

**PUBLIC MEETING**

**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, December 6, 2013

**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
*(Commission Chair)*  
Chief Deputy Director  
Department of Finance

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

ANDRÉ RIVERA  
Representative for BILL LOCKYER  
State Treasurer

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(Items 2 and 16)

JASON HONE  
Assistant Executive Director  
(Item 8)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 15)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

ERIC D. FELLER  
Senior Commission Counsel  
(Item 3 and Item 4)

MATTHEW B. JONES  
Commission Counsel  
(Items 5, 6, 7 and 10)

KERRY ORTMAN  
Program Analyst  
(Item 14)



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For Claimants San Diego Unified School District, Grant  
Joint Union High School District, and Twin Rivers Unified  
School District

ARTHUR PALKOWITZ  
Stutz, Artiano, Shinoff & Holtz  
2488 Historic Decatur Road, Suite 200  
San Diego, California 92106

For Department of Finance

JILLIAN KISSEE  
Department of Finance  
915 L Street  
Sacramento, California 95814

KATHY LYNCH  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Claimant County of Alameda

NICOLE WORDELMAN  
Legislative Advocate  
Platinum Advisors  
1215 K Street, Suite 1150  
Sacramento, CA 95814

For Department of Health Care Services:

EDUARDO CAVAZOS  
Office of Legal Services  
Department of Health Care Services  
1501 Capitol Ave (MS 0010)  
Sacramento, CA 95811

For Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

KATHY LYNCH  
Department of Finance  
915 L Street  
Sacramento, California 95814

LEE SCOTT  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:**

For County of Los Angeles

HASMIK YAGHOBYAN  
SB 90 Administration  
County of Los Angeles Auditor Controller's Office  
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Los Angeles, California 90012

CRAIG OSAKI  
Los Angeles Public Defender's Office  
210 West Temple Street  
Los Angeles, California 90012

For Requestor Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 6**

For Requestor Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

KATHY LYNCH  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:**

For Claimant County of Los Angeles

ED JEWIK  
Program Specialist V  
Department of Auditor-Controller Accounting Division

For Department of Finance

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

KATHY LYNCH  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing for Item 8:**

For Claimant City of Newport Beach

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

For Department of Finance:

MICHAEL BYRNE  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 10:**

For Claimants San Mateo Community College District and  
San Bernardino Community College District:

KEITH B. PETERSEN  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, California 92117

For Department of Finance:

MICHAEL BYRNE  
Department of Finance  
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Sacramento, California 95814

For State Controller's Office:

SHAWN D. SILVA  
Staff Counsel  
State Controller's Office  
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Sacramento, California 95814

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
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1 calendar today, I wanted to take a moment to acknowledge  
2 the passing of Mr. Albert Beltrami.

3 As many of you know, he served as a public  
4 member of the Commission from April 1996 through July of  
5 2001. Mr. Beltrami had a long and distinguished career  
6 in public service, including serving as a lieutenant  
7 commander in the United States Navy, working as a city  
8 manager in several California cities, and as the chief  
9 administrative officer at Mendocino County for 25 years.  
10 He was affectionately known there as "the sixth  
11 supervisor," and was well-respected as an advisor to the  
12 board of supervisors.

13 So we wanted to acknowledge and recognize his  
14 great loss. And I think many of you probably served with  
15 him.

16 So thank you.

17 And Ms. Ramirez also wanted to make some  
18 comments.

19 MEMBER RAMIREZ: Thank you, Chair.

20 I appreciate the opportunity to just note what  
21 the world is noting now, the passing of Nelson Mandela  
22 of South Africa, who was a great leader in the history of  
23 humanity, leading that country out of darkness into  
24 democracy. And I really appreciate this opportunity to  
25 acknowledge it.

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1           We're not living in a bubble here at the  
2 Commission. We know what's going on in the world.

3           Thank you.

4           CHAIR ORTEGA: Thank you.

5           Okay, I guess we could get started with the  
6 calendar today.

7           Are there any objections or corrections to the  
8 September 27<sup>th</sup> minutes?

9           MEMBER CHIVARO: I'll move approval.

10          MEMBER ALEX: Second.

11          CHAIR ORTEGA: A motion and a second.

12          If there are no objections, the minutes will be  
13 adopted.

14          Heather?

15          MS. HALSEY: We can do this by voice or roll  
16 call.

17          CHAIR ORTEGA: Okay, all those in favor?

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

19          CHAIR ORTEGA: Any opposed?

20          *(No response)*

21          CHAIR ORTEGA: Thank you.

22          MS. HALSEY: The motion carries.

23          And now we'll take up public comment for  
24 matters not on the agenda. Please note the Commission  
25 cannot take action on items not on the agendas. However,

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1 it can schedule issues raised by the public for  
2 consideration at future meetings.

3 CHAIR ORTEGA: Is there any general public  
4 comment?

5 *(No response)*

6 CHAIR ORTEGA: Okay, hearing none, we'll move  
7 forward.

8 MS. HALSEY: Next, we have a proposal to add  
9 another item to the Consent Calendar. After the agenda  
10 for this hearing was released, the parties agreed to  
11 Item 9, POST parameters and guidelines, *Immunization*  
12 *Records - Pertussis*, on consent.

13 CHAIR ORTEGA: Okay, any objections to adding  
14 Item 9 to the Consent Calendar?

15 *(No response)*

16 CHAIR ORTEGA: Okay, do we have a motion on the  
17 Consent Calendar?

18 MEMBER OLSEN: I'll move.

19 MEMBER SAYLOR: Second.

20 CHAIR ORTEGA: Consent Calendar has been moved  
21 and seconded.

22 All in favor?

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

24 CHAIR ORTEGA: Any objections or abstentions?

25 *(No response)*

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1 CHAIR ORTEGA: Thank you. The Consent Calendar  
2 has been passed.

3 MS. HALSEY: Let's move to the Article 7  
4 portion of the hearing.

5 Will the parties and witnesses please rise for  
6 Items 2, 3, 4, 5, 6, 7, 8, and 10, please?

7 *(Parties and witnesses stood.)*

8 MS. HALSEY: Do you solemnly swear or affirm  
9 that the testimony which you are about to give is true  
10 and correct based on your personal knowledge,  
11 information, or belief?

12 *(Chorus of "I dos" was heard.)*

13 MS. HALSEY: Thank you.

14 Item 2 is reserved for appeals of Executive  
15 Director decisions. There are no appeals to consider  
16 under Item 2 at this hearing.

17 Item 3, Senior Commission Counsel Eric Feller  
18 will present Item 3, a test claim on *Standardized Testing*  
19 *and Reporting, STAR II and III.*

20 MR. FELLER: Good morning.

21 These test claims seek reimbursement for  
22 administration of the *Standardized Testing and Reporting,*  
23 or *STAR* program, as required by the test-claim statutes  
24 and regulations.

25 The Commission does not have jurisdiction over

1 several of the statutes and regulations because the  
2 Commission has already issued a prior final decision on  
3 the Education Code sections out in 1997 and several other  
4 test-claim statutes and regulations were filed beyond the  
5 statute of limitations.

6 Although staff found a handful of newly  
7 required activities in the test-claim statutes and  
8 regulations, we conclude that the State has appropriated  
9 state and federal funds for the STAR program that are  
10 intended to pay for the costs of the newly required  
11 activities in an amount sufficient to pay for them.

12 Staff recommends the Commission adopt the  
13 proposed statement of decision to deny the test claim.

14 Would the parties and witnesses please state  
15 your names for the record?

16 MR. PALKOWITZ: Art Palkowitz on behalf of the  
17 claimant.

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

20 MS. LYNCH: Kathy Lynch, Department of Finance.

21 CHAIR ORTEGA: Mr. Palkowitz?

22 MR. PALKOWITZ: Yes, good morning. Thank you.

23 I would like to thank staff for their extensive  
24 analysis on this test claim, which included 79 pages and  
25 hundreds of footnotes.

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1           What I would like to do is address an issue.  
2           As was mentioned, there are activities that have been  
3           determined to be new activities. And what staff has done  
4           an extensive analysis is that there has been funding over  
5           the years and based on that funding, there are no net  
6           costs, and, therefore, their activities are not  
7           reimbursable.

8           On page 24 of the analysis, it correctly states  
9           that San Diego Unified School District, the claimant, did  
10          estimate back in 2004, when this was filed, that they  
11          estimated they would incur \$500,000 of annual costs for  
12          the Year '04-05, and then 550,000 to implement it in  
13          '05-06 and beyond.

14          What staff has preliminarily determined is that  
15          based on the funding that's been provided over the years,  
16          there are no net costs. And they've cited as authority  
17          Government Code section 17556(e), which is on page 72.  
18          Page 72 quotes that statute. And in reviewing that  
19          statute, it states that "There shall not be any mandated  
20          costs found if it results in no costs."

21          I would have issue with that analysis.

22          What the analysis is doing is saying the State  
23          is providing X dollars, and based on that X dollars,  
24          there should not be any net costs because those fundings  
25          should be applied to this program.

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1           However, this analysis is not providing the  
2           opportunity for a school district to determine if they do  
3           have costs over and above the funding.

4           To deny the claim after it is determined there  
5           are new activities on the basis that the funding should  
6           be enough to cover the costs really, I believe, is not  
7           fundamentally what the Government Code relates to when it  
8           refers to mandates.

9           The task of the Commission is to determine if  
10          there are new activities.

11          If the State provides -- or federal as it's  
12          indicated in this situation is providing funding to the  
13          local agencies, it should be, and it is allocated on a  
14          form that will allow each agency to file a form, and then  
15          deduct the costs they receive.

16          What is being done now is taking this analysis  
17          away from the districts, and using the funding as a  
18          mechanism to say, "Since there is this amount of funding,  
19          there can't be any net costs."

20          Fundamentally, statutory and case law, I don't  
21          believe, supports that type of analysis.

22          The form allows for each school district to  
23          file a claim annually; and if they do receive the  
24          funding, those funding costs are listed on the form, and  
25          are deducted, and could actually result in a net cost.

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1           But without that attempt for each school  
2 district to go through that process, we are now  
3 determining that these activities are not reimbursable.

4           So based on that analysis, we feel that the  
5 Commission should determine that this is a reimbursable  
6 mandate; allow each district to file the form annually;  
7 and based on the funding they receive, it would then be  
8 determined if there are any net costs that could be  
9 claimed.

10           Thank you.

11           CHAIR ORTEGA: Finance?

12           MS. LYNCH: Thank you.

13           Very quickly, Finance does agree with the  
14 staff's conclusion that there are no reimbursable state  
15 mandates here because of funding.

16           We also believe that there are some federal  
17 issues and I just want to get that clear for the record.

18           But back to the funding issue, if you look at  
19 17556(e), it is very clear, and to the extent that  
20 it says the statute, so on and so on -- let's see: If  
21 there's basically an appropriation in a budget bill or  
22 other bill that provides for an offsetting savings to  
23 local agencies or school districts, there are no costs  
24 mandated by state. And that's the situation we have  
25 here.

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1           So to wait until the very end and adjust things  
2           at the end, is completely contrary to this, the plain  
3           language of this statute right here.

4           In addition, there is no evidence before this  
5           Commission right now that the funding is insufficient.  
6           And the Commission staff did a nice job of outlining the  
7           funding for every particular year here. And absent  
8           anything to the contrary, we believe the Commission  
9           should adopt the decision of the staff.

10           CHAIR ORTEGA: Camille?

11           MS. SHELTON: I'm sorry.

12           Just a couple of things. The plain -- this is  
13           a question of law of that. Ultimately, a question of  
14           law. And the plain language of the appropriation  
15           required that any money appropriated by state or federal  
16           funds be first used to pay for any potential mandated  
17           activities in the STAR program. That's how the draft  
18           staff analysis was issued in September; and we issued it  
19           for comment.

20           The claimant did ask for an extension of time  
21           to look at that and maybe to provide evidence that they  
22           had any increased costs; and no comments were filed back.

23           If a school district, in the future, determines  
24           that they do have increased costs beyond the funding  
25           appropriated and they applied the funding in accordance

1 with those statutes, they can still file a test claim at  
2 that point, under Government Code section 17551.

3 But right now, there's no evidence of any  
4 increased costs mandated by the State.

5 MR. PALKOWITZ: If I may respond?

6 This claim, I believe, was filed in 2004.

7 We're at the end of 2013.

8 What the suggestion is, is that if there is a  
9 change in appropriation or change in the costs incurred  
10 by a local agency, we would be required to file a new  
11 claim form, go through the time and expense, and wait,  
12 potentially, seven years for another result. That  
13 doesn't seem economically to anyone's best interests,  
14 whether it be a local agency or at the state level.

