

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



TIME: 9:38 a.m.  
DATE: Thursday, September 26, 2008  
PLACE: State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
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California Certified Shorthand Reporter #5647  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

TOM SHEEHY  
(*Commission Chair*)  
Representative for MICHAEL GENEST  
Director, State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

ANNE SCHMIDT  
Representative for CYNTHIA BRYANT  
Director, Office of Planning & Research

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SARAH OLSEN  
Public Member

J. STEVEN WORTHLEY  
Supervisor and Chairman of the Board  
County of Tulare



COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 13)

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 3, 4, 8, and 12)



PUBLIC TESTIMONY

**Appearing Re Item 3 and Item 4:**

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SixTen and Associates  
Mandate Reimbursement Services  
Sacramento, California 95834

For Department of Finance:

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

**Appearing Re Item 8:**

For Claimant:

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President  
SixTen and Associates

For California Integrated Waste Management Board:

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Chief Counsel  
California Integrated Waste Management Board  
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Sacramento, California 95814

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance



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**Commission on State Mandates – September 26, 2008**

1 BE IT REMEMBERED that on September 26, 2008,  
2 commencing at the hour of at 9:38 a.m. thereof, at the  
3 State Capitol, Room 447, Sacramento, California, before  
4 me, Debra P. Codiga, CSR #5647, the follow proceedings  
5 were held:

6 —o0o—

7 CHAIR SHEEHY: I'd like to call the Commission on  
8 State Mandates meeting to order.

9 Paula, could you please call the roll?

10 MS. HIGASHI: Mr. Chivaro?

11 MEMBER CHIVARO: Present.

12 MS. HIGASHI: Mr. Glaab is absent today, but he is  
13 attending the League of California Cities meeting on  
14 behalf of the city.

15 Mr. Lujano?

16 MEMBER LUJANO: Here.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HIGASHI: Ms. Schmidt?

20 MEMBER SCHMIDT: Here.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Mr. Sheehy?

24 CHAIR SHEEHY: Present.

25 MS. HIGASHI: We have a quorum established.

Commission on State Mandates – September 26, 2008

1           The first item is approval of the minutes of  
2 August 1st, 2008.

3           CHAIR SHEEHY: Do any members of the committee have  
4 any objections or corrections to the minutes as presented  
5 in our agenda?

6           MEMBER OLSEN: I move adoption.

7           MEMBER CHIVARO: Second.

8           CHAIR SHEEHY: Paula, could you please call the  
9 roll?

10          MS. HIGASHI: Mr. Chivaro?

11          MEMBER CHIVARO: Aye.

12          MS. HIGASHI: Mr. Lujano?

13          MEMBER LUJANO: Aye.

14          MS. HIGASHI: Ms. Olsen?

15          MEMBER OLSEN: Aye.

16          MS. HIGASHI: Ms. Schmidt?

17          CHAIR SHEEHY: Ms. Schmidt?

18                 Let the record show that Ms. Schmidt was not  
19 at the last meeting. She's going to abstain on this  
20 vote.

21          MS. HIGASHI: Abstain? Okay.

22                 Mr. Worthley?

23          MEMBER WORTHLEY: Aye.

24          MS. HIGASHI: And Mr. Sheehy?

25          CHAIR SHEEHY: Aye.

1 MS. HIGASHI: Thank you.

2 There are no appeals to consider under Item 2, and  
3 we have a Proposed Consent Calendar.

4 CHAIR SHEEHY: Are there any corrections — well,  
5 strike "corrections."

6 Are there any objections to the items that we have  
7 on this morning's Consent Calendar from any members  
8 of the committee?

9 MS. HIGASHI: It's a green sheet. You picked it up,  
10 or, Members, you have it before you.

11 CHAIR SHEEHY: If there are no objections to the  
12 Proposed Consent Calendar, the Chair would entertain a  
13 motion.

14 MEMBER WORTHLEY: So moved.

15 MEMBER OLSEN: Seconded.

16 CHAIR SHEEHY: Thank you. Please call the roll.

17 Oh, it's a Consent Calendar. Can we do this by  
18 unanimous consent?

19 MS. HIGASHI: You could, but let me just — for the  
20 record, I'd like to read the item numbers.

21 CHAIR SHEEHY: Please.

22 MS. HIGASHI: Item 7, Item 9, Item 10 and Item 11  
23 are on the Consent Calendar.

24 CHAIR SHEEHY: If there's no objection from the  
25 committee, we'll record this as unanimous consent to the

1 Consent Calendar.

2 (No response)

3 MS. HIGASHI: Thank you very much.

4 This brings us to the hearing portion of our  
5 meeting, and I'd like to ask the parties and witnesses  
6 for Items 3 and 4 to please rise.

7 (Parties and witnesses were sworn.)

8 MS. HIGASHI: Thank you very much.

9 Chief Legal Counsel Camille Shelton will present  
10 Item 3.

11 MS. SHELTON: Good morning.

12 This test claim addresses the provision of services  
13 to disabled students within the California community  
14 colleges system. These services include the provision of  
15 academic adjustments and auxiliary aids, instructional  
16 materials provided in electronic format, and accessible  
17 parking for disabled students.

18 Staff recommends that the Commission deny this test  
19 claim. Community colleges are mandated by federal law,  
20 through the Rehabilitation Act of 1973 and the Americans  
21 with Disabilities Act, to perform many of the activities  
22 required by the state's program, and thus these  
23 activities do not impose a state-mandated program.

24 Although there are accounting, reporting and  
25 administrative activities required by the state that go

1 beyond the requirements of federal law, the activities  
2 are not mandated by the state pursuant to the California  
3 Supreme Court's decision in Kern High School District  
4 because community colleges perform the activities as a  
5 condition of receiving state funding. Other activities  
6 are denied on other grounds.

7 Will the parties please state your names for the  
8 record?

9 MS. GEANACOU: Susan Geanacou, Department of  
10 Finance.

11 MR. PETERSEN: Keith Petersen representing the  
12 test claimants.

13 CHAIR SHEEHY: Thank you.

14 Mr. Petersen, do you have comments for the  
15 committee's consideration this morning?

16 MR. PETERSEN: Yes, I do. Just a couple, thank  
17 you.

18 This test claim was filed to obtain reimbursement of  
19 that portion of the DSPS program which is not federally  
20 mandated. Commission counsel's already indicated that  
21 some of those services are not federally mandated; they  
22 are state mandates in excess of federal mandates.

23 However, staff position is that's not reimbursable  
24 because the DSPS program is voluntary, and since it's  
25 voluntary, it's not reimbursable.

1           What I'm asking you to do today on that critical  
2 threshold issue is to overrule your staff on its factual  
3 determination — mostly factual determination.

4           The issue is whether the colleges are practically  
5 compelled to take that money and to take that program and  
6 to run it and perform those services.

7           Obviously, the way the statute is cynically  
8 designed, it's a voluntary program, but the case law —  
9 the mandate case law makes provisions for that under the  
10 practical compulsion theory. And I think there's  
11 practical compulsion for at least three reasons, and  
12 I'll just summarize those briefly because they are  
13 discussed at a greater extent in the briefings.

