, rates of family mobility and parent access to the internet, lead us to believe that the only viable option is for the school district to determine which methodology is most cost-effective. Not the SCO or other entity. This should be clarified in the parameters and guidelines.<sup>42</sup>

School Innovations and Advocacy also questions the documentation requirements proposed by the SCO for districts claiming actual costs under its proposal.

## V. Discussion

### A. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines to Add, as a One-Time Activity, “Identifying the Most Cost-Effective Notification Method by Comparative Analysis,” Since That Activity is Required by a Subsequent Statute That Has Not Been the Subject of a Test Claim.

The existing parameters and guidelines authorize one-time reimbursement for the following activities:

#### Planning and Preparation – One-time

Planning the method of implementation, revising school district policies, and designing and printing the forms.

The SCO requests that the Commission add the following activity for one-time reimbursement: “Identifying the most cost-effective notification method by comparative analysis.” The SCO further requests that the Commission “clarify the definition of ‘most cost-effective.’”

The Commission denies this request. The Commission’s authority to amend parameters and guidelines is governed by Government Code section 17557(d) and section 1183.17(a) of the Commission’s regulations. Pursuant to this authority, the Commission has jurisdiction and is authorized to amend the parameters and guidelines to “*clarify* what constitutes reimbursable activities.”<sup>43</sup> More specifically, “[a] request to amend parameters and guidelines may be filed to make any of the following changes to the parameters and guidelines: . . . (4) *Clarify reimbursable activities consistent with the original decisions on the test claim and parameters and guidelines.*”<sup>44</sup> In addition, the Commission has the authority to add reimbursable activities to existing parameters and guidelines that may be “reasonably necessary” to comply with a mandated program, but that authority is limited. The Commission, following a hearing and findings on the record, may only add “activities that are reasonably necessary for the performance of the *original* state-mandated program.”<sup>45</sup>

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<sup>42</sup> Exhibit B, School Innovations & Advocacy, Comments on Request to Amend Parameters and Guidelines filed August 15, 2011.

<sup>43</sup> Government Code section 17557(d)(2)(D).

<sup>44</sup> California Code of Regulations, title 2, section 1183.17(a)(4).

<sup>45</sup> California Code of Regulations, title 2, section 1183.17(a)(5). The Commission may also amend parameters and guidelines to delete any reimbursable activity that has been repealed by

However, the Commission does not have jurisdiction to amend the parameters and guidelines to authorize new reimbursement for additional activities required by a subsequent statute, or for new activities that may be reasonably necessary to comply with a requirement imposed by a subsequent statute. That action would violate the statutory mandates scheme by allowing reimbursement for new activities without the filing of a test claim and a decision by the Commission that the subsequent statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6. Government Code section 17521 defines a “test claim” to mean “the first claim filed with the commission alleging that *a particular statute or executive order* imposes costs mandated by the state ....”

In this case, the original *Notification of Truancy* program did not require school districts to use the most cost-effective method of notifying the pupil’s parent or guardian of the initial truancy classification. Cost was not a factor that had to be considered. Rather, prior section 48260.5 required notification to the parent or guardian of their rights and responsibilities under the law and to get parents involved in order to provide intensive guidance and coordinated community services to meet the special needs of pupils with school attendance problems. The statutory scheme was summarized by the California Supreme Court in 1987 as follows:

The Education Code establishes a comprehensive mechanism for dealing with truants ranging from resort to various community programs, to special mediation programs. (§§ 48263.5, 48320 et seq.) Truants are not, except in aggravated circumstances involving “habitual” offenders, subject to the jurisdiction of the juvenile courts. ([Welf. & Inst.Code, § 601, subd. \(b\)](#); [Ed.Code, § 48263.](#))

In establishing this scheme the Legislature expressed its intent to provide “intensive guidance and coordinated community services ... to meet the special needs of pupils with school attendance problems....” (§ 48320, subd. (a).) Its stated goal was “to encourage school districts and county offices of education ... to adopt pupil attendance policies based on the active involvement of parents, pupils, teachers, administrators, other personnel, and community members” in order to, inter alia, provide procedures for “[j]oint efforts between law enforcement and schools, such as school level attendance review teams and periodic efforts to return truant pupils to school.” (§ 48340, subd. (f).) With this overall picture in mind, we turn to the constitutional issues.<sup>46</sup>

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statute or executive order; update offsetting revenues and savings as long as the proposal does not require a new legal findings that there are no costs mandated by the state pursuant to Government Code section 17556(e); include a reasonable reimbursement methodology for all or some of the reimbursable activities; define what activities are not reimbursable; consolidate the parameters and guidelines for two or more programs; and amend boilerplate language as specified. (Gov. Code, § 17557(d)(2).)