15 I think if we review past claims that have been  
16 filed over the years, you will find claims that have  
17 reimbursement amounts, and those costs are deducted from  
18 the claim form. So this is not any new precedent we're  
19 setting here.

20 MS. SHELTON: The difference here is the plain  
21 language and the appropriation that requires that the  
22 money first be used to pay for mandated activity. That's  
23 the difference.

24 If that language was not there, then  
25 Mr. Palkowitz would be correct because we would have no

1 way of knowing where the money was applied.

2 Here, it has to be applied first to the  
3 mandated activities. So the burden shifts, and it has  
4 always been, with the claimant to prove they have  
5 increased costs beyond that.

6 MS. HALSEY: And I just wanted to add, there's  
7 just no evidence that there are any increased costs to  
8 date, and that is the problem.

9 MR. PALKOWITZ: Well, I thought that on  
10 page 24, when the claimants submitted that they had  
11 costs, why would that not be evidence that they have  
12 incurred increased costs for these activities?

13 MS. SHELTON: In that declaration there was no  
14 discussion of any appropriation made by the State for  
15 this program. So there was not any discussion of  
16 receiving money from the state or federal government.

17 MR. PALKOWITZ: When the claimant is filing the  
18 form at the enactment of the statute, I'm not sure if  
19 they're really able to determine the amount of the costs  
20 or the amount of the appropriation that will be given to  
21 them at that time, and how much of that would actually go  
22 to that cost.

23 So, to me, to hold the District -- the District  
24 complied with the filing, stated that they made an  
25 estimate, and determined they were going to have

1 increased costs. For them to say, "Well, hold on. We  
2 didn't know at that time if we were going to apply all of  
3 the appropriations or we would have more costs than  
4 appropriated," and now to say they should be barred, or  
5 these activities should be barred, because at the time  
6 they filed, or even after, because the appropriation may  
7 be enough for all the costs, I don't think that's what  
8 the claim statutes and the case law are consistent with.

9 MS. SHELTON: Just to conclude, that we gave  
10 the claimant community an opportunity to file evidence in  
11 the record to support their burden of proof that they  
12 have is to show increased costs mandated by the State,  
13 and nothing was filed.

14 CHAIR ORTEGA: I think that remains a question  
15 as there's nothing on the record about what those costs  
16 are above the appropriated costs. And until that time,  
17 with respect to the time-line, you know, we can  
18 acknowledge that it would take some time for that to  
19 happen. But absent something happening on the record,  
20 I'm not sure how we could act any differently.

21 MR. PALKOWITZ: So what is the authority that  
22 requires that the claimant file costs over and above the  
23 appropriation?

24 MS. SHELTON: The Budget Act. The plain  
25 language of the Budget Act that was cited requires that

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1 it first be used -- the money first be used to pay for  
2 the mandated programs.

3 MR. PALKOWITZ: Okay.

4 MS. SHELTON: Under the statutory scheme for  
5 mandates, the claimant has the burden of proof on all  
6 issues and elements of mandates law. Increased costs  
7 mandated by the State is a question of fact, and that  
8 question of fact has to be proved by the claimant.

9 So an opportunity was provided for evidence to  
10 come in, and an extension was granted to allow that to  
11 occur; and nothing has been filed.

12 MR. PALKOWITZ: Okay.

13 CHAIR ORTEGA: Is there any discussion from the  
14 Members?

15 Mr. Saylor?

16 MEMBER SAYLOR: I have a question for Camille.

17 So is there any limitation in time for when a  
18 claimant on this matter could bring forward evidence to  
19 prove that their costs are higher than the mandated  
20 budget amount?

21 MS. SHELTON: You mean, if you took action  
22 today and --

23 MEMBER SAYLOR: Let's assume that the  
24 Commission finds in agreement with the staff's  
25 recommendation to us. At some point, is there any

1 limited time period that a school district can come  
2 forward with evidence that you're describing, that shows  
3 that the budgeted funds were insufficient to cover the  
4 mandate cost?

5 MS. SHELTON: The Government Code in  
6 section 17551(c) says that they can file a test claim  
7 within one year of first incurring costs.

8 And under the Commission's regulations, it  
9 actually gives them an extra fiscal year. So if they  
10 incur increased costs next year, in '14-15, they would  
11 have until '15-16 to file a test claim.

12 MEMBER SAYLOR: So these districts say that  
13 they have costs beginning in 2004 or 2005?

14 MS. SHELTON: Then with this decision, they  
15 needed to file evidence to support that.

16 MEMBER SAYLOR: Okay, so if we find in favor of  
17 the staff recommendation, then those districts that have  
18 incurred costs -- the three districts that are here as  
19 claimants -- they would no longer have standing to ask  
20 for additional funds above the budgeted amount?

21 MS. SHELTON: Right, that's correct. And  
22 that's why on our mail list, we have any school district  
23 in the state that has requested to be included on the  
24 mail list, have received notice of this claim, and have  
25 had the opportunity to file comments under the system.

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1 MEMBER SAYLOR: Did you know that?

2 MR. PALKOWITZ: Did I know what?

3 MEMBER SAYLOR: Did you know that this was --  
4 yeah, and when did you know it?

5 MR. PALKOWITZ: Did I know...?

6 MEMBER SAYLOR: Did you know that there was a  
7 requirement that you bring evidence during this extended  
8 time, from September to October, of additional costs?

9 MR. PALKOWITZ: Well, when the analysis came  
10 out, I requested additional time to review it and analyze  
11 it.

12 I think there is always a burden to try to  
13 prove more evidence than was submitted eight years ago on  
14 what happened. So I was aware of that.

15 But regarding your comment, I don't think I  
16 believe the decision by the Commission would go to all  
17 school districts, not only the claimants. All school  
18 districts would be barred from making a claim for this  
19 period of time.

20 So if a school district down the road or had  
21 any costs over and above the appropriation, or the  
22 appropriation stopped, then a district could file a new  
23 claim at that point and go through this process again and  
24 come back to you and ask you at that time for  
25 reimbursement.

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1 MS. HALSEY: I just wanted to point out one  
2 more factual thing that we do have in the record.

3 The appropriations made over the years since  
4 this mandate was enacted have been over \$60 million a  
5 year. And they're showing 5,000 in costs.

6 I don't see how the \$60 million doesn't cover  
7 it. And there's been no evidence introduced to show that  
8 it wouldn't.

9 And so I can see the concern that maybe someday  
10 that funding wouldn't be available any longer. And if  
11 that were the case, then a new test claim could be filed  
12 and could be reimbursed.

13 CHAIR ORTEGA: Any other questions or comments?

14 Ms. Ramirez?

15 MEMBER RAMIREZ: As to this request,  
16 procedurally, would it be possible to allow more time for  
17 the evidence here? Or are we out of time?

18 MS. SHELTON: The Commission, on their own  
19 motion, may continue any matter. It's up to the  
20 Commission. You would have to vote on that and have a  
21 majority.

22 MEMBER RAMIREZ: And if we did have to vote on  
23 that, to extend the time to let the claimant file  
24 additional evidence, we could do that?

25 MS. SHELTON: It's up to the Commission. It's

1 within your discretion.

2 MEMBER RAMIREZ: I see.

3 Well, I would make a motion that we allow some  
4 very limited period of time, perhaps to the next meeting,  
5 to see what the claimant can provide.

6 MEMBER SAYLOR: Second.

7 MS. SHELTON: Can I just clarify?

8 It would have to be not -- is your motion to  
9 give them all the way until the January hearing to  
10 provide evidence, or time enough for us to prepare a  
11 staff analysis?

12 MEMBER RAMIREZ: Absolutely.

13 MS. SHELTON: Because our staff analysis has to  
14 be filed right after Christmas.

15 MS. HALSEY: Actually, our staff analyses for  
16 January have already gone out.

17 MS. SHELTON: Well, we wouldn't even do a  
18 draft. It would just be a final.

19 MEMBER SAYLOR: Or the next meeting.

20 MEMBER RAMIREZ: Yes, I would move that.

21 MR. PALKOWITZ: If the Commission is thinking  
22 of your suggestion, I appreciate that.

23 With the holidays, I honestly couldn't provide  
24 you a good-faith statement that we'd be able to get any  
25 information by the end of this month, even.

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1           MEMBER RAMIREZ: I think December is always  
2 difficult.

3           What would be reasonable for the staff and for  
4 the claimant?

5           MEMBER ALEX: You mentioned that you had  
6 requested an extension and received it previously --

7           MR. PALKOWITZ: Yes.

8           MEMBER ALEX: -- but did not submit anything.

9           MR. PALKOWITZ: Correct.

10          MEMBER ALEX: Is there anything that has  
11 changed? Is there any reason to think that there would  
12 be additional evidence at this point that wasn't  
13 provided, given the extension previously?

14          MR. PALKOWITZ: I did contact several districts  
15 and tried to get information on what their claims were,  
16 and I wasn't successful in doing that.

17          Would I be more successful with more -- a  
18 longer period of time? I would try my best. I cannot  
19 give any guarantee that despite my best efforts, I'll be  
20 here in the next month or two and tell you I found  
21 something. But I would like to attempt to exhaust it  
22 some more.

23          MEMBER OLSEN: I'd just like to take a reality  
24 check here for a moment.

25          Mr. Palkowitz, is there any chance that any

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1 information you would gather would show costs in excess  
2 of \$6 million a year?

3 MS. KISSEE: Sixty.

4 MS. LYNCH: Sixty.

5 MEMBER OLSEN: I'm sorry, \$60 million a year?

6 MR. PALKOWITZ: Yes, there's a chance.

7 This is a large program statewide. I mean,  
8 this goes and impacts many grades in K through 12.

9 You know, I think what's going on with this  
10 program, and what I experienced -- I mean, this dramatic  
11 change is coming forward with Common Core and other  
12 programs. And so I'm having trouble getting ahold of  
13 districts and finding out their history of costs over the  
14 last decade.

15 MS. SHELTON: I also have to say that you would  
16 have to show that any excess costs have not paid for only  
17 the activities that are new, and that are identified on  
18 page 71. It's not providing the STAR testing to every  
19 student. That is not a new program, higher level of  
20 service. It's only those activities on page 71.

21 MR. PALKOWITZ: Well, but I don't -- the  
22 \$60 million is not going to just those programs, either.

23 MS. SHELTON: Oh, the \$60 million has to first  
24 be paid for all mandated activities.

25 MR. PALKOWITZ: But the \$60 million also pays

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1 for the other activities, too.

2 MS. SHELTON: But you have to pay first the  
3 mandated activities.

4 CHAIR ORTEGA: We have a motion and a second on  
5 the floor to continue the matter until the March hearing.

6 I'm going to say, I'm not in support of  
7 continuing the matter at this point. I think, you know,  
8 we would be denying the time period that we've discussed  
9 today; but if there are future costs identified, if the  
10 appropriation is not enough, there is an ability to file  
11 a future test claim. So we're not precluding ever  
12 getting reimbursement for any duties in the future.

13 So please call the roll on the motion.

14 MS. HALSEY: Is there a motion?

15 MEMBER ALEX: You need a second.

16 CHAIR ORTEGA: No, there was a second here.

17 MS. HALSEY: This is to continue?

18 CHAIR ORTEGA: Yes.

19 MEMBER RAMIREZ: Mr. Saylor seconded. I don't  
20 know if he wants to withdraw his second.

21 MS. HALSEY: Mr. Alex?

22 MEMBER ALEX: No.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: No.

25 MS. HALSEY: Ms. Olsen?

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1 MEMBER OLSEN: No.

2 MS. HALSEY: Ms. Ortega?

3 CHAIR ORTEGA: No.

4 MS. HALSEY: Ms. Ramirez?

5 MEMBER RAMIREZ: Yes.

6 MS. HALSEY: Mr. Rivera?

7 MEMBER RIVERA: No.

8 MS. HALSEY: Mr. Saylor?

9 MEMBER SAYLOR: Yes.

10 MS. HALSEY: The motion fails.

11 CHAIR ORTEGA: Do we have a motion on the staff  
12 recommendation or anything else?

13 MEMBER CHIVARO: I'll move staff  
14 recommendation.

15 MEMBER OLSEN: I'll second.

16 CHAIR ORTEGA: Okay, a motion and a second on  
17 the staff recommendation.

18 Please call the roll.

19 MS. HALSEY: Mr. Alex?

20 MEMBER ALEX: Yes.

21 MS. HALSEY: Mr. Chivaro?

22 MEMBER CHIVARO: Yes.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Yes.

25 MS. HALSEY: Ms. Ortega?

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1 CHAIR ORTEGA: Yes.