14           Currently, the state provides about \$115 million in  
15 DSPS funding to colleges. I've provided a schedule of  
16 appropriation from 2007–2008, which added up to about  
17 111 million, as part of our filings.

18           And those dollars, for some of the community  
19 colleges, are specifically — Coast College is  
20 \$2.8 million; Contra Costa, down near the Bay Area,  
21 \$2.8 million — I'm looking at the schedule provided in  
22 the package — Los Angeles Community College District,  
23 \$6.4 million; Los Rios here in Sacramento, \$5 million.

24           This is a one-year appropriation. These funds  
25 are used to provide both federally and state-mandated

1 special education services. The staff's contention is  
2 that the colleges can willingly give up that money if  
3 they don't want to participate in DSPS.

4 The reality, of course, is DSPS is a combination of  
5 federal and state mandates, and in order to get any money  
6 to implement these mandates, they have to buy into —  
7 into the entire DSPS program.

8 Once upon a time many years ago, community colleges  
9 were part of the K-12 system. In 1977, the community  
10 colleges split off. It took several years, but  
11 essentially starting in 1976-1977, the community  
12 colleges split off with their own budgets and their own  
13 operations and their own leadership.

14 At that time, the Legislature continued its  
15 historic funding of special education services to the  
16 colleges in a separate appropriation, upon which the  
17 community colleges have relied ever since.

18 That funding is based on a formula, not on actual  
19 costs. That process worked, I guess, sufficiently well  
20 for most parties until the Legislature ordered the  
21 community college — the Board of Governors of the  
22 community college system to create the DSPS system.

23 This DSPS system was created mostly in Title 5  
24 regulations, not — not legislation. Those regulations  
25 are drafted by the Chancellor's Office staff. They are

1 submitted for voting by the Board of Governors, who are  
2 political appointees, and they are not passed until they  
3 are vetted by the executive branch. Title 5 is subject  
4 to veto by the executive branch, so the DSPS program is  
5 very much a creature of the executive branch process.

6 So where are we now? We have historic  
7 funding. Somewhere along the lines, the DSPS program  
8 was created with additional state mandates, and all the  
9 funding became captured in that program. So if you  
10 wanted to continue historical support for the program,  
11 you had to buy into the DSPS program.

12 The *Sacramento II* court case says you're  
13 practically compelled if a there's coercive effect or  
14 some catastrophic penalty for not taking the money.  
15 Your community colleges are definitely coerced. They  
16 have to have that money to provide the mandated  
17 services. It's not enough money, but that's how they  
18 get the — that's their sole significant source of  
19 funding, so they have to buy into the entire DSPS  
20 program.

21 If they do not take the money and they do not  
22 perform the state portion of the DSPS program, they're  
23 still compelled to perform the federal mandate, which  
24 was historically supported by state funding prior to the  
25 DSPS program. We're locked into the DSPS program.

1 Now, one of the distinctions in the Kern case  
2 cited by staff is it's voluntary. And in that Kern case,  
3 it dealt with certain small committees and school sites  
4 that, if you wanted to continue with federal support, you  
5 had to put together an agenda package.

6 And if you didn't want to do that, you could give up  
7 the committees and give up the money. Very small dollar  
8 amounts, very small activities, and the school districts  
9 were able to give up those programs without a significant  
10 impact to their budget. The work went away; the money  
11 went away, and essentially they would have been even.

12 In this case, if you give up the DSPS money, the  
13 work doesn't go away. You still have that federal-  
14 mandated activity that was historically funded by the  
15 state.

16 So essentially over a period of 20, 25 years,  
17 the state has locked the colleges into it as a sole  
18 source of funding for this program, and the \$115 million  
19 is just too much to let go. I mean if you're a college  
20 district, you can't give up \$5 million and expect to  
21 continue those services out of your other funds.

22 We all know what the budget process looks like in  
23 the last ten years. You just don't give up \$5 million.

24 Okay. Any questions?

25 CHAIR SHEEHY: Excuse me. Before we get to

1 questions of Mr. Petersen, may we hear from the  
2 Department of Finance?

3 Ms. Geanacou, do you have comments on this item?

4 MS. GEANACOU: Good morning. Susan Geanacou,  
5 Department of Finance. We just have a few brief  
6 comments.

7 The Department supports the final staff analysis on  
8 this matter. And then, very briefly in response to some  
9 of the comments of Mr. Petersen, I'll echo written  
10 filings we already provided that are integrated into the  
11 final staff analysis, that the portions of the DSPS  
12 program that exceed the federal mandate are optional in  
13 that they are simply conditions of receiving the state  
14 funding that Mr. Petersen speaks to this morning.

15 The only consequence of not complying with these  
16 requirements that are in excess of the federal mandate is  
17 that they will not receive the funding.

18 MR. PETERSEN: Any funding.

19 MS. GEANACOU: The funding that's provided for the  
20 DSPS program. And this is not practical compulsion  
21 according to the Kern High School District case, as is  
22 outlined in the greater detail in the final staff  
23 analysis.

24 CHAIR SHEEHY: Questions of the committee?

25 *(No response)*

1 CHAIR SHEEHY: Mr. Petersen.

2 MR. PETERSEN: Well, to rebut briefly,  
3 practical compulsion is what you say it is. It's mostly  
4 a question of fact. You're the triers of fact. It's in  
5 your hands. If you decide that Los Rios Community  
6 College District losing \$5 million is catastrophic when  
7 they have to continue providing the services, then it is  
8 practical compulsion.

9 The funding should be clear. It's — if you don't  
10 take the DSPS funding, you still have to do most of the  
11 activities, and you don't get to slice off pieces. You  
12 can't say, "I don't want to do that, so here's \$10,000  
13 back." If you don't buy into the whole thing, you get  
14 nothing.

15 And ironically, of course, this is what the —  
16 the State of California and every other state in the  
17 union claims about the federal government. It's the  
18 cynical carrot-and-stick — I think the court case calls  
19 it "cooperative federalism."

20 Well, they've created cooperative statism, I  
21 guess, by doing the same thing to its subordinate local  
22 agencies. What the state rails against, it has turned  
23 upon its own local agencies.

24 MEMBER WORTHLEY: Mr. —

25 CHAIR SHEEHY: Mr. Worthley.

1 MEMBER WORTHLEY: — Mr. Petersen, can you cite  
2 to us in the record — can you cite to us in the  
3 record — my — I would take from your argument that the  
4 issue really would be the difference in terms of the  
5 money that is paid to the special — to the community  
6 colleges and the difference between that amount of money  
7 and the actual cost.

8 MR. PETERSEN: Yes.

9 MEMBER WORTHLEY: And is that — I'm sorry.  
10 Can you cite to us in the record what those costs  
11 are?

12 MR. PETERSEN: Well, I can't tell you what the  
13 costs are because the claims have never been filed, but  
14 what the mechanics would be is the entire DSPS program  
15 has a cost to each college.

16 The staff would have to determine, by parameters and  
17 guidelines, which portion of those activities are  
18 federally driven. That would drop off. Okay. Then  
19 you'd have to subtract out the DSPS funding, and  
20 whatever's left over is the cost.