<sup>46</sup> *In re James D.* (1987) 43 Cal.3d 903, 910.

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 student's initial classification as a truant.<sup>47</sup>

Statutes 2010, chapter 724 amended Education Code section 48260.5 to require school districts to use the most cost-effective method possible, which may include a telephone call, when notifying the pupil's parent or guardian as follows:

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~~ using the most cost-effective method possible, which may include electronic mail or a telephone call:

The amendment requiring school districts to use the most cost-effective method possible does not clarify existing law; it materially changes the law.<sup>48</sup> As indicated in the background, the purpose of the amendment was to limit reimbursement of existing state-mandated costs for the program by requiring districts to use the most cost-effective method of notification.<sup>49</sup> While the ultimate use of the most cost-effective method of notification may affect or reduce the actual ongoing costs incurred by school districts to comply with this program, the SCO's request to add the activity of "identifying the most cost-effective notification method by comparative analysis," would increase state reimbursement for the one-time activities. Government Code section 17557(d) does not give the Commission the authority to amend the parameters and guidelines to increase reimbursement by adding new reimbursable activities based on the enactment of a subsequent statute which has not been the subject of a test claim.

Accordingly, the Commission does not have jurisdiction to amend the parameters and guidelines to add the one-time activity of "identifying the most cost-effective notification method by comparative analysis."

**B. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines To Add As One-Time Activities "Designing Standardized Electronic Mail Notifications, and Designing Records to Support Notifications Made by Methods Other Than Forms," Since Those Activities Conflict With the Original Decisions on the Test Claim and Parameters and Guidelines and Are Not Reasonably Necessary for the Performance of the State-Mandated Program.**

The current parameters and guidelines authorize one-time reimbursement for "planning the method of implementation, revising school district policies, and designing and printing the

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<sup>47</sup> Exhibit F, Brief Written Statement for Adopted Mandate issued by the Board of Control on the *Notification of Truancy* test claim (SB 90-4133).

<sup>48</sup> *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, where the court noted that a material change in the language of the statute creates the presumption that the Legislature intended to change the law.

<sup>49</sup> Exhibit F, Senate Rules Committee, Office of Senate Floor Analysis, Analysis of AB 1610 (2010 Reg. Sess.) amended October 7, 2010, page 4; Assembly, Concurrence in Senate Amendments, Analysis of AB 1610 (2009-2010 Reg. Sess.) amended October 7, 2010, page 3.

forms.” These activities have been eligible for reimbursement since the original parameters and guidelines were adopted with period of reimbursement beginning July 28, 1983.

The SCO requests the Commission to amend the parameters and guidelines to add the following activities for one-time reimbursement: “designing standardized electronic mail notifications and designing records to support notifications made by methods other than forms.”

The activities proposed by the SCO are not required by the plain language of Education Code section 48260.5 as amended by the test claim statute (Stats. 1983, ch. 498) or as amended by Statutes 2010, chapter 724. Thus, the proposal must be considered as adding activities that are “reasonably necessary” to comply with the mandated program. The Commission’s authority to add activities to existing parameters and guidelines that may be considered “reasonably necessary” to comply with a mandated program, however, is limited. The proposed activities must be reasonably necessary for the performance of the *original* state-mandated program.”<sup>50</sup>

The Commission denies the SCO’s request. The proposed activity to “design records to support notifications made *by methods other than forms*” may be necessary to implement Statutes 2010, chapter 724 which allows school districts to provide unwritten notices of truancy, but that statute was never the subject of a test claim and the proposal conflicts with the Board of Control’s decision on the test claim statute (Stats. 1983, ch. 498). The Board of Control found that the test claim statute mandates school districts to develop notification forms and provide written notice to the parents or guardians of the truancy classification. Neither the test claim decision, nor the existing parameters and guidelines, authorize reimbursement for providing notice in an unwritten manner. The Board of Control’s decision on the scope of the mandate was a quasi-judicial decision interpreting the reimbursement requirements of article XIII B, section 6 of the California Constitution and is, therefore, binding in later actions.<sup>51</sup> Thus, authorizing reimbursement to design records to support unwritten notifications (i.e., by telephone call), conflicts with the original decision and, therefore, is not reasonably necessary for the performance of the original state-mandated program.