2 MS. HALSEY: Ms. Ramirez?

3 MEMBER RAMIREZ: Yes.

4 MS. HALSEY: Mr. Rivera?

5 MEMBER RIVERA: Yes.

6 MS. HALSEY: Mr. Saylor?

7 MEMBER SAYLOR: Yes.

8 MS. HALSEY: The motion carries.

9 CHAIR ORTEGA: Thank you.

10 MS. HALSEY: Moving on to Item 4, Senior  
11 Commission Counsel Eric Feller will present Item 4, a  
12 test claim on *Medi-Cal Eligibility of Juvenile Offenders*.

13 MR. FELLER: This test claim seeks  
14 reimbursement for counties to help juveniles whose  
15 Medi-Cal coverage is terminated as a result of  
16 incarceration in a juvenile detention facility  
17 for 30 days or more, to obtain Medi-Cal or other health  
18 coverage immediately upon release from custody.

19 Test-claim statute requires county juvenile  
20 detention facilities to provide specified information  
21 regarding Medi-Cal eligibility to county welfare  
22 departments and if the ward is a minor, provide notice to  
23 the ward's parent or guardian beginning January 1, 2008.

24 The county welfare department is then required  
25 to perform specified mandated activities related to

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1 initiating an application for Medi-Cal or other benefits  
2 for the ward. These are all newly required activities  
3 that impose costs mandated by the State.

4 Staff recommends that the Commission adopt the  
5 proposed statement of decision to partially approve the  
6 test claim.

7 Would the parties and witnesses please state  
8 your name for the record?

9 MS. WORDELMAN: Nicole Wordelman on behalf of  
10 the claimant.

11 MR. CAVAZOS: Eduardo Cavazos on behalf of the  
12 Department of Health Care Services.

13 MR. SCOTT: Lee Scott, Department of Finance.

14 MR. BYRNE: Michael Byrne, Department of  
15 Finance.

16 MS. LYNCH: Kathy Lynch, Department of Finance.

17 CHAIR ORTEGA: Ms. Wordelman?

18 MS. WORDELMAN: The claimants simply wanted to  
19 express appreciation for all of the time and effort going  
20 into the test claim, and they concur with the staff  
21 recommendation.

22 CHAIR ORTEGA: Okay, the Department of Finance,  
23 or Mr. --

24 MR. SCOTT: The Department of Finance concurs  
25 with staff. We believe that costs may exist for the

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1 detention facilities. However, we are unsure if costs  
2 exist for the county welfare department.

3 We've asked the Department of Health Care  
4 Services to be here today to elaborate.

5 CHAIR ORTEGA: Mr. Cavazos?

6 MR. CAVAZOS: Yes. The Department of Finance  
7 requested that the Department of Health Care Services  
8 explain how the state and federal government reimburses  
9 the county welfare department for their eligibility  
10 workers.

11 Under state law and under federal law, the  
12 state and federal government provide for eligibility  
13 workers, the counties. These eligibility workers help  
14 with the application intake, which means they help the  
15 potential Medi-Cal beneficiaries fill out their  
16 application and receive additional information.

17 The State pays for these costs. I have it in  
18 John Zapata's declaration gave the statutory authority  
19 for the eligibility workers, but we also have statutory  
20 authority that explains the reimbursement for the county  
21 and it's in -- pardon me, one moment -- state law,  
22 Welfare and Institutions Code 14150 to 14153, and onward  
23 to 14158. We provide for state and federal reimbursement  
24 for the county's costs for their eligibility workers.  
25 And these eligibility workers are employed by the --

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1 well, not employed, but they are associated with the  
2 county welfare department. That's one side of their  
3 administrative costs that the State pays for.

4 The other side of the administrative costs that  
5 is broader that the State pays for is County Medi-Cal  
6 Administrative Activities program, which is a program  
7 that is half reimbursed by the federal government and the  
8 other half is actually paid for by the counties.

9 In the department's original comment, dated  
10 June 11, 2009, on page 34, I just wanted to provide an  
11 update to that. Because in there, we state that the  
12 State -- and in turn, counties -- received a federal  
13 disallowance for the county probation officers providing  
14 the administrative activities that we're discussing right  
15 now. Basically, that means that the federal government  
16 says that these administrative activities provided by the  
17 county probation officers were unallowable by --  
18 unallowable for receiving federal reimbursement.

19 However, in November, we received an update  
20 from the federal government, saying that prerelease  
21 administrative activities for inmates performed under  
22 CMAA program is now allowable. Since it's November, we  
23 haven't had time to implement it entirely. We have sent  
24 out a policy and procedure letter informing the counties  
25 that this additional federal reimbursement is allowable.

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1           The implications of that, if anything, if the  
2 county does incur costs, they have the opportunity to  
3 choose to enter into the CMAA -- this optional CMAA  
4 program and reduce their costs by half. So if the costs  
5 that they occurred are 15,000, 17,000, they may have the  
6 opportunity. We don't know yet because we haven't filled  
7 out the county claiming plan for the county if it chooses  
8 to participate in CMAA but it could be reduced by half --  
9 approximately half. They could get federal reimbursement  
10 to reduce those costs if they, in fact, have incurred  
11 those costs, or will can occur those costs.

12           Thank you.

13           CHAIR ORTEGA: Yes, please.

14           MR. BYRNE: Michael Byrne, Department of  
15 Finance.

16           We agree with staff that the costs are there.  
17 But the Department of Health Care Services and all of  
18 their correspondence since 2009 have come out and said,  
19 no, this is paid through with Medi-Cal monies.

20           Mr. Scott and I, about six weeks ago, went down  
21 to Oakland and met with the Probation Department and  
22 said: Commission on State Mandates is ruling that there  
23 is a reimbursable cost here; and the Department of Health  
24 Care Services is saying, no, they fund it through  
25 Medi-Cal monies. Which -- who's right? Do we have any

1 proof for anything?

2 And the people we met with said, "No, we didn't  
3 do this stuff. Welfare people came over and did this  
4 all."

5 So we kind of left that meeting, and contacted  
6 the Department of Health Care Services, and say, "You're  
7 going to have to help us through this because we can't  
8 tell who is paying for what."

9 So we're to a point now that, you know, we  
10 concur with staff that costs are there; and we're just  
11 down to, what monies are being used to fund those costs.  
12 And maybe the proper place to deal with those issues is,  
13 if the Commission approves the staff recommendation, is  
14 the P and G process and the State Controller's SCE  
15 process.

16 CHAIR ORTEGA: Okay, Camille?

17 MS. SHELTON: A couple of thoughts. The new  
18 information that was provided by Health Care Services,  
19 I think might -- it sounds like potential offsetting  
20 revenue coming from the federal government.

21 We would have to take a look at those all-  
22 county letters and make that determination.

23 But in order to deny a claim, you have to show  
24 that an appropriation was specifically made for the  
25 mandated activities here. And we still don't see that in

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1 any of the -- in the laws that you've identified. We did  
2 take a look that. It pays for a lot of things. And this  
3 is just -- there is no requirement unlike the prior claim  
4 that they first be paid for the mandated activities. So  
5 we can't trace the money without an audit.

6 So in the past, we have approved those test  
7 claims, have the Controller's office, you know, audit  
8 those reimbursement claims. You know, the reimbursement  
9 claims are filed under penalty of perjury, and they're  
10 going to have to show things.

11 But for sure, when we do address the parameters  
12 and guidelines, we will update the potential offsetting  
13 revenues there. And if we do see that the money could be  
14 used for these activities, those would be identified.

15 CHAIR ORTEGA: Okay, Ms. Ramirez?

16 MEMBER RAMIREZ: I have a question for  
17 Mr. Cavazos.

18 MR. CAVAZOS: Yes.

19 MEMBER RAMIREZ: You indicated that the federal  
20 government had changed the rule; correct?

21 MR. CAVAZOS: Yes.

22 MEMBER RAMIREZ: Was there a rationale given?

23 MR. CAVAZOS: It was a matter of interpreting  
24 federal law.

25 In the past, there was -- they interpreted a

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1 federal law, inmates had said that no Medi-Cal  
2 reimbursement was allowed for inmates while they're in  
3 custody, inside the incarceration facility. And although  
4 under this program the federal has been giving us leeway  
5 for the medical costs, we've managed to have the federal  
6 government reexamine the administrative costs side of it;  
7 and we are in the process of making sure that their  
8 interpretation of federal law would allow the state and  
9 counties to receive as much federal reimbursement  
10 possible.

11 MEMBER RAMIREZ: Can you say, is there a  
12 distinction between juvenile inmates versus adult inmates  
13 in terms of this?

14 MR. CAVAZOS: Well, we have a case law that  
15 makes a distinction of juvenile inmates. But from the  
16 federal perspective, for the federal reimbursement  
17 perspective, there really isn't a difference.

18 MEMBER RAMIREZ: Thank you.

19 MR. FELLER: Can I just add one thing?

20 As the standard -- the statutory standard in  
21 17556, is that the money that's appropriated be  
22 specifically intended to fund the mandated activities.  
23 And we couldn't find any money specifically intended to  
24 fund these mandated activities, as Camille pointed out.  
25 The activities Mr. Cavazos pointed out are pre-release

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1 administrative activities, but not specifically intended  
2 to fund the mandated activities. And that's why the  
3 recommendation is as it is.

4 MEMBER OLSEN: I'll move the staff  
5 recommendation.

6 MEMBER CHIVARO: Second.

7 CHAIR ORTEGA: Okay, there's a motion and a  
8 second.

9 CHAIR ORTEGA: Please call the roll.

10 MS. HALSEY: Mr. Alex?

11 MEMBER ALEX: Yes.

12 MS. HALSEY: Mr. Chivaro?

13 MEMBER CHIVARO: Yes.

14 MS. HALSEY: Ms. Olsen?

15 MEMBER OLSEN: Yes.

16 MS. HALSEY: Ms. Ortega?

17 CHAIR ORTEGA: Yes.

18 MS. HALSEY: Ms. Ramirez?

19 MEMBER RAMIREZ: Yes.

20 MS. HALSEY: Mr. Rivera?

21 MEMBER RIVERA: Yes.

22 MS. HALSEY: Mr. Saylor?

23 MEMBER SAYLOR: Yes.

24 MS. HALSEY: The motion carries.

25 Item 5, Commission Counsel Matt Jones will

1 present a mandate redetermination on *Sexually Violent*  
2 *Predators*.

3 MR. JONES: Good morning. The Commission  
4 conducted the second hearing of the two-step hearing  
5 process on this redetermination request on  
6 September 27<sup>th</sup>, 2013, finding that the State's liability  
7 had been modified based on a subsequent change in law,  
8 and that a new test-claim decision was required to  
9 reflect the State's modified liability under the  
10 test-claim statute.

11 However, at that same hearing, an issue was  
12 raised by the County of Los Angeles which it was alleged  
13 might affect the period of reimbursement for this mandate  
14 redetermination. Therefore, the Commission approved the  
15 redetermination request but reserved its determination on  
16 the period of reimbursement pending staff's evaluation  
17 and recommendation on the new substantive issue.

18 In this hearing, the only issue before the  
19 Commission is the period of reimbursement applicable to  
20 the redetermination request and the adoption of the  
21 proposed new test-claim decision, including the analysis  
22 of the new issue identified at the last hearing.

23 Staff finds in the new analysis that the  
24 stipulation alleged by the County of Los Angeles has no  
25 effect on the period of reimbursement applicable to this

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1 redetermination request.

2 Staff recommends that the Commission adopt the  
3 staff analysis and proposed statement of decision, ending  
4 reimbursement for most of the test-claim activities as of  
5 July 1, 2011, as specified.

6 Staff further recommends that the Commission  
7 direct staff to prepare a new expedited parameters and  
8 guidelines to reflect the State's modified liability  
9 under the new test-claim decision.

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

12 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of  
13 L.A. County.

14 MR. OSAKI: Craig Osaki, on behalf of the L.A.  
15 County Public Defender's office.

16 MR. BYRNE: Michael Byrne, Department of  
17 Finance.

18 CHAIR ORTEGA: Thank you.

19 And I just want to remind everyone that we had  
20 a lengthy hearing on this last time. So, let's  
21 definitely keep any comments to the specific issue about  
22 the time-line here.

23 Ms. Yaghobyan?

24 MS. YAGHOBYAN: Thank you.

25 I will make it very short. But the one thing

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1 I have to mention, because it is very interesting because  
2 I see that the Commission staff are actually  
3 contradicting their previous recommendation that this  
4 Commission adopted. Because for ten months, we were  
5 fighting and saying that Prop. 83 was not changing law;  
6 that Prop. 83 was a mirror image of SB 1128.

7 But now, the Commission with their staff  
8 analysis on page 2, actually they're admitting, that  
9 they're saying that incidentally, the activities that  
10 were claimed incidentally -- Prop. 83 incidentally is  
11 saying the same as SB 1128, which was enacted a few  
12 months before Prop. 83 was enacted.