21 The staff has done a wonderful job of listing  
22 those services that appear state-driven only. There's  
23 about two pages of them. There are a significant amount  
24 of expenses.

25 One of the problems is that the funding is based on

1 a formula, a capitation formula, not actual costs. And  
2 you probably saw that some of the Title 5 sections  
3 specifically say these will not be reimbursed.

4 So there is a significant portion that will —  
5 was not intended to be funded by the DSPS — excuse me,  
6 reimbursed or funded by the DSPS program, so it would be  
7 that chunk plus whatever's not federal, and I have no  
8 idea what that cost is.

9 CHAIR SHEEHY: Mr. Petersen —

10 May I, Mr. Worthley, follow up —

11 MEMBER WORTHLEY: Yes.

12 CHAIR SHEEHY: — on your question?

13 Has the — has the West Kern Community College  
14 District done that analysis?

15 MR. PETERSEN: No. The test claim process only  
16 requires the test claim to allege a threshold amount:  
17 either \$200, depending on when it was filed, or a  
18 thousand dollars.

19 I think you could all be comfortable in the  
20 thought that it's a big number. Or uncomfortable.

21 CHAIR SHEEHY: Mr. Worthley?

22 MEMBER WORTHLEY: Yes. Ms. Shelton indicates  
23 she would like to respond, I believe.

24 MS. SHELTON: There's a couple of issues that need  
25 to be clarified.

1           One, although we are discussing some facts  
2           dealing with practice compulsion, it still is a question  
3           of law and not a question of equity. So that's No. 1.

4           No. 2, the *Kern* case did deal with substantial  
5           funding, and I can read directly from page 732 where  
6           they were talking about one of the programs, that the  
7           participation in that program was voluntary and there  
8           was \$394 million at stake.

9           So it wasn't just something they had to — to  
10          think about. They were dealing with substantial funding  
11          in that case as well.

12          The court said, though, in order for practical  
13          compulsion to be found, you have to find certain and  
14          severe penalties for not complying, independent of the  
15          funding.

16          Here we don't have — the only stick is the  
17          funding. You take away the — the stick, the funding,  
18          that's all they have left is, you know, nothing, and  
19          they still have to comply with federal law, and that's  
20          true.

21          The way the program is set up, you can see on  
22          page 16 and 17, the intent of the legislation is to pay  
23          for actual costs. The — what it does pay for — it can  
24          be used for the salaries, benefits and professional  
25          development costs of DSPS certificated and classified

1 personnel and for supplies and materials necessary for  
2 operation of the DSPS program.

3 The only thing it can't be used for are indirect  
4 costs for the building. For lighting, heating,  
5 janitorial service for the facilities or for legal  
6 matters or audit expense costs. But it pays for all of  
7 the variable costs, all of the one-time costs and  
8 ongoing costs to provide services to the student.

9 CHAIR SHEEHY: Thank you, Ms. Shelton.

10 Yes, Mr. Petersen.

11 MR. PETERSEN: Well, back to the Kern case.  
12 Substantial dollars were involved, but again, the  
13 distinction is, in that case, if the dollars went away,  
14 the work and the cost went away.

15 The distinction here is that dollars go away, the  
16 work is still there. Okay. And apparently that work is  
17 at least worth \$115 million because that's the amount  
18 that's being funded by DSPS. I know it's worth a great  
19 deal more than that, the cost, because of the things not  
20 covered.

21 She mentioned some indirect costs that are not  
22 covered. Currently, we do an indirect, and the state  
23 auditors do, an indirect-cost-rate calculation for  
24 college districts as part of annual claims for the  
25 programs, and it's running about 30 to 35 percent of

1 direct costs.

2 So we know, right off the top, that colleges are  
3 losing 35 percent of their indirect cost rates because  
4 the DSPS program won't fund it. That's, you know,  
5 another 35 percent on top of \$115 million. That's  
6 significant money. So there is significant penalty  
7 involved.

8 Again, *Kern* is distinguishable. I don't think  
9 *Kern* is controlling here, and I think it's not — the  
10 commission counsel seems to indicate I'm stressing  
11 equity. No. Fairness would be an outcome, but I'm  
12 stressing this is the factual side of compulsion.

13 It — you have to determine as a matter of fact  
14 whether the penalty to the districts, the economic  
15 disaster, is sufficient to say they're compelled, and it  
16 must be. Nearly all the districts, I believe, are in  
17 the program. I personally don't know one — of a  
18 district that's not in the program.

19 CHAIR SHEEHY: Any more comments?

20 MEMBER WORTHLEY: One other comment, and a  
21 question too.

22 You're not saying that just because historically the  
23 State of California has picked up some of the federal  
24 requirement, in other words, reimbursed the districts,  
25 that they're mandated to continue doing that?

1           In other words, if they just pulled all that money  
2 away for the federal mandates, as I understand the law,  
3 there would be no obligation — there would be no  
4 compensable claim against the State of California  
5 because it is federally required to do those things.

6           Is that not correct?

7           MR. PETERSEN: That's possible. There wouldn't  
8 be any claim from the district against the state. The  
9 reason I brought up the historical context is if  
10 financing is structured over a 30-year period and the  
11 state has structured financing to provide the local  
12 districts that funding, that's what it's built upon.

13           That raises the potential issue of the — the  
14 shift — another court case, the shift of state cost to  
15 local cost. I haven't — we haven't gone into that  
16 because that's a subsidiary issue.

17           But, yes, the state could withdraw its funding.  
18 The local districts would be compelled to continue the  
19 federal thing. Same thing in the K-12 districts. The  
20 state could withdraw its funding, but you should know  
21 that nobody can stop doing those services because — and  
22 I think it's covered in the staff position paper  
23 recommendation — that they'll go to — the parents of  
24 the students will go to court, and they'll win. And then  
25 you'll have to pay lawyer fees and do it anyway.

1 CHAIR SHEEHY: Ms. Shelton.

2 MS. SHELTON: Under federal law, the state is  
3 not required to reimburse any of the community colleges  
4 or other postsecondary institutions for complying with  
5 the federal mandate.

6 When they were drafting the federal regulations,  
7 that was a concern of postsecondary institutions because  
8 there was funding provided under separate chapters of the  
9 Rehabilitation Act for state vocational rehab agencies.

10 And so postsecondary institutions felt like it  
11 was, you know, quite unfair for them now to be required  
12 independently to perform the same services and not be  
13 reimbursed.

14 And the comments to the regulations just indicated  
15 that, you know — you know, we understand your concern,  
16 but that's your responsibility to go try and work out a  
17 deal with your state, with your voc rehab and other  
18 independent grant funding for disabled students.

19 And so there was a recognition that postsecondary  
20 institutions are not getting reimbursed. There is no  
21 federal funding to the community colleges, and the  
22 states, under federal law, are not required to provide  
23 any funding.

24 And if there's any question about what activities  
25 are required under federal law and what's required under

1 state law, on page 28 and 29 of the analysis in the box  
2 is basically — those are the requirements under federal  
3 law, and it's basically just the provision of services to  
4 the student and performing an individual analysis of each  
5 student's disability.