In addition, both of the proposed activities conflict with the existing parameters and guidelines and, therefore, are not necessary for the performance of the original state-mandated program. The existing parameters and guidelines authorized one-time reimbursement to school districts to plan the method of implementation, revise school district policies, and design and print the forms. These activities were approved with a reimbursement period beginning in 1983. Although the forms may have changed over the last thirty years (i.e., to reflect written notices by

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<sup>50</sup> California Code of Regulations, title 2, section 1183.17(a)(5).

<sup>51</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: “[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.”

email), adding new language that essentially requires additional reimbursement to amend the existing designs and forms, conflicts with the Commission's earlier decision to limit reimbursement for these types of activities to a one-time occurrence. While the proposed activities may be reasonably necessary to comply with Statutes 2010, chapter 724, the Commission cannot amend the parameters and guidelines to increase reimbursement by adding new reimbursable activities based on the enactment of a subsequent statute.<sup>52</sup>

Accordingly, the SCO's proposal to add "designing standardized electronic mail notifications, and designing records to support notifications made by methods other than forms" as additional one-time activities, conflicts with the original decisions on the test claim and parameters and guidelines is, therefore, not reasonably necessary for the performance of the state-mandated program. The SCO's proposal is denied.

**C. The Commission Does Not Have Jurisdiction to Amend the Parameters and Guidelines to Approve Ongoing Reimbursement for Unwritten Truancy Notifications and to Make Related Changes to the Uniform Cost Allowance, Since the Proposal Conflicts with the Board of Control's Test Claim Decision.**

The existing parameters and guidelines contain a unit cost of \$10.21 based on each initial notification of truancy distributed "pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983," adjusted each subsequent year by the Implicit Price Deflator. The parameters and guidelines also contain language allowing school districts that incur unique costs that cause the district to incur additional reasonable expenses to implement the program beyond the unit cost provided, to submit a request to amend the parameters and guidelines for the Commission to approve additional reimbursement for the unique costs.

The SCO requests that the Commission amend the parameters and guidelines by adding language to Section IV, describing the reimbursable activities, to provide that the parent or guardian shall be notified of the truancy classification "using the most cost-effective method possible;" and then limiting the use of the \$10.21 unit cost to only those districts that provide initial truancy notification forms in writing "by first class mail or other reasonable means, if it is the most cost-effective method." The SCO interprets the phrase "first class mail or other reasonable means" to mean the method of distributing *written* notification truancy forms (by first class mail, second class mail, hand-delivered, or email, for example). The unit cost would not be available for districts that notify parents or guardians by other unwritten methods, including telephone calls and meetings. Claimants who notify parents or guardians by unwritten methods must claim actual costs and maintain documentation that supports the number of notifications made by a method other than a written initial truancy notification form, shows that the district directly notified the parent or guardian, and shows that the district notified the parent or guardian of the information required in the statute. Documentation may include detailed time logs and the district's policies and procedures.

The proposed amendments to section IV. of the parameters and guidelines, governing the reimbursable activities and the uniform cost allowance, are reflected in underline and strikeout as follows:

## B. 2 Notification Process – On-going

~~Identifying the truant pupils to receive the notification pupils initially classified as truant, associated recordkeeping, and notifying the pupil's parent or guardian using the most cost-effective method possible of, preparing and distributing by first class mail or other reasonable means the forms to parents/guardians, and associated recordkeeping to provide parents/guardians with the following required information upon a pupil's initial classification as a truant:~~

[¶]

Chapter 724, Statutes 2010, requires school districts upon a pupil's initial classification as a truant, to notify the pupil's parent or guardian using the most cost-effective method possible. However, only claimants who distribute initial truancy notification forms to parents or guardians by first-class mail or other reasonable means are allowed to claim reimbursement using the existing uniform cost allowance. Claimants who notify parents or guardians by other methods must claim actual costs and maintain documentation that (1) supports the number of notifications made by a method other than an initial truancy notification form; (2) shows that the district directly notified the pupil's parent or guardian; and (3) shows that the district notified the parent or guardian of the eight items specified in Section IV.B.2. Documentation supporting items (1) and (2) may include detailed time logs. Documentation supporting item (3) may include the district's policies and procedures established in Section IV.B.1.