13 Having that in mind, the second disagreement,  
14 the reason we are disagreeing with the Commission's staff  
15 is because the Commission is saying even -- let's say  
16 there was a new law, the stipulation that we discussed  
17 last time, the Commission is not bound by the  
18 stipulation.

19 But the fact is, the Commission don't have to  
20 be bound by the stipulation. This is the law of the  
21 state. The Supreme Court bound the State, the County on  
22 this stipulation. So it is a law of the state. The  
23 Commission doesn't have to be bound.

24 The only fact that the Commission has to  
25 decide, at least for those pre-Prop. 83 defendants, if

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1 there was a new law to begin with, there is no new law.  
2 And the County is still obligated to provide the services  
3 until these people are out of the jurisdiction.

4 And Mr. Osaki is going to give more  
5 information.

6 MR. OSAKI: Good morning, Members of the  
7 Commission and staff.

8 I'm here to speak to you today about the  
9 stipulation in L.A. County, the case of *People versus*  
10 *Castillo* and the impact on the Commission's decision.

11 First of all, I'll address the pertinent parts  
12 of the stipulation for the Commission.

13 Now, this stipulation was entered into between  
14 the L.A. District Attorney's office, the L.A. County  
15 Public Defender's office, and the L.A. Superior Courts.

16 This agreement basically indicated that for  
17 cases filed prior to September 20<sup>th</sup>, 2006, cases would  
18 proceed under the old law. And just to clarify, under  
19 this old law, this Commission determined that costs would  
20 be reimbursable.

21 This agreement also indicated that these cases  
22 would have to be tried in a two-year period, and after an  
23 individual gets committed under a two-year provision, the  
24 D.A. would be authorized to file a recommitment petition,  
25 which is also authorized under the old law. This is

1 significant since there are no recommitment provisions in  
2 the initiative.

3 Now, a few things about the stipulation and the  
4 number of cases impacted.

5 First, there was a subsequent stipulation which  
6 lifted the requirement that the case -- these cases had  
7 to be completed in two years. However, it should be made  
8 clear that the cases under this agreement, it's a finite  
9 number.

10 This agreement only impacts those few remaining  
11 cases that have not had their initial trials and their  
12 recommitment trials.

13 Next, I'll address the California Supreme Court  
14 decision in *Castillo*, because I believe the staff  
15 analysis was incorrect in its interpretation of that  
16 decision.

17 On page 2 of the final revised staff analysis,  
18 they write, "While the County may be bound by the terms  
19 of the stipulation," in essence, they write that the  
20 decision does not bind the Commission, presumably because  
21 the Commission was not part of that stipulation.

22 I believe this analysis to be incorrect. And  
23 let me explain.

24 Now, Mr. Castillo was one of the individuals  
25 that went to trial under the agreement. He is the one

1 involved in the case of *People versus Castillo* that went  
2 to the California Supreme Court. And after trial was  
3 completed, the Court imposed the two-year commitment on  
4 Mr. Castillo pursuant to the agreement, even though the  
5 law, for the rest of the state at that time was the  
6 initiative.

7 Mr. Castillo filed an appeal challenging that  
8 two-year commitment.

9 The California State Attorney General's office  
10 challenged the two-year term.

11 Now, that is important to note there was  
12 opposition from L.A. County, from both the District  
13 Attorney's office and the Public Defender's office.

14 Now, it's important to note that the Attorney  
15 General was not a party to the stipulation. And yet the  
16 California Supreme Court upheld the two-year term. And  
17 the agreement, and bound the State to this agreement.

18 For example, another -- just to show you that  
19 this agreement is not just bound to the County, for  
20 example, the Department of Mental Health, now the  
21 Department of State Hospital, that is another state  
22 agency. Now, they were not a party to the agreement or  
23 the stipulation, and yet they would be bound to follow  
24 this two-year agreement as well because it is the law of  
25 the state. It is the California Supreme Court decision.

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1           So what happened here? The California Supreme  
2 Court, in essence, created two tracks: Those cases,  
3 under the new law, under the initiative, and those cases  
4 under the agreement in L.A. County.

5           So now that we know the *Castillo* decision did  
6 not bind just the County to its decision, well, what  
7 impact does this *Castillo* decision have on this  
8 Commission? I submit to this Commission, that the  
9 California Supreme Court, in essence, created two types  
10 of cases for this Commission to consider: Cases under  
11 which the initiative applies, and those cases that are  
12 governed under the old law pursuant to the L.A. County  
13 agreement.

14           Now, the cases under the initiative I won't  
15 belabor. We have had our hearings, we've pointed out  
16 our objections; but ultimately, my understanding is that  
17 17556(f), this Commission has basically found that  
18 certain activities are not to be reimbursable because  
19 there was an initiative passed.

20           However, for those few remaining cases under  
21 this agreement, the applicable law would be the old law,  
22 which this same Commission found costs to be  
23 reimbursable.

24           I ask this Commission to follow the Supreme  
25 Court's lead and create two tracks of cases: Those cases

1 under the initiative and those cases remaining under the  
2 L.A. County agreement.

3 Since those L.A. County cases are not governed  
4 under the initiative, 17556(f) does not apply. Instead,  
5 what should govern is this Commission's prior finding  
6 that costs are reimbursable.

7 If the Commission does not create these two  
8 tracks of cases, I believe it would not be following the  
9 Supreme Court decision. It would create an absurd  
10 result, whereby cases utilizing the old law that this  
11 Commission found to be reimbursable, would ultimately not  
12 be reimbursable.

13 I would request the Commission the following:  
14 Find that activities 1 through 8 be fully reimbursable  
15 for those few cases under the stipulation; and also find  
16 that the recommitment petitions authorized pursuant to  
17 the stipulation be reimbursed for activities 1 through 5,  
18 and activities 7 and 8.

19 Now, I specifically -- I'm deleting references  
20 to subsequent hearings under 6605 and 6608 of the Welfare  
21 and Institutions Code, since they are expressly included  
22 in the initiative and are not referenced in the  
23 stipulation.

24 But I believe the rest of the activities are  
25 covered in the stipulation and, thus, are reimbursable.

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1 Thank you for your time and attention.

2 And I would be happy to address any questions  
3 from the Commission.

4 CHAIR ORTEGA: Mr. Byrne?

5 MR. BYRNE: Michael Byrne, Department of  
6 Finance.

7 We concur with the staff recommendation.

8 CHAIR ORTEGA: Matt -- go ahead, Mr. Alex.

9 MEMBER ALEX: I have some questions.

10 Who did the Attorney General represent in the  
11 proceeding at the Supreme Court?

12 MR. OSAKI: It was -- at that point in time,  
13 what had happened is that the State -- well, there was a  
14 jury trial with Mr. Castillo. The jury found that  
15 Mr. Castillo qualified as an SVP, and the District  
16 Attorney was prosecuting that case.

17 Usually what happens is that --

18 MEMBER ALEX: So the State -- the Attorney  
19 General handled it on appeal and became the  
20 representative of the people?

21 MR. OSAKI: That's basically what it is.

22 MEMBER ALEX: Okay.

23 MR. OSAKI: What's unusual about this case, is  
24 that the basis for the appeal by Mr. Castillo, obviously,  
25 was not the two-year stipulation, because obviously that

1 was okay with him.

2 The basis were other legal grounds. He was  
3 challenging the commitment.

4 The Attorney General, despite the agreement,  
5 took the position that "Wait a minute, this is not the  
6 law of the land." And at that point in time, L.A.  
7 County -- both the L.A. County Public Defender's and the  
8 District Attorney's offices opposed the imposition of the  
9 indeterminate term because of this agreement. And it  
10 created an unusual situation where a prosecuting agency  
11 was opposing the State Attorney General's office in the  
12 amicus.

13 MEMBER ALEX: That's interesting.

14 It's also -- isn't it typical when the State  
15 Attorney General handles an appeal from a local district  
16 attorney that the representation is not of the state,  
17 it's of the people as described by the original  
18 jurisdiction?

19 MR. OSAKI: However, in this case, it is  
20 different, a little bit different. Because what the  
21 Attorney General's office was, in fact, representing the  
22 State, because they were trying to say that this  
23 agreement in L.A. County was inappropriate because that  
24 was not the law of the state. And so, in essence, they  
25 were representing the State at that time.

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1           MEMBER ALEX: Okay, and then you stated a  
2 couple of times, that the Supreme Court ruling bound the  
3 State. And you said it in a conclusory way. But it's  
4 kind of the central question here, and I wonder if you  
5 have a basis for saying why the State would be bound.

6           MR. OSAKI: Well, what it is, is that I was  
7 challenging the staff's assertion that the County alone  
8 is bound. And what I'm saying is that, no, what happened  
9 in this case, is that obviously the Attorney General's  
10 office was not a party to the stipulation, and yet they  
11 are bound. Also, the Department of --

12           MEMBER ALEX: Well, let's explore that for a  
13 second.

14           In what way is the Attorney General's office  
15 bound, and why does that mean the State is bound? I  
16 mean, I'm sorry to be a lawyer here --

17           MR. OSAKI: No, no, I understand. No, I  
18 understand.

19           But as we went further, they were representing  
20 the State's interest at this time, as I explained  
21 earlier.

22           So what the Supreme Court did, was they  
23 indicated that the position taken by the Attorney General  
24 was incorrect, okay.

25           Now, the staff's interpretation that only the

1 County was bound, implying that this agreement was just a  
2 county measure, okay. But even the case itself bound the  
3 Attorney General from challenging this agreement in  
4 future prosecutions. So the State was bound to this  
5 California Supreme Court.

6 Now, the other thing, too, I gave an example  
7 where another State agency, even though they were not a  
8 party to the stipulation would also be bound, such as the  
9 Department of Mental Health or the Department of State  
10 Hospitals. If they decided, "Well, we're not going to  
11 abide by this two-year stipulation," we can go to the  
12 courts, that "We have an agreement. Hey, we have to  
13 enforce this two-year agreement."

14 So this is a state law, and it's bound to  
15 everyone.

16 MEMBER ALEX: One more question, and then it  
17 looks like there's some other views.

18 How many cases are we talking about?

19 MR. OSAKI: Very few, actually. Right now, we  
20 have less than 20 cases with their initial trials.

21 With respect to recommitment trials, at this  
22 point in time, I haven't crunched those numbers. I was  
23 not asked to provide those numbers. I apologize. But  
24 even with the initial commitments, we're talking about  
25 cases that were filed prior to 2006, so they are being

1 whittled away. And so we are dealing with a finite  
2 number.

3 MR. JONES: I'd like to clarify just a couple  
4 of things, but then I'd mostly want to just stand on the  
5 staff analysis and answer questions if anyone else has  
6 them.

7 But first, I disagree with the view that the  
8 *Castillo* case binds the whole state, not least because  
9 the Attorney General was representing the County on  
10 appeal in that particular case. And in that same  
11 opinion, the Supreme Court cites at least three, four,  
12 five other cases that I've cited to just in the short  
13 section that I thought was relevant, in which other  
14 cases, other Court of Appeal opinions and Supreme Court  
15 opinions had sort of worked out these details in terms of  
16 retroactivity of Prop. 83 and SB 1128.

17 The reason that the Court -- in my reading of  
18 the case, the reason that the Court bound the Attorney  
19 General on appeal as representing L.A. County to abide  
20 by this stipulation, is simply that at the time the  
21 stipulation was entered into, there was some substantial  
22 legal uncertainty about how these changes -- you know,  
23 it was mentioned that there's no recommitment procedure  
24 under the new law, all terms are indeterminate instead of  
25 two-year terms.

1           And so there was substantial legal uncertainty  
2 as to how those would apply retroactively to cases  
3 pending at the time.

4           All those details and all those questions have  
5 since been worked out and, in fact, were worked out by  
6 the time *Castillo* made it to the Supreme Court. And the  
7 Supreme Court recognized that those details had been  
8 worked out, and only bound the Attorney General to abide  
9 by the stipulation in this case because at the time the  
10 stipulation was entered into, it was entered into in good  
11 faith by the County and the District Attorney, it was  
12 signed by the Superior -- by the presiding judge of the  
13 Superior Court in L.A. County in good faith, and it was  
14 because nobody quite knew how this was going to apply  
15 retroactively.

16           Now we know, and the Attorney General was only  
17 held to abide by the stipulation for cases like this  
18 coming out of L.A. County.

19           I think it's quite a stretch to say that this  
20 binds the entire state.

21           MR. OSAKI: If I may respond very briefly.

22           With respect to the other cases that were just  
23 cited, those were Court of Appeal cases; but most  
24 importantly, those are cases that did not have the  
25 stipulation, the unusual circumstance that we have in

1 this case. So the Supreme Court specifically dealt with  
2 this whole retroactivity thing in light of the agreement  
3 that we have in L.A. County, as opposed to those cases  
4 that were cited -- just previously cited right now, where  
5 there was no agreement in those cases.