6 The services under state law really aren't —  
7 you know, they have to designate a separate coordinator  
8 which may be performing administrative and accounting  
9 and financial functions. And everything else is  
10 policies and procedures, accounting back to the state on  
11 the funding, performing administrative responsibilities,  
12 and those are just as a condition of receiving that  
13 state money.

14 And under Kern, it's still the law dealing with  
15 these types of mandate cases. It does establish a legal  
16 standard that has to be met, and it can't be ignored.

17 CHAIR SHEEHY: Yes, Mr. Petersen.

18 MR. PETERSEN: Well, she's raised the bar again.

19 Let's look at page 30. This is the commission  
20 staff's enumeration of those services that are not  
21 required by federal law. Designated DSPS coordinator.  
22 That's not reimbursed.

23 MS. SHELTON: A portion of that.

24 MR. PETERSEN: Okay. The student educational  
25 contract, which is very much like the IEP at the K-12

1 level. That's a personal contract with the student  
2 regarding the services provided, and it's appealable.

3 And it goes on. It's not just policies and  
4 procedures. I do not wish to diminish the portion  
5 that's not federal and — nor the portion that's not  
6 reimbursed.

7 I agree that there's no federal requirement for  
8 the — upon the state to reimburse local governments. I  
9 think, as part of the collection of coercion, you've got  
10 to remember the state funded these programs at some  
11 level historically; they continue to do so, but what's  
12 changed significantly is the DSPS program in Title 5,  
13 which was created by the executive branch, which added  
14 on new duties knowing they would not be reimbursed or  
15 funded.

16 And again, that's their cynical mechanism to handle  
17 the state funding. It's not anything the local agency  
18 asked for. It's just something they have to comply  
19 with.

20 And again, she cites the background. The federal  
21 government has no control of that. Well, again, the  
22 state government's done the same thing that the federal  
23 government does to the state government. And, of course,  
24 that has to stop somewhere, and it stops at the local  
25 agencies because they can't do this to anybody else.

1           It's being done to them by the state; it's being  
2 done to the state by the federal government, but the  
3 local agencies — the college in this case — can't do it  
4 to anybody else. It's stuck at their level. That's why  
5 it's coercive.

6           CHAIR SHEEHY: Ms. Olsen.

7           MEMBER OLSEN: I want to explore this coercion  
8 thing for a minute, Mr. Petersen.

9           Is it your contention that it's coercion because if  
10 you — if a community college district decided not to do  
11 the DSPS program anymore, I think what I heard you say is  
12 that they would be compelled to do it because parents of  
13 the — of the DSPS-served students would go to court.

14          MR. PETERSEN: Well, two thoughts. They're  
15 compelled to continue at least the federal portion —

16          MEMBER OLSEN: Right.

17          MR. PETERSEN: — because —

18          MEMBER OLSEN: But I'm talking about just the state  
19 portion.

20          MR. PETERSEN: They would not be compelled to do  
21 the state excess if they weren't in the DSPS program.

22          MEMBER OLSEN: So they can stop doing that?

23          MR. PETERSEN: Yes.

24          MEMBER OLSEN: And — but — so then what is the  
25 practical compulsion?

1 MR. PETERSEN: The practical compulsion is they  
2 still have to continue doing the federal mandate, which  
3 has always been funded by the state, and at that point,  
4 there'd be no funds for any of it.

5 MEMBER OLSEN: For any of it.

6 MR. PETERSEN: Yes.

7 MEMBER OLSEN: Okay.

8 MS. SHELTON: It was funded by the state because it  
9 was funded under the state's voc rehab program. And what  
10 was happening, you had — before the enactment of DSPS,  
11 you had students that overlapped between — they were  
12 students at a community college and also receiving  
13 services through the state's voc rehab department, and so  
14 there was a lot of overlap.

15 And so, you know, knowing that federal law existed,  
16 and the Chancellor's Office agreed, that community  
17 colleges have independent responsibility to provide the  
18 same services that voc rehab was already providing, they  
19 came to an agreement — which was — which is in the  
20 analysis — that, you know, basically acknowledged,  
21 "We'll take" — you know, "We'll perform all these  
22 services for these students and voc rehab will not." And  
23 there was no funding guarantee in that agreement either.

24 MS. GEANACOU: Susan Geanacou, Finance.

25 If I may just add on to what Ms. Olsen said, is — a

1 good portion of what we're talking here is federally  
2 required under federal law, both the ADA and the Rehab  
3 Act, just to kind of echo what I think you were getting  
4 at, Ms. Olsen.

5 CHAIR SHEEHY: Ms. Olsen, you — you have additional  
6 comments?

7 MEMBER OLSEN: Well, Mr. Petersen did say that,  
8 at one point — and what I'm trying to get to is — if a  
9 state — if a community college — part of what his  
10 argument on practical compulsion that I heard — and I'm  
11 just trying to clarify this portion — is that part of  
12 the practical compulsion is that parents of these served  
13 students, if the services — if the DSPS portion of the  
14 services were pulled, would go to court.

15 That — now, I did hear you say something about  
16 parents going to court, and I'm just trying to get back  
17 to that point.

18 MR. PETERSEN: That would be federal —

19 MEMBER OLSEN: Why don't you clarify that?

20 MR. PETERSEN: That would be more of the  
21 federal issues.

22 MEMBER OLSEN: Okay.

23 MS. SHELTON: And let me just clarify.

24 Under one of the published cases, *Hayes vs.*

25 *Commission on State Mandates*, that was — you know, that

1 case, the court there was analyzing the Rehabilitation  
2 Act at — as of that time, as it applied to K-14, so  
3 K-12 and — and community colleges, but the case was  
4 dealing with K-12.

5 And they said one of the reasons which did support  
6 a practical-compulsion finding was that there were  
7 equal-protection lawsuits filed — being filed all over  
8 the state — all over the country, excuse me, and the  
9 majority of them winning substantial, you know, damages —  
10 — you know, damage awards.

11 So they — you know, certainly in that case there  
12 was practical compulsion to comply with federal law.  
13 And in this case, we found that, therefore, the  
14 rehabilitation Act is a federal mandate, and in this  
15 case, on the community college.

16 It's different how it applied to K-12 and how  
17 special ed law applies to K-12. It's a little bit of a  
18 different analysis.

19 CHAIR SHEEHY: Yes, Mr. Petersen.

20 MR. PETERSEN: Well, we have to go back to a new —  
21 somewhat new issue.

22 The deal cut with the Department of Rehabilitation  
23 in the '70s, I guess, was probably wonderful for  
24 everybody involved.

25 The — the issue I'm presenting here is, because

1 of the funding structure by the state, the only way to  
2 get any significant funds to do any federal- or state-  
3 mandated services is to take on DSPS.

4 When you take on DSPS, you're, quote, unquote,  
5 voluntarily taking on these additional activities that  
6 the state wants you to do the federal never specified.  
7 There's some cross-over, and that's subject to  
8 argument.