## C. Uniform Cost Allowance

Pursuant to Government Code section 17557, the Commission on State Mandates has adopted a uniform cost allowance for reimbursement in lieu of payment of total actual costs incurred. The uniform cost allowance was adopted for, and applies to, only those claimants who distribute initial truancy notification forms by first-class mail or other reasonable means, if it is the most cost-effective method. The uniform cost allowance is based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, Chapter 498, Statutes 1983.

For fiscal year 1992-93, the uniform cost allowance is \$10.21 per initial notification of truancy distributed. The cost allowance shall be adjusted each subsequent year by the Implicit Price Deflator.

## D. Unique Costs

~~School districts incurring that distribute initial truancy notification forms by first-class mail or other reasonable means and incur~~ 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. Pursuant to Section 1185.3, Title 2, California Code of Regulations, such requests must be made by November 30 immediately following

the fiscal year of the reimbursement claim in which reimbursement for the costs is requested.

The proposed amendments to section V. of the parameters and guidelines, Claim Preparation and Submission, state in relevant part the following:

~~Each claim for reimbursement pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983, must be timely filed and provide documentation in support of the reimbursement claimed for this mandated program. Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.~~

#### A. Uniform Cost Allowance Reimbursement

~~Report the number of initial notifications of truancy~~ truancy notification forms distributed during the year. Do not include in that count (1) the number of notifications made by method other than an initial truancy notification form, or (2) the number of notifications or other contacts which may result from the initial notification to the parent or guardian. The agency claimant must maintain documentation that indicates supports the total number of initial notifications of truancy notification forms distributed. The claimant must also maintain documentation that identifies the content of initial truancy notification forms distributed.

#### B. Recognized Unique Costs

~~As of fiscal year 1992-1993~~ 2010-2011, the Commission has not identified any circumstances ~~which that~~ would cause a school district to incur additional costs to implement this mandate which that have not already been incorporated in the uniform cost allowance ~~to implement this mandate by distributing initial truancy notification forms by first-class mail or other reasonable means.~~

Chapter 724, Statutes of 2010, requires school districts to perform initial truancy notifications using the most cost-effective method possible. If and when the Commission recognizes that (1) unique circumstances cause a school district to incur additional reasonable costs beyond the uniform cost allowance to implement this mandated program by distributing initial truancy notification forms by first class mail or other reasonable means, and (2) distributing initial truancy notification forms by first-class mail or other reasonable means is the most cost-effective method for the school district to implement the mandated program, the any unique circumstances which can cause the school district to incur additional reasonable costs to implement this mandated program, these unique implementation costs will be reimbursed for specified fiscal years in addition to the uniform cost allowance.



School districts which incur these recognized unique costs will be required to provide a detailed written explanation of costs associated with the unique circumstances recognized by the Commission. School districts are required to support those actual costs in the following manner: unique costs in the manner specified in Section V.C.

~~1. Narrative Statement of Unique Costs Incurred~~

~~Provide a detailed written explanation of the costs associated with the unique circumstances recognized by the Commission.~~

~~2. Employee Salaries and Benefits~~

C. Actual Cost Reporting

Claimants that (1) have recognized unique costs pursuant to Section V.B., or (2) perform initial truancy notifications by methods other than distributing initial truancy notification forms by first-class mail or other reasonable means must report actual costs. The following are eligible for reimbursement.

The SCO requests additional boilerplate amendments to the claim preparation and submission section of the parameters and guidelines, and a section authorizing the use of a time study, consistent with its proposal to require actual cost claiming for districts that use unwritten methods of notification.