6 And I could indicate to this Commission that my  
7 understanding is that we're the only county that had such  
8 an agreement. So we're not talking widespread, you know,  
9 application here.

10 And the thing is that when I say it applies to  
11 the State, it, of course, applies to the State as it  
12 applies with respect to this agreement to those limited  
13 cases.

14 So, yes, it applies to the State to those  
15 individuals. And because the Supreme Court has allowed  
16 for these two tracks of cases to exist at this current  
17 time, I think the Commission's job as to ascertain:  
18 Well, wait a minute. There are cases that are pursuant  
19 to the initiative. There those cases that are pursuant  
20 under the old law.

21 I think those cases that are still going  
22 forward, those few remaining cases, are still  
23 reimbursable.

24 MS. SHELTON: The only comment that I was going  
25 to make was that the only reason why those few cases are

1 being governed under the old law, is because of an  
2 agreement made, not because of an interpretation of what  
3 the law is.

4 The State did not force the parties to enter  
5 into that agreement. It was a decision made in good  
6 faith as the *Castillo* court mentioned. But it's not  
7 mandated by the State to interpret the law the way the  
8 stipulation does.

9 MS. HALSEY: I just have one thing quick to add  
10 to that, and that is that the Attorney General had issued  
11 a memorandum to all District Attorneys prior to the time  
12 that L.A. County entered into that agreement, stating  
13 that the Attorney General's interpretation was that  
14 indeterminate commitment would apply to all pending  
15 claims. And L.A. still chose to go this other route.  
16 So I just wanted to reinforce the idea that the agreement  
17 was not mandated by the State, that was a discretionary  
18 choice of L.A. County.

19 MR. OSAKI: But what's interesting about it is  
20 that the Supreme Court looked at it. They actually  
21 looked at the agreement.

22 They could have said, "No, we're not going to  
23 abide by the agreement," that "We want a uniform law  
24 throughout the whole state." But they didn't do that.  
25 They said, "You know, as a result of principles of

1 judicial estoppel, we have to, you know, abide by this  
2 agreement because the Superior Court got involved in this  
3 whole agreement, and to maintain the integrity of the  
4 judicial system, we have to enforce the agreement."

5 And I'm just asking that this Commission has to  
6 enforce the intentions of the California Supreme Court.

7 MEMBER ALEX: So I think this is not an easy  
8 decision, but the way I see it, the question really --  
9 look, the County had the right to enter into an  
10 agreement, and it's probably binding on the County -- it  
11 almost certainly is, now that the Supreme Court has  
12 confirmed it.

13 The question is whether that decision, finding  
14 that the County agreement applies, whether that decision  
15 recognizing that agreement applies to the State as a  
16 whole or some subset, and whether the Commission, as a  
17 part of the State of California, is bound by that.  
18 And from my perspective, I suspect it's not.

19 MR. OSAKI: Well, and let me address that  
20 position as well, because as I indicated, it is not just  
21 bound to the County, because there are other parties that  
22 have to be involved to enforce such a stipulation. So  
23 those other parties are also, you know, bound to follow  
24 the stipulation.

25 Now, we're all focusing on whether or not this

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1 Commission is bound and so forth. But I would submit to  
2 you, that's really not the analysis. The analysis really  
3 is, we have two tracks of cases. We know that. And we  
4 have some cases under the initiative, and we know that  
5 this Commission has ruled that under 17556(f), they're  
6 not reimbursed -- or certain activities are not  
7 reimbursable.

8 I'm just simply saying that this Commission has  
9 also made a determination that the applicable law is what  
10 governs. And there's two applicable laws here.

11 MEMBER ALEX: The problem, though, is that if  
12 the Commission is not bound by the Supreme Court  
13 determination, then there is no mandate because that --  
14 the Commission has already determined there is no mandate  
15 under the statute. And so if this Commission is not  
16 bound, then mandate goes away, even with respect to the  
17 County of L.A.

18 MR. OSAKI: I apologize, I didn't understand  
19 that.

20 MS. SHELTON: Well, the issue is reimbursement,  
21 not whether -- I mean, the issue is whether reimbursement  
22 is required, right, versus whether you have to comply  
23 with the *Castillo* decision.

24 Yes, you have to comply with the *Castillo*  
25 decision, but that decision does not bind the decision on

1 reimbursement.

2 MR. OSAKI: Yes, and what I'm saying is that  
3 I'm not saying just simply because the Supreme Court says  
4 this, I'm just saying, the Supreme Court has created two  
5 tracks, and that there are two different laws to be  
6 applied.

7 And what I've seen is that depending on the law  
8 that's applied, one's reimbursable and one's not.

9 And so what I'm saying is that those few cases,  
10 yes, this Commission has already made that determination  
11 of reimbursement, right? So those shouldn't be applied  
12 because that's the state of the law as to those limited  
13 cases.

14 CHAIR ORTEGA: What remains a problem for me in  
15 the argument is that the two tracks are created pursuant  
16 to an agreement that the County entered into. And the  
17 track -- that second track is not something that was  
18 mandated by the State. And so that, again, leads us to  
19 the question of, is reimbursement required.

20 MR. OSAKI: Well, the second track is mandated  
21 by the --

22 MS. YAGHOBYAN: It was mandated.

23 MR. OSAKI: It was mandated by the State.

24 There was a Commission finding, right, back in nineteen  
25 ninety- --

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1 MS. YAGHOBYAN: So that is no new law for those  
2 people, so there is no new determination --  
3 redetermination for those people.

4 MR. OSAKI: And in the event that the  
5 Commission has concerns over the agreement, that's what  
6 the Supreme Court addressed. The Supreme Court said,  
7 yes, the agreement is enforceable.

8 CHAIR ORTEGA: All right, any comments or  
9 questions from the Members?

10 MEMBER SAYLOR: Move approval of the staff's  
11 recommendation.

12 MEMBER CHIVARO: Second.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Yes.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Yes.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Yes.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Yes.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: No.

23 MS. HALSEY: Mr. Rivera?

24 MEMBER RIVERA: Yes.

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER SAYLOR: Yes.

2 MS. HALSEY: The motion carries.

3 MS. YAGHOBYAN: Thank you.

4 MS. HALSEY: Item 6, Commission Counsel Matt  
5 Jones will present a request for mandate redetermination  
6 on *Local Recreational Areas: Background Screenings*.

7 MR. JONES: This redetermination request  
8 alleges that the State's liability under Public Resource  
9 Code section 5164 has been modified by a subsequent  
10 amendment to that section, enacted as a part of Statutes  
11 2010, Chapter 719, SB 856.

12 The Department of Finance brings this  
13 redetermination request alleging that local agencies now  
14 have fee authority under the amended statute, which is  
15 sufficient to cover the costs of the mandated activities  
16 as a matter of law; and that this constitutes a  
17 subsequent change in law in accordance with section 17570  
18 and 17556(e).

19 At this hearing -- at this first hearing,  
20 excuse me -- of the two-step hearing process, the only  
21 issue before the Commission is whether the requester has  
22 made an adequate showing that the state's liability under  
23 Article XIII B, section 6, has been modified based on a  
24 subsequent change in law, as defined in section 17570.  
25 If the Commission determines that the requester has made

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1 this showing, the Commission shall proceed to a second  
2 hearing to determine if a new test-claim decision shall  
3 be adopted to reflect the State's modified liability  
4 under the test-claim statutes.

5 Staff recommends that the Commission find that  
6 the Department of Finance has made an adequate showing  
7 that the State's liability has been modified, and direct  
8 staff to schedule a second hearing on the requests.

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

11 MR. BYRNE: Michael Byrne, Department of  
12 Finance.

13 MS. LYNCH: Kathy Lynch, Department of Finance.

14 MR. BYRNE: We concur with the staff  
15 recommendation.

16 MEMBER OLSEN: I move the staff recommendation.

17 MEMBER CHIVARO: Second.

18 MS. HALSEY: Motion and a second.

19 Mr. Alex?

20 MEMBER ALEX: Yes.

21 MS. HALSEY: Mr. Chivaro?

22 MEMBER CHIVARO: Yes.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Yes.

25 MS. HALSEY: Ms. Ortega?

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1 CHAIR ORTEGA: Yes.

2 MS. HALSEY: Ms. Ramirez?

3 MEMBER RAMIREZ: Yes.

4 MS. HALSEY: Mr. Rivera?

5 MEMBER RIVERA: Yes.

6 MS. HALSEY: Mr. Saylor?

7 MEMBER SAYLOR: Yes.

8 MS. HALSEY: The motion carries.

9 Moving on to Item 7, Commission Counsel Matt  
10 Jones will present parameters and guidelines on  
11 *Interagency Child Abuse and Neglect Investigation*  
12 *Reports*, or ICAN.

13 MR. JONES: These parameters and guidelines  
14 address reimbursable activities under the Child Abuse and  
15 Neglect Reporting Act, or CANRA, found in the Penal Code  
16 commencing at section 11164.

17 In the test-claim statement of decision adopted  
18 December 6<sup>th</sup>, 2007, the Commission approved reimbursement  
19 for statutory requirements imposed on county  
20 law-enforcement agencies, county probation departments,  
21 and county welfare agencies to cross-report suspected  
22 child-abuse cases and to forward to the Department of  
23 Justice a report on every case that the agency  
24 investigates that is determined not to be unfounded --  
25 excuse me, to be not unfounded.

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1           In addition, local agencies were required to  
2 perform a number of notice and record-keeping  
3 requirements.

4           The primary issues in dispute in this proposed  
5 statement of decision involve reasonably necessary  
6 activities proposed by the claimant, the scope of  
7 investigation necessary to comply with the mandate, the  
8 claimant's proposed RRM -- or reasonable reimbursement  
9 methodology -- for tasked repetitive activities involved  
10 in the investigation and reporting requirements, and  
11 whether there are offsetting revenues that must be  
12 identified in the parameters and guidelines.

13           Staff recommends that the Commission adopt the  
14 proposed statement of decision and parameters and  
15 guidelines, determining the scope of reimbursement,  
16 rejecting the RRM, and describing possible offsetting  
17 revenues.

18           Will the parties and witnesses please state  
19 your names for the record?

20           MR. JEWIK: Ed Jewik, representing County of  
21 Los Angeles.

22           MR. BYRNE: Michael Byrne, Department of  
23 Finance.

24           MS. LYNCH: Kathy Lynch, Department of Finance.

25           CHAIR ORTEGA: Mr. Jewik?

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1           MR. JEWIK: I just want to thank the Members of  
2 the Commission, and the exceptional work done by the  
3 staff of the Commission. And we concur with the staff  
4 recommendation.

5           MR. BYRNE: Department of Finance concurs with  
6 the staff recommendation.

7           MEMBER OLSEN: I'll move the staff  
8 recommendation.

9           MEMBER RAMIREZ: Second.

10          MS. HALSEY: A motion and a second.

11          Mr. Alex?

12          MEMBER ALEX: Yes.

13          MS. HALSEY: Mr. Chivaro?

14          MEMBER CHIVARO: Yes.

15          MS. HALSEY: Ms. Olsen?

16          MEMBER OLSEN: Yes.

17          MS. HALSEY: Ms. Ortega?

18          CHAIR ORTEGA: Yes.

19          MS. HALSEY: Ms. Ramirez?

20          MEMBER RAMIREZ: Yes.

21          MS. HALSEY: Mr. Rivera?

22          MEMBER RIVERA: Yes.

23          MS. HALSEY: Mr. Saylor?

24          MEMBER SAYLOR: Yes.

25          MS. HALSEY: The motion carries.

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Thank you.

Item 8, Assistant Executive Director Jason Hone will present parameters and guidelines on *Peace Officers Procedural Bill of Rights*, or *POBR II*.

MR. HONE: Good morning. The *Peace Officers Procedural Bill of Rights* program, or *POBR II*, addresses amendments to activities associated with the Peace Officers Procedural Bill of Rights Act. The Act provides a series of rights and procedural safeguards to peace officers employed by local governments that are subject to investigation or discipline.

The test-claim statement of decision approved reimbursement for activities relating to notices required to be provided to an officer, access to officer personnel files, and the notice requirements to search an officer's locker.

The claimant has requested alleged reasonably necessary activities for serving and filing the notices, scheduling appointments to inspect the personnel file, monitoring the officer while he or she reviews the personnel file, and paying the officer's salary during the time it takes to inspect the personnel file while away from his or her normal duties.

Staff recommends that the Commission deny these additional activities.

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1           Paying the officer's salary was specifically  
2 found not to be reasonable in the test-claim statement of  
3 decision.

4           As for the filing and service, scheduling of  
5 appointments, and monitoring the officer, no evidence has  
6 been submitted into the record that those activities are  
7 reasonably necessary to implement the mandated  
8 activities.