9 But the districts are at the point now where they  
10 have to continue doing the federal mandate because of  
11 the court coercion, and the only place to get money  
12 is from the DSPS program, and the only way to get DSPS  
13 money is to do state-mandated activities —

14 CHAIR SHEEHY: Okay.

15 MR. PETERSEN: — the portion we're requiring.

16 So —

17 CHAIR SHEEHY: All right.

18 MR. PETERSEN: — you can't just stop doing federal.

19 CHAIR SHEEHY: I think — unless the members of  
20 the committee feel otherwise, I think that the point  
21 that you've just made, Mr. Petersen, you've made very  
22 clear. You've been very articulate. I think that issue  
23 has been pretty well vetted here in the last 30  
24 minutes.

25 Are there any members on the committee who would

1 like to continue discussing this particular issue?

2 Because there are a couple other issues here,  
3 and I was wondering, Mr. Petersen, if you wanted to talk  
4 about instructional materials in an electronic format or  
5 some of the other aspects of this, or did you —

6 MR. PETERSEN: No. This — the only legs this test  
7 claim has is the issue we just discussed.

8 CHAIR SHEEHY: Okay.

9 MR. PETERSEN: I'm not saying I agree, but I think  
10 the threshold issue has to be decided before we worry  
11 about those issues.

12 CHAIR SHEEHY: All right. I understand.

13 Further comments or questions from the members  
14 of the committee?

15 *(No response)*

16 CHAIR SHEEHY: In that case, Finance, did you  
17 have any further comments?

18 MS. GEANACOU: No.

19 CHAIR SHEEHY: Okay. Thank you, Ms. Geanacou.

20 At this point, then, I would — the Chair would be  
21 happy to entertain a motion on this item.

22 MEMBER CHIVARO: I'll move staff  
23 recommendation.

24 MEMBER LUJANO: I'll second it.

25 CHAIR SHEEHY: Thank you.

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1 Paula, could you please call the roll on —  
2 actually, let me repeat the motion.

3 The motion is to approve the staff recommendation on  
4 item No. 3.

5 Could you please call the roll?

6 MS. HIGASHI: Mr. Chivaro?

7 MEMBER CHIVARO: Aye.

8 MS. HIGASHI: Mr. Lujano?

9 MEMBER LUJANO: Aye.

10 MS. HIGASHI: Ms. Olsen?

11 MEMBER OLSEN: Aye.

12 MS. HIGASHI: Ms. Schmidt?

13 MEMBER SCHMIDT: Aye.

14 MS. HIGASHI: Mr. Worthley?

15 MEMBER WORTHLEY: Aye.

16 MS. HIGASHI: Mr. Sheehy?

17 CHAIR SHEEHY: Aye.

18 MS. HIGASHI: Motion is carried.

19 This brings us to Item 4.

20 MS. SHELTON: This is the Proposed Statement of  
21 Decision on the Disabled Student Programs and Services  
22 test claim.

23 Staff recommends that the Commission adopt the  
24 Proposed Statement of Decision that accurately reflects  
25 the staff recommendations to deny the testing.

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1 CHAIR SHEEHY: I'm sorry, Ms. Shelton. I just  
2 missed the last part of your statement there.

3 MS. SHELTON: Oh, I'm sorry. That the Commission —  
4 staff recommends that the Commission adopt the Proposed  
5 Statement of Decision which accurately  
6 reflects the staff recommendation.

7 CHAIR SHEEHY: Thank you. Are there any  
8 questions or comments from the public or members of the  
9 Commission on this item?

10 *(No response)*

11 CHAIR SHEEHY: In that case, is there a motion  
12 on this item?

13 MEMBER CHIVARO: I move the recommendation.

14 MEMBER LUJANO: Second.

15 CHAIR SHEEHY: Please call the roll.

16 MS. HIGASHI: Mr. Chivaro?

17 MEMBER CHIVARO: Aye.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: Ms. Schmidt?

23 MEMBER SCHMIDT: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

1 MS. HIGASHI: Mr. Sheehy?

2 CHAIR SHEEHY: Aye.

3 MS. HIGASHI: Motion is carried.

4 The next two items in your binder are for a test  
5 claim that was postponed at the request of claimant,  
6 Items 5 and 6. Item 7 was already adopted, and this  
7 brings us to Item 8.

8 Item 8 will also be presented by Chief Counsel  
9 Camille Shelton.

10 MS. SHELTON: This item is on remand from the  
11 Sacramento County Superior Court on a judgment and writ  
12 dealing with the Integrated Waste Management Program.  
13 The program requires community college districts to  
14 develop and adopt an integrated waste management plan,  
15 to divert a specified percentage of solid waste from  
16 landfills, and to prepare and submit an annual report to  
17 the Integrated Waste Management Board summarizing the  
18 progress in reducing solid waste.

19 The writ issued by the court requires the  
20 Commission to amend the parameters and guidelines in two  
21 respects.

22 First, the writ requires the Commission to amend the  
23 offsetting revenue section of the parameters and  
24 guidelines to require claimants to identify and offset  
25 from their claims all revenue generated as a result of

1 implementing their plans, without regard to the  
2 limitations described in the Public Contract Code.

3 The second amendment requires that the Commission  
4 add an offsetting-cost-savings section to the parameters  
5 and guidelines to require claimants to identify and  
6 offset from their claims cost savings realized as a  
7 result of implementing their plans, consistent with the  
8 limitations provided in the Public Contract Code.

9 Under the Public Contract Code provisions, community  
10 colleges are required to deposit all cost savings  
11 resulting from their plans in the Integrated Waste  
12 Management account. The funds deposited in the account,  
13 upon appropriation by the Legislature, may be expended by  
14 the Integrated Waste Management Board for the purpose of  
15 offsetting integrated waste management plan costs.

16 Subject to the approval of the Board, cost savings  
17 by a community college that do not exceed \$2,000 annually  
18 are continuously appropriated for expenditure by the  
19 community college for the purpose of offsetting  
20 their costs. Cost savings exceeding \$2,000 annually may  
21 be available for expenditure by the community college  
22 only when appropriated by the Legislature.

23 The proposed amendments to the parameters and  
24 guidelines beginning — beginning on page 11 contain  
25 these changes required by the court.

1           The Integrated Waste Management Board is requesting  
2           that the Commission add more language to the offsetting  
3           cost-savings section. The Board wants the Commission to  
4           require community college districts to provide  
5           information with their claims identifying all cost  
6           savings resulting from the plans, including cost savings  
7           that exceed \$2,000.

8           The Board also wants the Commission to require  
9           community college districts to analyze categories of  
10          potential cost savings in determining what to include in  
11          their claims. The Board's proposed language is in  
12          Exhibit D on page 143.

13          Staff finds that the Board's request for additional  
14          language goes beyond the scope of the court's judgment  
15          and writ and the statute at issue in this case. The  
16          Commission's jurisdiction in this case is limited to the  
17          court's judgment and writ.

18          Therefore, staff recommends that the Commission  
19          deny the Board's request and adopt the proposed  
20          amendments to the parameters and guidelines beginning on  
21          page 11.

22                 Will the parties state your names for the record?

23                 MR. BLOCK: Elliot Block, Chief Counsel for the  
24                 California Integrated Waste Management Board.

25                 MR. PETERSEN: Keith Petersen. I represented

1 the test claimant many years ago.