The Commission denies this request. As stated above, the law provides that a request to amend parameters and guidelines may be filed to “*clarify reimbursable activities consistent with the original decisions on the test claim and parameters and guidelines.*”<sup>53</sup> The existing parameters and guidelines authorize reimbursement based on Education Code section 48260.5, as that section existed *before* Stautes2010, chapter 724. Although there was no analysis in the decision on the test claim of the phrase “by first class mail or other reasonable means” for providing the notice in section 48260.5, the Board of Control determined that section 48260.5 mandated school districts to provide *written* notification to the parent or guardian upon the initial classification of the student as a truant. The Board of Control’s decision is a final, binding decision.<sup>54</sup>

Moreover, the parameters and guidelines are consistent with the test claim decision and authorize reimbursement for written notifications only. In this respect, one-time reimbursement was authorized to develop notification forms and reimbursement for the program is based on the unit cost per notification distributed; phrases that are consistent with a written notice of truancy. In addition, the parameters and guidelines already limit the use of the unit cost to only those districts that provide initial truancy notification forms in writing. Section IV(C) of the parameters and guidelines states that “[t]he uniform cost allowance is based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, Chapter 498, Statutes of 1983,” which, as determined by the Board of Control, mandates the

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<sup>53</sup> California Code of Regulations, title 2, section 1183.17(a)(4); Government Code section 17557 (d)(2)(D).

<sup>54</sup> *California School Boards Assoc., supra*, 171 Cal.App.4th 1183, 1200.

distribution of a written notice. Section V(A) of the parameters and guidelines 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.”

Reimbursement was not approved for providing notice based on the most cost-effective method, or to provide notice using an unwritten method like a telephone call.

Thus, the request to add language requiring that school districts be reimbursed based on the most cost-effective method of providing notice, including the option of providing a verbal notice by telephone or meeting, is not consistent with the Board of Control’s original decision on the test claim. Since the Board of Control’s decision limited the mandate to written notifications, the Commission cannot later authorize reimbursement to distribute an unwritten notice, absent a new test claim filing, since that change would not clarify or be consistent with the original decision.

Therefore, the SCO’s requests to authorize reimbursement for unwritten notifications and to amend the unit cost language are denied. In addition, the related proposed amendments to add time study language and boilerplate language for filing reimbursement claims based on actual costs for unwritten notifications are also denied.

School districts are required by law to comply with Education Code section 48260.5, as amended in 2010, and use “the most cost-effective method possible, which may include electronic mail or a telephone call” when providing the required notice of truancy. However, school districts are not eligible to claim reimbursement under the existing parameters and guidelines to determine the most cost-effective method of notification or to claim reimbursement based on unwritten notifications since a test claim was not filed on the 2010 statute.

If the actual costs of the program are now less than the unit cost approved in the parameters and guidelines as a result of the subsequent 2010 statute, as suggested in the legislative history of the bill, the Government Code does authorize two alternative processes that may be applicable here. If it is contended that the state’s liability for the *Notification of Truancy* program has been modified based on a subsequent change in law (Stats.2010, ch.724), a request for a new test claim decision pursuant to Government Code section 17570 may be filed. Under section 17570, the Commission “may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified by a subsequent change in law.”<sup>55</sup> However, all representations of fact in a mandate redetermination request must be supported by documentary evidence filed in the record to support the requested findings.<sup>56</sup>

Alternatively, if the allegation is that the unit cost does not currently reflect the actual reasonable costs incurred to comply with the original mandated program, a parameters and guidelines amendment proposing a new reasonable reimbursement methodology (RRM) could be filed pursuant to Government Code section 17557(d)(2)(C). Any request to change an existing unit

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<sup>55</sup> Government Code section 17570(b).

<sup>56</sup> Government Code section 17559; California Code of Regulations, title 2, section 1187.5.

cost must comply with the RRM requirements in Government Code section 17518.5.<sup>57</sup> As determined by the Commission, a unit cost RRM must represent a reasonable approximation of the actual costs incurred by each eligible claimant to comply with the state-mandated program, in order to fulfill the constitutional requirement that all costs mandated by the state be reimbursed to a local governmental entity. In addition, the unit cost proposal must be based on substantial evidence in the record.<sup>58</sup>

For the reasons stated above, however, the Commission does not have the authority to adopt the SCO's proposed amendments to these parameters and guidelines.

## **VI. Conclusion**

The Commission denies the request to amend the parameters and guidelines.

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<sup>57</sup> Government Code section 17557(d)(2)(C).

<sup>58</sup> Article XIII B, section 6 of the California Constitution; Government Code sections 17518.5, 17557, and 17559; Evidence Code section 1280; California Code of Regulations, title 2, section 1187.5; *Chesney v. Byram* (1940) 15 Cal.2d 460, 465; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.