9           Staff recommends that the Commission adopt the  
10 proposed statement of decision and parameters and  
11 guidelines for this program.

12           Will the parties and the representatives please  
13 state your names for the record?

14           MR. BURDICK: Allan Burdick on behalf of the  
15 claimant.

16           MR. BYRNE: Michael Byrne, Department of  
17 Finance.

18           MS. LYNCH: Kathy Lynch, Department of Finance.

19           CHAIR ORTEGA: Okay.

20           MR. BURDICK: I think, as pointed out --  
21 Members of the Commission, as was pointed out by the  
22 staff, general agreement on the major tasks and  
23 activities. There are just a few kind of sub-tasks that  
24 are related to those. And the issues for all of them are  
25 really, you know, are they reasonably necessary or not?

1 And the question, I guess, is how much detail do you need  
2 to get into some of these tasks? So kind of let me  
3 provide them.

4 The first one relates to providing notices.  
5 And these are notices given to the officer, both before  
6 there's an investigation and after there's an  
7 investigation of an officer, that there has been an  
8 activity performed which would result in some  
9 disciplinary action.

10 The test claimant feels that, you know, there's  
11 a one-year statute of limitation for this process. And  
12 so it requested, instead of the word "given," it used the  
13 word "serve." It could use "given" and "signed" and  
14 "noted." But because of the one year in effect, this is  
15 a legal process, they felt that the word "serve" should  
16 be used, or something beyond the word "given." "Given"  
17 could just mean handed to them, and there is really no  
18 record that that activity was provided. And so that's  
19 the first one.

20 The second thing really relates to personnel  
21 files and somebody coming to inspect their files. And  
22 there is a slight difference between cities or counties,  
23 but I don't think it really makes a lot of difference in  
24 relating to these.

25 And the first one is to make an appointment.

1 So if somebody wants to review their file, cities and  
2 counties feel they need to make an appointment to come.  
3 That way, the materials are available when they get  
4 there, their file and their record.

5 And, secondly, the claimant believes that while  
6 they're reviewing their file, an officer or  
7 representative of the employer should be there to review,  
8 to watch the officer while they review them -- these are  
9 very sensitive files -- the files, to make sure nothing  
10 is taken from the file.

11 Secondly is the monitoring, and that's kind of  
12 what I added on there is that they watch the officer  
13 reviewing his or her personnel file during that  
14 particular process.

15 And then the third one is, in those cases where  
16 an officer is on duty and comes in and reviews their  
17 file, that the City be able to claim the time that that  
18 officer was away from his or her duty.

19 So those are relatively minor differences.

20 The real question is, are they reasonably  
21 necessary or not? And I think it gets to the level of  
22 detail that you have to provide in the parameters and  
23 guidelines. You know, there are certain things just  
24 assume this is the net reasonable -- just kind of the  
25 normal process for doing this, or is this something that

1 goes beyond what is normally expected by a police  
2 department in conducting these legal activities?

3 Thank you very much.

4 MR. BYRNE: Michael Byrne, Department of  
5 Finance.

6 We concur with the staff recommendation.

7 CHAIR ORTEGA: Okay. Jason?

8 MR. HONE: I can respond to some of the points  
9 that Mr. Burdick raised.

10 I'll start with the third point, which was  
11 paying the officer's salary. And I would just stand on  
12 the staff analysis, that recognizes that the Commission's  
13 decision on the test claim specifically identified that  
14 as something that was not reimbursable.

15 As for the first alleged reasonably necessary  
16 activity, as he stated here, is a little different than  
17 it was in the written comments in the record. But to  
18 replace "given" with "give," the plain language of the  
19 statute says "given," give the notice to the officer. So  
20 did the activity as it was approved in the test-claim  
21 decision.

22 Secondly, appointments and monitoring, while  
23 those could be reasonably necessary, this was discussed  
24 pretty thoroughly in the staff analysis, both the draft  
25 staff analysis and in the final.

1 There's just no evidence in the record -- there's no  
2 documentary evidence -- and even, we gave an example of,  
3 of what documentary evidence might be in that case, which  
4 would be, you know, something submitted by either oral or  
5 written testimony, provided under oath or affirmation by  
6 a person who has personal knowledge, information, or  
7 belief about the assertions made.

8 We don't have that in the record. So that's  
9 where we are with that.

10 MEMBER ALEX: Mr. Burdick, do you know if, in  
11 the union contracts for officers, whether there's a  
12 requirement that they be served in an official way?

13 MR. BURDICK: No, I don't think there is. You  
14 know, and as I stated, they typically go by the statute,  
15 in which it says "does give them." I just think that  
16 because of the nature of this, is that, you know, this is  
17 a legal document, there's a one-year statute of  
18 limitation. And it kind of depends on the severity of  
19 the thing.

20 If it's a very minor kind of allegation, you  
21 know, like a citizen says, you know, the officer said  
22 something, they may not actually ask them to sign it,  
23 file, serve it, do it more legalistically.

24 But if it's a serious offense or miner offense,  
25 then they do that as kind of what they feel is reasonably

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1 necessary.

2 So these aren't major issues. It's just  
3 certain things that the department felt that they very  
4 typically do in many of the cases.

5 MEMBER OLSEN: I'll move the staff  
6 recommendation.

7 MEMBER ALEX: Second.

8 MS. HALSEY: Mr. Alex?

9 MEMBER ALEX: Yes.

10 MS. HALSEY: Mr. Chivaro?

11 MEMBER CHIVARO: Yes.

12 MS. HALSEY: Ms. Olsen?

13 MEMBER OLSEN: Yes.

14 MS. HALSEY: Ms. Ortega?

15 CHAIR ORTEGA: Yes.

16 MS. HALSEY: Ms. Ramirez?

17 MEMBER RAMIREZ: Yes.

18 MS. HALSEY: Mr. Rivera?

19 MEMBER RIVERA: Yes.

20 MS. HALSEY: Mr. Saylor?

21 MEMBER SAYLOR: Yes.

22 MR. BURDICK: Thank you very much.

23 MS. HALSEY: Item 9 was on consent.

24 Item 10, Commission Counsel Matt Jones will  
25 present an incorrect reduction claim on *Health Fee*

1     *Elimination.*

2                   MR. JONES: This consolidated incorrect  
3     reduction claim addresses costs reduced by the Controller  
4     on reimbursement claims filed under the Health Fee  
5     Elimination program. The primary issues in dispute are  
6     the statute of limitations applicable to audits, the  
7     proper application of the health fee rule in light of the  
8     *Clovis Unified School District versus State Controller*  
9     decision, the proper development and application of  
10    indirect cost rates, reductions of salaries and benefits,  
11    other outgoing expenses, student insurance costs, and  
12    health services provided under the mandate, on grounds  
13    that the claimant's documentation was insufficient and  
14    not consistent with the parameters and guidelines and  
15    claiming instructions.

16                   Staff recommends that the Commission adopt the  
17    statement of decision and request that the Controller  
18    reinstate costs claimed as specified and reexamine its  
19    findings and reductions as provided.

20                   Staff further recommends that the Commission  
21    authorize staff to make any technical non-substantive  
22    changes to the statement of decision and parameters and  
23    guidelines after the hearing.

24                   Will the parties and witnesses please state  
25    your names for the record?

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1 MR. PETERSEN: Keith Petersen, representing the  
2 claimants.

3 MR. SPANO: Jim Spano with the security office.

4 MR. SILVA: Shawn Silva with the State  
5 Controller's Office.

6 MR. PETERSEN: Stand on the written submission.

7 Okay, Mr. Silva?

8 MR. SILVA: The Controller -- I'd like to let  
9 Mr. Spano address some of the factual issues, since he's  
10 an auditor and deals with those, and I will delve into  
11 some of the legal concerns we have.

12 CHAIR ORTEGA: Okay.

13 MR. SPANO: We support the Commission staff  
14 conclusions on all the issues except for three, which  
15 I'll go over briefly here in the testimony.

16 The first issue relates to Issue B, pages 30  
17 through 34 of the Commission final staff analysis. The  
18 Commission determined that the claim filed by  
19 San Bernardino Community College District during the  
20 audit period understated authorized health fee revenues.  
21 The Controller determined that offsetting revenues by  
22 deducting students who received the board of governor's  
23 grant waivers from student enrollment and multiply the  
24 difference by authorized student health fees.

25 The Commission staff believes that the record

1 does not demonstrate whether all exempt students pursuant  
2 to Government Code section 76355 were excluded from the  
3 fee calculation. Therefore, the Commission staff  
4 recommends that the issue be remanded for the Controller  
5 to reexamine our calculation of understated authorized  
6 health fees revenues.

7 Specifically, the Commission staff indicated  
8 that the record does not support whether the Controller  
9 excluded: One, student attending an apprenticeship  
10 training program; and, two, students who depend on prayer  
11 for healing.

12 During the audit, the District provided our  
13 office with the total enrollment and total students who  
14 received Board of Governor grant waivers. The District  
15 did not provide our office with the number of students  
16 attending an apprenticeship training program or the  
17 number of students who depends on prayer for healing.

18 Community college districts provides the number  
19 of students attending an apprenticeship training program  
20 annually to the California Community College Chancellor's  
21 office. The Chancellor's office confirmed to our office  
22 that the District reported no students attending an  
23 apprenticeship training program. Therefore, no excluded  
24 costs -- or students.

25 The number of students who depends on prayer

1 for healing was not provided to the Chancellor's office.

2 MR. SILVA: With respect to the legal concerns,  
3 we agree with the ultimate result, which is, we are happy  
4 to look at any documents that the claimant may have which  
5 would support that there are exemptions and, therefore,  
6 there should be less offsetting revenue and reinstated  
7 costs. However, we believe the staff's approach  
8 essentially shifts the burden for putting forth a claim  
9 to the Controller's Office. If the claimant believes  
10 that they've incurred costs or, in this case, if they  
11 believe that the offsetting revenue is not as much as it  
12 would appear on its face based on the number of students,  
13 it would be up to them to claim that they have certain  
14 exemptions that should apply; and, therefore, the  
15 offsetting revenues should be reduced.

16 In this case, the staff analysis essentially  
17 shifts the burden to the Controller to disprove that  
18 there were certain exemptions available, which on a  
19 commonsense level it doesn't make sense, because that  
20 information is uniquely under the control of the claimant  
21 themselves.

22 We were able to verify, at least those who --  
23 on the apprenticeship issue, however, that still leaves  
24 the question of those who have applied to use healing --  
25 prayer for healing instead of going through the Health

1 Services program.

2 And that is our concern is, we have no problem  
3 reviewing those documents, but we don't believe that the  
4 decision was arbitrary and capricious because there was  
5 no evidence presented by the claimant to support an  
6 alteration to the calculation.

7 And Mr. Spano will go to the next issue now.

8 MR. JONES: May I -- would you mind if we break  
9 this up by each issue? You mentioned you had only three  
10 issues in dispute, anyway. Is that all right?

11 MR. SILVA: That makes sense.

12 MR. JONES: Thank you.

13 With respect to the health fee offsetting  
14 revenues issue, I'd like to point out that these audits  
15 are from '04-05, I believe -- excuse me, the IRC is from  
16 '04-05. The audit is from 1999 through 2003. And so  
17 during the audit process, and even during the early  
18 stages of the IRC and comments and so forth, the health  
19 fee rule still hadn't yet been resolved by the courts.  
20 It now has.

21 The *Clovis Unified* decision was 2007 -- 2009 --  
22 2010. Okay. Keith is saying '10. That was actually  
23 going to be my first guess, but I couldn't remember. I  
24 apologize.

25 So 2010 we have the *Clovis Unified* decision

1 that resolves the issue of how the health fee rule is  
2 supposed to operate, which is that whatever the  
3 maximum -- so the health fees were reinstated in the 1987  
4 test-claim statute, and they were capped at a dollar  
5 amount, which was then supposed to adjust for inflation.  
6 And then the Chancellor of the Community Colleges  
7 notifies the other districts when -- and somebody can  
8 correct me if I'm wrong on any detail of this -- but my  
9 understanding is that the Chancellor of Community  
10 Colleges notifies the districts when the inflation  
11 adjustment is supposed to take place, and says, "Okay,  
12 now this year, going forward, you can charge \$8 or you  
13 can charge \$9 or \$10."

14 And so San Mateo's claim was very simple  
15 because they simply didn't adjust their fee on the  
16 schedule that was provided for by the Controller -- or  
17 excuse me, by the Chancellor. And so after we have  
18 *Clovis* that says essentially the maximum fee authority  
19 that you have is the amount that you have to declare as  
20 the offsetting revenue, after *Clovis*, it seems pretty  
21 clear how San Mateo's fee authority should be resolved.  
22 You simply take the \$1 difference that they didn't charge  
23 and multiply it by the number of students they claim. No  
24 problem, that one's done.