2 MS. GEANACOU: Susan Geanacou, Department of  
3 Finance.

4 CHAIR SHEEHY: Well, Mr. Petersen, since you're  
5 on a roll, let's start with you first.

6 MR. PETERSEN: No, sir. I've been rolled over.

7 I can here procedurally agree that the scope of  
8 the amendment's limited to the court order and that the  
9 issues interesting the state Board will probably be  
10 before us in another request to amend at a future date.

11 CHAIR SHEEHY: Okay. Very good.

12 Mr. Block, did you like to — would you like to  
13 address the Commission this morning?

14 MR. BLOCK: Yes, I would. Thank you.

15 And I wanted to thank the Commission for acting  
16 promptly after the order from the court. As — as  
17 noted, this matter's been going on for quite a few  
18 years. We'd love to see this resolved sooner — as soon  
19 as we could.

20 In looking at the analysis by staff and the  
21 suggestions that the Board made, the two different  
22 era — areas, we just believe that your staff is viewing  
23 its jurisdiction in the scope of the court's decision  
24 narrow — more narrowly than is necessary.

25 That litigation was about — and this is as

1 noted in the analysis — interpretation of the law that  
2 applies in this case. And it appears that, in viewing  
3 the requests that we have made, your staff is really  
4 just looking at: What exactly did the court say? Did  
5 they specifically identify a particular change? As  
6 opposed to what we believe is the appropriate analysis,  
7 which is, given the court's determination as to how the  
8 law should be applied in this case, how would these  
9 parameters and guidelines have been written originally?

10 So, for instance, in talking about the  
11 additional information that we're looking at for cost  
12 savings, the staff analysis does appear to indicate that  
13 those additions could be made prospectively based on a  
14 request for reconsideration that we've made, but is not  
15 agreeing that they can be made retroactively.

16 However, really, the question, again, is if, when  
17 the parameters and guidelines were originally written  
18 three or four years ago — I forget the exact date — and  
19 if the Commission had been applying the law as the court  
20 has now said it should have been applied, would it have  
21 been appropriate to add the additional guidance?

22 And I should note, in terms of the cost  
23 savings, that's really what it is. We're talking about  
24 providing additional guidance to help those claims be  
25 formulated in a way that they're actually reviewable

1 and — and usable, if you will.

2 From our point of view, not providing some  
3 additional guidance just means we're — this process is  
4 going to continue to go on and on.

5 If you look back in the record of this matter,  
6 you'll see the original claims that came in, which came  
7 in without any of that sort of guidance, were, for lack  
8 of a better word, a mess. They were hard to review.  
9 They were — contained things that, on their face, were  
10 inappropriate.

11 And your staff, in fact, in their analysis —  
12 initial analysis of those, requested the Board help  
13 figure out how to review those claims. Well, the problem  
14 is, as we noted back then — and I think will be the case  
15 again — we can't if the information isn't provided in  
16 the first place. You're leaving this up to being an  
17 audit down the road.

18 So that's where we're coming from in terms of that  
19 issue. And it seems to me if it's appropriate, looking  
20 prospectively, to include that sort of guidance, it  
21 should have been appropriate originally as well. And  
22 I should say, for the record, we did in fact request  
23 that guidance be added when the parameters and  
24 guidelines were originally done.

25 Likewise, in terms of the revenue question, your

1 staff has indicated that they don't feel that you have  
2 the authority to request information on revenues above  
3 the \$2,000 limit, but doesn't seem to have a problem  
4 saying that that money has to be deposited into the  
5 Board's — the Waste Board's account.

6 So clearly those community college districts are  
7 going to have the information; otherwise, they wouldn't  
8 know how much to put into that account. All we're simply  
9 suggesting is let's put that information into the claims  
10 up front. It's actually to the benefit of the claimants  
11 as well. It's going to make the review of those claims  
12 easier down the road.

13 So with that, I would just respectfully request that  
14 the additions that we have requested be also included in  
15 the parameters and guidelines.

16 CHAIR SHEEHY: One moment, Ms. Shelton, please.

17 I'd like to understand.

18 MR. BLOCK: Sure.

19 CHAIR SHEEHY: So your contention, Mr. Block, is  
20 that the claims that are being submitted are difficult to  
21 review and they're not usable because they're messy and  
22 they have incomplete information?

23 MR. BLOCK: Perhaps I shouldn't have used the  
24 word "messy."

25 They — they — on their face, if you go back and

1 look at the analysis of the claims that were filed —  
2 that would be in your files; that wasn't something that I  
3 sent you the additional papers — your staff almost  
4 literally pleaded with the Board to help them review and  
5 understand those claims because, on their face, there  
6 were things that didn't make sense and didn't seem to  
7 accord with the original parameter or guidelines as  
8 well.

9 And our response at that point in time was, we  
10 can't do it because you — the parameters and guidelines  
11 didn't request any sort of detailed information in a way  
12 to enable that review — any kind of review of those  
13 claims without doing an audit.

14 So that's — that's the point — that's where we're  
15 coming from on this, asking for some more information  
16 in — in advance.

17 CHAIR SHEEHY: Ms. Shelton?

18 MS. SHELTON: I think Paula had something.

19 CHAIR SHEEHY: Okay.

20 MS. HIGASHI: I just wanted to respond.

21 I think what Mr. Block is talking about — some  
22 of you may recall this if you were at the hearing — but  
23 the Commission adopted the statewide cost estimate for  
24 this program.

25 When it did so, it requested a summary compilation

1 of the amounts claimed by all the community  
2 college districts filing timely reimbursement claims.

3 The State Controller's Office prepared a report  
4 for us, and it was basically a summary report which  
5 identified each claimant by name, the amount claimed and  
6 the amounts that were offset. And it was not a detailed  
7 review, as Mr. Elliot — Mr. Block seems to think we  
8 did, of actually looking at all the claims data. But it  
9 was a summary report, which is typically the basis for  
10 our preparation of statewide cost estimates.

11 And so the issues that he's commenting on and  
12 raising at this point in time are really not necessarily  
13 germane to this issue, because now, with the  
14 Commission's consideration of this agenda item, those  
15 claims would have to be refiled and offsets would have  
16 to be taken as had been directed by the court.

17 So it's, you know, two different scenarios here  
18 that he's talking about, and they're getting mixed up.  
19 And so I just wanted to clarify that because the period  
20 of reimbursement for this P's & G's amendment goes all  
21 the way back to the beginning, so all those claims would  
22 have to be refiled.

23 CHAIR SHEEHY: Questions or comments of the  
24 committee?

25 Ms. Geanacou.

1 MS. GEANACOU: Yes. Thank you. Susan Geanacou,  
2 Department of Finance.

3 We've — we were a petitioner — co-petitioner  
4 with the Waste Board in the matter before the court, so  
5 we have followed this closely, obviously, and  
6 participated.

7 I would just observe, from reviewing the test  
8 claims statutes and certainly the final staff analysis,  
9 that it would appear that the — the cost savings from  
10 implementing the test claims statutes that might or  
11 should very well appear as an offset in the ultimate  
12 claims for reimbursement might appear in two sources of  
13 information that are arguably already available if the  
14 test claims statutes are complied with.

15 That would be, first, that the amount is deposited  
16 with the Board per the test claims statutes, and also  
17 provided in the annual report by the community college  
18 districts to the — to the Board. So ostensibly those  
19 would provide the cost-savings information that is  
20 being — being sought or requested here by the Board.

21 If there are no such cost savings deposited or  
22 reported per compliance with the statutes, or there are  
23 no offsets appearing in mandate reimbursement claims  
24 ultimately filed, that can be dealt with as appropriate  
25 at the time apart from this court-remand issue.

1 I think that's all I have to say.

2 CHAIR SHEEHY: Ms. Shelton.

3 MS. SHELTON: The commission's jurisdiction in this  
4 case is really limited to the writ, and the writ directed  
5 two specific changes to the parameters and guidelines.

6 In the court's ruling, it found that the  
7 information to support cost savings was already provided  
8 to the Board in their existing annual report — the  
9 community colleges' annual report to the Board. That is  
10 what the court based its finding on. The court, in  
11 fact, on the ruling on page 7, you know, didn't indicate  
12 that they needed additional information.

13 As Ms. Geanacou indicated, the money goes into the  
14 Board's account. They, every year, get a report that  
15 describes the calculations of annual disposal reduction  
16 and information on the changes in waste generated or  
17 disposed of due to increases or decreases in employees,  
18 economics or other factors.

19 So their authority is there. The information should  
20 be there. If they want to still, you know, pursue their  
21 request to amend the P's & G's which is on file and is  
22 still pending, they may do that, but that is subject to a  
23 different period of reimbursement pursuant to Government  
24 Code section 17557.

25 This writ covers the entire period of reimbursement

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1 going back to the initial date.

2 CHAIR SHEEHY: Are there any further questions  
3 or comments from the committee?

4 MEMBER WORTHLEY: Mr. Chairman, I would, at this  
5 time, move the staff recommendation.

6 MEMBER OLSEN: I'll second that.

7 CHAIR SHEEHY: We have a motion and a second to  
8 approve the staff recommendation on Item No. 8.

9 Paula, could you please call the roll?

10 MS. HIGASHI: Mr. Lujano?

11 MEMBER LUJANO: Aye.

12 MS. HIGASHI: Ms. Olsen?

13 MEMBER OLSEN: Aye.

14 MS. HIGASHI: Ms. Schmidt?

15 MEMBER SCHMIDT: Aye.

16 MS. HIGASHI: Mr. Worthley?

17 MEMBER WORTHLEY: Aye.

18 MS. HIGASHI: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MS. HIGASHI: Mr. Sheehy?

21 CHAIR SHEEHY: Aye.

22 MS. HIGASHI: Motion is adopted.

23 MR. PETERSEN: Thank you. I have to go back and do  
24 a hundred misleading claims again.

25 CHAIR SHEEHY: Okay. That motion carries.

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1 MS. HIGASHI: Yes. This brings us to Item 12, the  
2 Chief Counsel's Report.

3 MS. SHELTON: It's been a couple of months. I  
4 don't have anything new for public session to report.

5 CHAIR SHEEHY: Wish I could say the same,  
6 Ms. Shelton.

7 MS. HIGASHI: We'll move on to my report,  
8 Item 13.

9 And first I'd like to make a — to acknowledge  
10 a couple of our staff. First I'd like to introduce  
11 Heidi Palchik, one of our new staff hired in June, and  
12 she just hasn't been able to come to a commission  
13 hearing, but she's working on minutes and learning about  
14 parameters and guidelines and statewide cost estimates.  
15 But we're really happy to welcome her and have her on  
16 board.

17 CHAIR SHEEHY: Welcome.

18 MS. HIGASHI: And secondly, I'd like to introduce  
19 another member of our staff who many of you see but you  
20 probably don't know. And that is Lorenzo Duran.

21 Lorenzo, would you please stand?

22 A couple of days ago, there was an event held in  
23 Roosevelt Park where one of the state agencies was  
24 sponsoring a fundraising effort for the state employees'  
25 United Way campaign.

1           And we received word that our commission chair,  
2 Mr. Genest, was going to be sitting on a dunk tank.  
3 And what we decided to do — what I decided to do  
4 unilaterally was sponsor one of our staff to go over  
5 there and take a chance on the dunk tank.

6           And Lorenzo was the first person in line when Mike  
7 was seated on the bench, and I have to report he was very  
8 successful in dunking Mr. Genest, and there was a picture  
9 of him in the papers yesterday, I believe.

10           So thank you, Lorenzo.

11           *(Applause)*

12           MEMBER WORTHLEY: Mr. Chairman, I think — I had a  
13 conversation with him also, and just in defense of  
14 our staff — because it could have been a whole lot  
15 worse — he — he actually had ten tickets for ten tries  
16 but managed to dunk him on the third try and then gave  
17 away the rest of the tickets.

18           So it's possible he might have been dunked several  
19 more times by our staff. So we're hoping he doesn't hold  
20 that against the staff when he reappears in front of  
21 the —

22           CHAIR SHEEHY: We give you additional points for  
23 compassion on my boss.

24           Thank you, Paula. Do you have anything else?

25           MS. HIGASHI: On a more serious note, we all know

1 the budget was adopted, and I think everyone here is  
2 pretty much aware of what the impact is on mandates, so  
3 I'm not going to cover it again. There were no further  
4 changes to the Commission's actual budget from those that  
5 were last reported.

6 We had — our next hearing is set for November 6th.  
7 At the time that we scheduled that hearing, we were  
8 looking at a variety of calendars and schedules, and what  
9 we wanted to find out from you today is if we could  
10 consider changing that hearing date to December in light  
11 of the fact that, because of my absence over the last  
12 month, we have not put together all the agenda items that  
13 we wanted to do for November.

14 And so if I can get a consensus from members as  
15 to an alternate date in December, that would be very  
16 productive for staff if we could — and parties.

17 CHAIR SHEEHY: I will be unavailable — we could  
18 have somebody stand in for me, but I will be unavailable  
19 on Friday, December 5th.

20 MS. HIGASHI: Okay.

21 MEMBER SCHMIDT: And I can't speak for Cynthia  
22 Bryant as to whether or not she will be able to attend  
23 on that date. And this is — this is technically the  
24 only time I'm filling in for her, to the best of my  
25 knowledge.

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1 MS. HIGASHI: Okay. And what we would do,  
2 obviously, is we would survey all the members and the  
3 parties that have agenda items pending and see if there's  
4 a date we can agree to in the future. If there is not,  
5 we would keep the November date because we have actually  
6 released items for that hearing.

7 CHAIR SHEEHY: Would it be possible, then, Paula,  
8 for staff to follow up with the members of the Commission  
9 to see if we can find an agreeable —

10 MS. HIGASHI: We will work on it immediately —

11 CHAIR SHEEHY: Great. Thank you.

12 MS. HIGASHI: — after this hearing.

13 We are continuing our efforts to put together a  
14 proposal and also to survey the members on how we intend  
15 to deliver agenda materials and to cover the agenda  
16 binders during the Commission hearings.

17 Now that the budget has been adopted, we have a  
18 better sense of what we'll be working with, and as we  
19 wait for the guidelines to come out on further  
20 restrictions on spending. So that will be coming soon  
21 as well.