25 However, San Bernardino, it's not entirely

1 clear from the documents in the record -- at least to  
2 me -- how many students were actually subject to the fee,  
3 and how many students were exempt from the fee; nor, in  
4 fact, exactly what amount was charged to each student,  
5 and whether that amount represented the maximum that was  
6 allowable for that school year or that semester.

7 So the staff is recommending that the  
8 Commission remand this issue to the Controller only to  
9 resolve the question of how many students were subject to  
10 and not exempt from the fee. And the record indicates  
11 that the only information that the Controller has  
12 considered thus far, has been the enrollment information,  
13 which would be the global "how many students might be  
14 subject to this fee" and then the exemption information  
15 contained in the BOG waiver report, which is going to be  
16 your low-income students, who I presume most, if not all  
17 of them are going to be exempt from the health fee.

18 The record doesn't indicate any consideration  
19 of students who depend on prayer for healing, which is  
20 specifically exempt under the statute from the health  
21 fee, or students who are entered into a qualified  
22 apprenticeship training program.

23 Staff is recommending that the Controller work  
24 with San Bernardino to establish if San Bernardino has  
25 any records of those numbers; because as I said at the

1 beginning, during the IRC and during the audits and even  
2 during the claim years, there was still substantial  
3 disagreement between the Controller and the claimant  
4 community -- that is, the community college districts --  
5 over how the health fee rule should be applied and how  
6 much offsetting revenue they were supposed to be  
7 claiming. And so it's not clear in this record that the  
8 information has been laid out, that allows us, now that  
9 we have the wisdom of Clovis, to determine exactly what  
10 the offsetting revenues look like.

11 MEMBER RAMIREZ: I have a question.

12 Mr. Jones, could you just review the  
13 burden-of-proof issue that was raised by the Controller's  
14 representative?

15 MR. JONES: I completely agree with the  
16 Controller that the district -- that these documents  
17 would be uniquely in control of the district; and that  
18 the district should have to bring something forward.  
19 And if they can't, then absolutely, the Controller should  
20 be able to use whatever information they have available,  
21 which clearly includes the BOG report and the enrollment  
22 numbers that have already been submitted.

23 If a district has figures, though, on how many  
24 students in the district would depend on prayer for  
25 healing, I think it would be appropriate to remand this

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1 question to the Controller, and let them at least  
2 consider that small adjustment.

3 And the same with the apprenticeship training  
4 program.

5 Only because the audit and the comments on the  
6 IRC and the rebuttal comments and none of the record that  
7 I can -- nothing in the record that I can see indicates  
8 that those exemptions have been considered.

9 So I think it would be appropriate for the  
10 Commission to remand this issue, and allow the district  
11 to try to come forward with some documentation for the  
12 audit years.

13 I'm sorry, does that answer your question?

14 MEMBER RAMIREZ: Yes.

15 CHAIR ORTEGA: Anything else on the first set  
16 of issues?

17 MR. SILVA: Well, I would just add that, as I  
18 said, we're perfectly happy to look at the documentation.  
19 Our concern is with the determination that our decision  
20 was arbitrary and capricious. Our determination was  
21 made -- the audit findings were made based on the  
22 information and the claim made at the time, which itself  
23 was done before *Clovis* was decided. So how can a  
24 subsequent action by the Court make what was a very  
25 reasonable decision by the Controller's office, arbitrary

1 and capricious?

2 Basically, I'm asking that you strike that  
3 phrase from the decision, and simply remand it based on  
4 the changes caused by the *Clovis* decision.

5 MS. SHELTON: I think that's fine. I think  
6 that's fine. Because it's just asking them to do  
7 additional work, and it's not really -- a decision yet  
8 hasn't been made on the number.

9 MR. PETERSEN: Can we have the same  
10 consideration on the rest of the findings?

11 I guess not.

12 MR. SPANO: Okay, on to Issue Number 2.

13 MS. SHELTON: Yes.

14 MR. SPANO: This is issue F.4, pages 48 through  
15 57, of the Commission's final staff analysis.

16 A little background.

17 The mandate requires community colleges to  
18 continue providing health services at the level provided  
19 during the base year, which is 1986-87.

20 The Commission calls this a maintenance effort  
21 requirement.

22 The parameters and guidelines instructions  
23 provide a long list of services that may be eligible for  
24 reimbursement in the claim year to the extent those  
25 services were provided in the base year.

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1           And this issue relates to San Bernardino  
2           Community College -- it relates to San Bernardino  
3           Community College District.

4           MR. PETERSEN:   The labs or what?

5           MR. SPANO:   The parameters and guidelines  
6           identify four services under immunization:   Diphtheria,  
7           tetanus, measles, rubella, influenza and others, or  
8           information.

9           The parameters and guidelines and claiming  
10          instructions do not list hepatitis-B, therefore, we made  
11          an adjustment.

12          After further review of the documentation, we  
13          verify that influenza and outside lab services were  
14          provided in the base year.  Therefore, we agree that  
15          these services should be reinstated.

16          MR. SILVA:   And after review of the  
17          Commission's -- the staff's analysis, although we have  
18          some concerns with the specific analysis, we do not  
19          oppose reinstating the costs for the hepatitis  
20          vaccinations.

21          MR. PETERSEN:   Can I ask a question?

22          For that, for hepatitis, are you only agreeing  
23          with the concept, the finding?

24          MR. SILVA:   As I said, we have concerns with  
25          the analysis, but we do not oppose reinstating those

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1 costs.

2 MR. PETERSEN: Thank you.

3 MR. JONES: I would stand on the analysis,  
4 unless the Members have questions about that issue.

5 CHAIR ORTEGA: Okay, any questions on Issue  
6 Number 2 that's been raised?

7 *(No response)*

8 CHAIR ORTEGA: Okay. Let's move forward to the  
9 third grouping.

10 Go ahead, Mr. Spano.

11 MR. SPANO: Okay, the third issue relates to  
12 issue D.1, pages 42 through 47 of the final staff  
13 analysis.

14 The Controller's office determined that  
15 salaries and benefits claimed for Dee Howard and Ernest  
16 Rodriguez, both full-time faculty, are unallowable in  
17 the audit of San Mateo County Community College District,  
18 on the grounds that the District did not provide  
19 documentation supporting that these employees worked in  
20 the health center.

21 The Commission staff believes that the  
22 Controller's office disallowance of salaries and benefits  
23 for these employees was arbitrary and capricious or  
24 entirely lacking evidence support; and costs claimed for  
25 these employees should be reinstated.

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1           Consistent with what's in the staff analysis,  
2           the District provided support for Ernest Rodriguez and  
3           Dee Howard with posting to employees' earning reports,  
4           showing that the employees were funded out of the  
5           district health service program. And an unsworn letter  
6           from Kathy Blackwood, chief financial officer, stating  
7           that the employees were full-time faculty assigned to the  
8           Health Services.

9           These two employees who were classified as  
10          full-time faculty, we requested additional corroborating  
11          evidence from the District supporting their work in the  
12          health center. However, the District provided no  
13          additional information for these employees. So we didn't  
14          have additional corroborating evidence to support the  
15          costs claimed.

16          The Commission staff states that the  
17          Controller's office substantiated hours claimed for  
18          Gloria D'Ambra and Donna Elliott, both office assistants,  
19          with the same documentation that the Controller's office  
20          had determined to be unallowable to Dee Howard and Ernest  
21          Rodriguez, which is the employees earning statement and  
22          declaration -- or the letter.

23                 We disagree.

24          The District also provided other corroborating  
25          evidence for Gloria D'Ambra and Donna Elliott. The

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1 corroborating evidence consists of employees'  
2 classification, job announcement, personnel action forms  
3 relating to the costs incurred in the district health  
4 center for the work actually performed. And those are in  
5 our comments, Tab 8, pages 24, 25, 26, 40, 41, 44, and  
6 45.

7           The Commission staff also states that the  
8 District supported the health center counseling costs for  
9 Arlene Wiltberger and classified as full-time faculty  
10 with posting to the employees' earnings and by personal  
11 action forms, academic administrative salary orders, and  
12 an approval of personnel action form. We agree.

13           The additional information provided by the  
14 District corroborating Ms. Wiltberger corroborated that  
15 she worked in the health center. The documentation  
16 supported that she was assigned as a counselor in the  
17 health center rather than a full-time faculty over the  
18 three-year audit period. For instance, the documentation  
19 included quite a few other corroborating documentation  
20 other than just the employee's earning report. It  
21 included the -- in six instances, there was academic  
22 administrative personnel action forms during the audit  
23 period, identified here as a counselor in a student  
24 counseling psychological service department. There was  
25 an increase in staff allocation and temporary

1 reassignment form during the audit period, recommending a  
2 temporary increase in staff allocation for Ms. Wiltberger  
3 as counselor. And there's approval of a personnel action  
4 form showing changes in assignment for Ms. Wiltberger as  
5 a counselor.

6 So in contrast, all we have for Dee Howard and  
7 Ernest Rodriguez was posting to the employee's earnings  
8 report, showing that the employees were funded out of the  
9 district health service program and an unsworn letter  
10 from Kathy Blackwood, chief financial officer.

11 MR. SILVA: And this again raises the concerns  
12 we had concerning the burden of proof. But note that in  
13 the staff's analysis, they concluded -- first of all, the  
14 staff's analysis concluded that the claimants did not  
15 meet the requirements of the P's and G's as far as  
16 demonstrating that individual hours of each employee  
17 attributed to the mandate. And we believe that in itself  
18 is a valid basis to deny the claim because they have not  
19 even met the requirements of the P's & G's.

20 However, the auditors did work with them, asked  
21 them for these different documents; and at least as to  
22 those other employees, were able to get documents that  
23 are created back during the process. These were the  
24 personnel action forms. And there were numerous forms  
25 for each of these employees, which helped to validate;

1 and the mere fact that they were billed to the Health  
2 Services program rather than some direct evidence that  
3 they worked there.

4           And one of our big concerns is the phrase used  
5 by the staff is "on the basis of same or similar  
6 evidence, we have to come to the same conclusion." And  
7 while we would agree that if the evidence is identical,  
8 a different decision for different people would be almost  
9 by definition arbitrary and capricious. However, when  
10 you start getting into the question of what is "similar  
11 evidence," you're getting into the question of reweighing  
12 the evidence. And the staff itself noted in the final  
13 staff analysis, citing a court case, that the court, or  
14 in this case the Commission, did not have the authority  
15 to reweigh evidence.

16           The question is merely whether there was  
17 sufficient evidence for the Controller to make their  
18 decision. And given the fact that the claimant did not  
19 even meet the requirements of the P's & G's, we believe  
20 we've met that threshold.

21           And I think as Mr. Spano has demonstrated,  
22 there was a substantial difference in not only the amount  
23 of documentation supporting the salaries for those other  
24 employees, but in the number -- the sheer number, there  
25 was, I believe, eight forms from within the system which

1 showed that the one employee who we did reimburse --  
2 Ms. Wiltberger -- was, indeed, a counselor rather than a  
3 full-time faculty, as her job description might have  
4 indicated.

5 So based on that, we believe that the decision  
6 made by the Controller's office was not arbitrary,  
7 capricious; and that the way -- the staff's approach has  
8 essentially shifted -- has altered the standard of  
9 review, and basically shifted the burden to us to  
10 disprove that those two employees were not engaged in  
11 reasonable mandated activities.

12 MR. JONES: I guess I can see where the  
13 Controller is coming from, that it feels like a  
14 burden-shifting; that it feels like, you know, that  
15 there's -- that we're reweighing evidence. And this is  
16 certainly -- this is the grayest of these three issues  
17 that's been brought up today, and the one that we  
18 struggled with at our staff recommendation. But it  
19 seemed to me, in reading this record, that certainly the  
20 early documents, and even some of the later documents,  
21 it seemed to me that the documentation -- it's really a  
22 question of reliability.

23 The claimant has the right to reimbursement of  
24 all their costs. And they file their claims under  
25 penalty of perjury. And, yes, admittedly, this claimant

1 did not meet the requirements of the claiming  
2 instructions and the P's & G's with respect to actual  
3 hours worked and, you know, all this documentation that  
4 appears to be required.

5 But as is pointed out, the Controller did work  
6 with the claimant to try to verify and validate as much  
7 of the costs claimed as possible.

8 And with respect to these last two, this record  
9 looks like -- one of the things that struck me in reading  
10 this record is that it looks a lot like the Controller  
11 denied these two employees based largely on their job  
12 description as full-time faculty.