22 We did file our annual workload report with the  
23 Director of Finance, and this is the report Mike filed  
24 to himself. It's posted on our website, and all of you  
25 did receive a hard copy of that report. So if anyone

1 has not seen it, it's on the Commission's website.

2 The tentative agendas that are identified here are  
3 very tentative. As I've indicated, some of the drafts  
4 have issued; others have not.

5 We've actually had a postponement of one, Pesticide  
6 Use Report's Parameters and Guidelines Amendment. That  
7 postponement was requested by the requester, the  
8 Department of Pesticide Regulation, and that matter won't  
9 be set for hearing until next March.

10 And all the other items are items that we're working  
11 on and hoping to get drafts out in the next couple of  
12 months.

13 Are there any other questions?

14 *(No response)*

15 CHAIR SHEEHY: Thank you, Paula.

16 MS. HIGASHI: At this time, we have public  
17 comment.

18 And before we go to public comment, just one last  
19 thing I wanted to note. For those who may not be  
20 aware of the fact, Anne Sheehan is no longer with the  
21 Department of Finance. She has accepted a position at  
22 CalPERS as the Director of Corporate Governance.

23 MEMBER LUJANO: CalSTRS.

24 MS. HIGASHI: CalSTRS; I'm sorry. CalSTRS.

25 And she'll be there effective next week.

1 CHAIR SHEEHY: Okay. I have the privilege and  
2 distinct honor of presenting a resolution here  
3 recognizing many years of hard work and service to the  
4 State of California. And this is on behalf of Deborah  
5 Borzelleri, who is the senior commission —

6 MS. HIGASHI: Borzelleri.

7 CHAIR SHEEHY: — counsel.

8 I'm sorry?

9 MS. HIGASHI: Borzelleri.

10 CHAIR SHEEHY: Borzelleri. Excuse me. I  
11 apologize.

12 Whereas Ms. Borzelleri has distinguished herself as  
13 a state employee for 35 years, including three years as  
14 the Senior Commission Counsel with the Commission on  
15 State Mandates; and whereas she has advised and counseled  
16 the Commission in determining if cities and counties and  
17 special districts and school districts should be  
18 reimbursed pursuant to section 6, article XIII B of the  
19 California Constitution, and section 17514 of the  
20 Government Code; whereas she has completed complex legal  
21 analyses and made recommendations to the Commission on  
22 over 12 test claims, including the following programs on  
23 the mentally disordered offenders binding arbitration,  
24 local agency formation commissions, local government  
25 employment relations, prevailing wages, comprehensive

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1 school safety plans, California Youth Authority sliding  
2 scale, and workers' compensation disability benefits;  
3 whereas she has completed trial court briefs and  
4 successfully represented the commission before the  
5 San Diego Superior Court in litigation on the *San Diego*  
6 *Unified School District versus Commission on State*  
7 *Mandates* Emergency Procedures Act case; and whereas she  
8 is being honored by the Commission on State Mandates in  
9 appreciation of her outstanding dedication and service to  
10 the State of California and her exemplary service to the  
11 Commission on State Mandates.

12 Now therefore be it resolved that the Commission on  
13 State Mandates and staff warmly congratulate Deborah  
14 Borzer —

15 MS. HIGASHI: Borzelleri.

16 CHAIR SHEEHY: — Borzelleri, excuse me.

17 Warmly congratulate Deborah Borzerrel — warmly  
18 congratulate Deborah upon her retirement from the  
19 state — I apologize. Warmly congratulate Deborah upon  
20 her requirement from state service on September 3rd,  
21 2008, done this 1st day of August, 2008, County of  
22 Sacramento, State of California, witnessed thereof by  
23 members of the Commission.

24 And we have — Deborah, I apologize. My — I didn't  
25 get a chance to finish my coffee, so I'm not operating on

1 all eight cylinders, but we have a nice plaque here, and  
2 I'd like — was wondering if you could come and accept  
3 this on behalf of the Commission.

4 MS. BORZELLERI: Sure.

5 *(Applause)*

6 CHAIR SHEEHY: Thank you so much for your  
7 service to the State of California.

8 MS. BORZELLERI: Thank you.

9 CHAIR SHEEHY: It's dedicated folks like you that  
10 really make things — make all the wheels turn in state  
11 government, and we sure appreciate the many years of your  
12 great service.

13 MS. BORZELLERI: Thank you so much. It's been an  
14 honor to work with the Commission and with the staff.  
15 They're excellent staff. It's been a great job.

16 Thank you very much.

17 CHAIR SHEEHY: Thank you so much.

18 *(Applause)*

19 MS. HIGASHI: So with Deborah's retirement, I'd  
20 just like to note we'll will probably be exploring a  
21 freeze exemption so that we can hire behind her, but we  
22 will be down one attorney.

23 CHAIR SHEEHY: Okay. At this time, the  
24 Commission on State Mandates, if there — is there any  
25 further public comment on any of the items that we've

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1 discussed today?

2 (No response)

3 CHAIR SHEEHY: Seeing none, at this time, the  
4 Commission is going to adjourn to closed session, and so  
5 therefore members of the public and others will have to  
6 leave the room.

7 The Commission on State Mandates will now meet in  
8 closed executive session pursuant to Government Code  
9 section 11126, subdivision (e), in order to confer with  
10 and receive advice from our legal counsel for  
11 consideration and action, as necessary and appropriate,  
12 upon pending litigation listed on the published notice  
13 and also listed on the agenda in order to confer with  
14 and receive advice from our legal counsel regarding  
15 potential litigation.

16 The commission will also confer on personnel  
17 matters listed on the published notice and agenda, and  
18 we will reconvene in open session in approximately ten  
19 to 15 minutes.

20 (Closed executive session commenced at  
21 10:33 a.m.)

22 (Open session resumed at 10:48 a.m.)

23 CHAIR SHEEHY: The Commission on State Mandates  
24 met in closed executive session pursuant to Government  
25 Code section 11126, subdivision (e), in order to confer

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1 with and receive advice from legal counsel, for  
2 consideration and action, as necessary and appropriate,  
3 upon pending litigation listed on the published notice  
4 and agenda and also potential litigation, and pursuant  
5 to Government Code section 11126, subdivision (a), and  
6 17526, to confer on personnel matters listed on the  
7 published notice and agenda.

8 The Commission on State Mandates will now reconvene  
9 in open session.

10 Is there a motion to adjourn?

11 MEMBER OLSEN: So moved.

12 MEMBER CHIVARO: Seconded.

13 CHAIR SHEEHY: May we adjourn by unanimous consent?

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

15 CHAIR SHEEHY: Thank you. The Commission on  
16 State Mandates is adjourned.

17 *(Proceedings concluded at 10:50 a.m.)*

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1 REPORTER'S CERTIFICATE

2 I hereby certify that the foregoing proceedings  
3 were duly reported by me at the time and place herein  
4 specified;

5 That the proceedings were reported by me, a  
6 duly certified shorthand reporter and a disinterested  
7 person, and was thereafter transcribed into  
8 typewriting.

9 In witness whereof, I have hereunto set my hand  
10 on October 13, 2008.

11   
12 \_\_\_\_\_  
13 DEBRA P. CODIGA  
14 California CSR #5647