13 Yes, we have an e-mail from Kathy Blackwood,  
14 chief financial officer of the District, who -- and it's  
15 not a sworn declaration of any kind. But we also have  
16 accounting records that are business records, and would  
17 be -- you know, would be admissible, generally speaking,  
18 over and above the hearsay rule in a court. And those  
19 accounting records do show that these people were --  
20 their time was billed to the Health Services department,  
21 if the accounting codes can be read correctly, or can be  
22 deciphered.

23 And then the other thing that's interesting is  
24 that those same accounting records were used to deny  
25 costs for overtime wages for a couple of employees as

1 well. So if those same accounting records -- and there  
2 may have been more than that on the overtime costs, but  
3 that's all I can see in the record. And so if those same  
4 accounting records can be used to deny a certain portion  
5 of someone's pay because it's overtime, and it's billed  
6 to a different code, then what's the problem with  
7 applying that same logic to accept an employee -- two  
8 employees whose costs were claimed under penalty of  
9 perjury, in the first instance and, you know, we have  
10 these accounting records, payroll records that show that  
11 they were billed to Health Services.

12 So, yes, the quantum of evidence is different,  
13 for different employees; and perhaps the District could  
14 have done better. But initially, they filed their claim  
15 under penalty of perjury, and they are entitled to all  
16 costs claimed -- or not all costs claimed, but all costs  
17 that are reimbursable under the P's & G's and under the  
18 test claim.

19 So, like I said, that was the grayest of the  
20 three issues, but that's where staff's recommendation  
21 came down.

22 And I'd be happy to elaborate further for the  
23 Members if you have questions.

24 CHAIR ORTEGA: Any questions or comments from  
25 the Members?

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1 Oh, sorry.

2 MR. PETERSEN: Yes, I'm still here.

3 Mr. Spano mentioned, at least twice, that the  
4 chief financial officer's e-mail was not sworn. I don't  
5 know if there's any evidentiary standard for that.  
6 Commission staff mentioned the claim was filed under  
7 penalty of perjury. That's true.

8 The claim was based on records produced in the  
9 normal course of business. They were not created for the  
10 audit.

11 And as far as I know, the State Controller is  
12 not required to provide sworn audits or provide an audit  
13 under penalty of perjury. They're the only one here that  
14 doesn't have to do that.

15 CHAIR ORTEGA: Any other comments or questions  
16 from the --

17 MEMBER CHIVARO: I just have a question for the  
18 gentleman.

19 CHAIR ORTEGA: Yes.

20 MEMBER CHIVARO: So what is it you're saying  
21 that the Controller's Office -- how much weight should  
22 they afford the document that's under penalty of perjury?

23 Should they take it without question?

24 MR. JONES: No, not at all. I mean, the  
25 parameters and guidelines and claiming instructions do

1 require some documentation. And certainly the updated  
2 claiming instructions for this program come very close to  
3 the language in the contemporaneous source document rule  
4 that was the source of contention in *Clovis*.

5 But here, we have the claim -- the claimant  
6 initially saying that these two employees are health  
7 services employees in spite of their job titles. You  
8 have an e-mail in which someone with a basis of knowledge  
9 has made a statement -- maybe not a sworn declaration --  
10 but has made a statement in which they've explained how  
11 someone whose title is full-time faculty, would be billed  
12 to health services; and then you have payroll records  
13 that show that their pay was, in fact, drawn on those  
14 accounts, which, again, those are business records, not  
15 produced for the audit, as Mr. Petersen points out.

16 So, no, they certainly don't -- certainly, the  
17 Controller isn't expected to just buy into everything  
18 that's claimed. But there was some documentation here.  
19 So staff felt that this seemed like it was enough  
20 documentation that it would be inconsistent to disallow  
21 costs for these two employees, and yet allow costs for  
22 several other employees whose job titles, at least, don't  
23 necessarily imply that they work in health services, such  
24 as some office assistants and so forth. And, of course,  
25 Mr. Spano pointed out, there's plenty of documentation

1 for those employees as well.

2 And in light of another employee whose job  
3 title is the same, full-time faculty, but who is tasked  
4 to counseling duties in health services.

5 So I don't think it's a huge leap to see that  
6 these two employees were in the same situation. They  
7 were full-time faculty who were tasked to health  
8 services.

9 The documentation is a little bit less, but it  
10 seemed inconsistent to disallow one and not the other.

11 MEMBER CHIVARO: Thank you.

12 MR. SILVA: Can I respond?

13 I think the fact that we've had to go into all  
14 this evidence is, in fact, itself evidence, and we're  
15 reweighing the evidence.

16 The standard is -- the decision on the  
17 Controller is upheld unless it's arbitrary, capricious,  
18 or whether it's entirely lacking in evidence. But yet  
19 the statement was, we have to look at the reliability of  
20 the evidence.

21 Reliability is really a synonym for reweighing.  
22 The Commission staff is applying their determination on  
23 what evidence is good enough or not good enough, but not  
24 asking the basic question: Did the Controller's office  
25 make a decision without evidence?

1           And as we pointed out, there's a substantial  
2           distinction in the evidence between the employees that  
3           we approve their salaries, and those we didn't.

4           If they were actually employees who were  
5           working at the health services clinic, why did they not  
6           provide those same pay -- what was it, employee actions,  
7           personnel action forms for which they had numerous of  
8           those forms for the employees who we did?

9           So we think that that is the basic -- the core  
10          problem, is that they're reweighing the evidence and  
11          deciding that they think what's there is good enough.  
12          But they're not saying that we acted without any  
13          evidence, which is the standard.

14          MR. JONES: I don't know that that is the  
15          standard. And, actually, Mr. Silva, you had suggested  
16          that if you were inconsistent, and that would by  
17          definition be arbitrary and capricious. And that's --  
18          my opinion is, these IRCs can't be viewed without looking  
19          at the facts. They're incredibly fact-specific. Because  
20          the claimant is saying one thing and the Controller is  
21          saying another, and we have to dive into the record to  
22          determine what's -- to determine who has got the better  
23          argument, really. I mean, these are very fact-specific  
24          claims, much more so than any test claim or P's & G's or  
25          anything else that the Commission is doing.

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1           So I think inconsistency is really the focus of  
2 my analysis and my recommendation. Just that there has  
3 to be -- yes, there can be distinctions and the quantum  
4 of evidence is different. But ultimately, it's whether  
5 it's inconsistent to deny some costs on the basis of  
6 similar documentation or a similar level of  
7 documentation. And I kind of -- I don't know how I would  
8 make a recommendation on an IRC without getting into  
9 that, to some extent.

10           CHAIR ORTEGA: Mr. Saylor?

11           MEMBER SAYLOR: I'm ready to move approval of  
12 the recommendations that we've got before us.

13           MEMBER ALEX: Can I ask Camille a question?

14           I just want to make sure I understand the  
15 standard of review of the auditor's decision.

16           As the Commission, do we evaluate whether their  
17 action was arbitrary and capricious?

18           MS. SHELTON: Yes.

19           MEMBER ALEX: Okay, so that's a very high  
20 standard. All right.

21           MS. SHELTON: I was going to say, on this type  
22 of issue. I mean, there's different types of issues.

23           On this type of issue, yes.

24           I was just going to mention, this one was  
25 difficult. We sat around for a few days talking about it

1 and looking at it.

2 We have had other incorrect reduction claims  
3 where the Commission has found something similar to be  
4 arbitrary and capricious when the Controller's office has  
5 used documentation differently, for different purposes,  
6 within the same claim. So it's not being used  
7 consistently.

8 I can remember -- I don't remember the names,  
9 but two recent ones where that occurred, where they had  
10 documentation filed in the record from the claimant, and  
11 the Controller's office came to different conclusions  
12 with similar documentation.

13 And that's basically where I was feeling the  
14 comfort level of the recommendation, because it is  
15 consistent with what the Commission has done in the past.

16 CHAIR ORTEGA: Yes?

17 MEMBER RAMIREZ: I just want to know  
18 procedurally, if there was a way, if it would have been  
19 appropriate -- or did it happen that there was some  
20 discussion between our staff and Controller's staff about  
21 this issue.

22 MS. SHELTON: There are procedures in the  
23 Commission's regulations where the parties can request an  
24 informational meeting. There's also procedures where the  
25 Executive Director can call for one.

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1           It is a legal issue, and it's sort of a yes-no  
2 decision. So I don't know how much we would end up  
3 getting back from an informational meeting when, still,  
4 the parties are going to dispute a "yes" and a "no."

5           MEMBER OLSEN: I'll second the motion. I don't  
6 think it's been seconded yet.

7           MEMBER ALEX: I have a comment -- or I guess an  
8 opinion before we vote on it.

9           First, I think the three different claims have  
10 three different outcomes for me.

11           On the first, I think we should strike the  
12 "arbitrary and capricious" determination, it has no  
13 effect on the outcome. It gets remanded either way. We  
14 might as well not make that determination.

15           On the second, there's an agreement about the  
16 outcome. So let's leave that.

17           On the third, my feeling -- and this may be my  
18 legal bias -- but in an arbitrary and capricious  
19 determination, where there is evidence in the record that  
20 the Controller has acted on a reasoned basis, whether we  
21 agree with it or not, I don't think that's arbitrary and  
22 capricious. So that's my own view of it. But  
23 nonetheless.

24           MEMBER RAMIREZ: Are you making a motion,  
25 Mr. Alex?

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1 MEMBER ALEX: Procedurally, I don't think I  
2 can, right?

3 MEMBER RAMIREZ: Well, we can strike --

4 MS. HALSEY: Do we have a motion and a second  
5 for the staff recommendation?

6 MEMBER OLSEN: Yes.

7 CHAIR ORTEGA: Yes, we could ask that the maker  
8 of the motion withdraw the motion, and a second motion  
9 could be made perhaps to separate the issues, at least?

10 MEMBER SAYLOR: Sure, you could always ask for  
11 a substitute motion as well.

12 In this instance, I will withdraw the motion  
13 and, instead, treat each one of the three issues  
14 separately.

15 CHAIR ORTEGA: Okay, so do we have a motion  
16 then on Issue Number 1?

17 MEMBER SAYLOR: I move that we accept the  
18 recommendation, and that we strike the phrase "arbitrary  
19 and capricious."

20 MEMBER ALEX: Second.

21 MS. HALSEY: Mr. Alex?

22 MEMBER ALEX: Yes.

23 MS. HALSEY: Mr. Chivaro?

24 MEMBER CHIVARO: Yes.

25 MS. HALSEY: Ms. Olsen?

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1 MEMBER OLSEN: Yes.

2 MS. HALSEY: Ms. Ortega?

3 CHAIR ORTEGA: Yes.

4 MS. HALSEY: Ms. Ramirez?

5 MEMBER RAMIREZ: Yes.

6 MS. HALSEY: Mr. Rivera?

7 MEMBER RIVERA: Yes.

8 MS. HALSEY: Mr. Saylor?

9 MEMBER SAYLOR: Yes.

10 MS. HALSEY: The motion carries.

11 CHAIR ORTEGA: And then Issue 2.

12 MEMBER SAYLOR: I move approval of the

13 recommendation as packaged in the staff report to us.

14 MEMBER ALEX: Second.

15 CHAIR ORTEGA: Mr. Alex?

16 MEMBER ALEX: Yes.

17 MS. HALSEY: Mr. Chivaro?

18 MEMBER CHIVARO: Yes.

19 MS. HALSEY: Ms. Olsen?

20 MEMBER OLSEN: Yes.

21 MS. HALSEY: Mr. Ortega?

22 CHAIR ORTEGA: Yes.

23 MS. HALSEY: Ms. Ramirez?

24 MEMBER RAMIREZ: Yes.

25 MS. HALSEY: Mr. Rivera?

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1 MEMBER RIVERA: Yes.

2 MS. HALSEY: Mr. Saylor?

3 MEMBER SAYLOR: Yes.

4 MS. HALSEY: The motion carries.

5 CHAIR ORTEGA: And Issue Number 3.

6 MEMBER SAYLOR: And I move approval of the  
7 recommendation in the third issue as well.

8 MS. HALSEY: Is there a second?

9 *(No response)*

10 MS. SHELTON: The third issue on the denial of  
11 the salaries, benefits of the 29 individuals.

12 MEMBER SAYLOR: Right, yes.

13 MEMBER OLSEN: Mr. Alex, it was your -- if you  
14 would like to have the --

15 MEMBER SAYLOR: Do you want to do something  
16 else?

17 MEMBER ALEX: So I move on the third issue,  
18 that the staff recommendation be stricken. Is that -- is  
19 that technically correct? How should we --

20 MS. SHELTON: Can we -- I'm confused.

21 Did Mr. Saylor have a motion on this issue?

22 MEMBER SAYLOR: There was no second.

23 MS. SHELTON: Okay, so your motion would be  
24 then to disagree with the staff recommendation on that  
25 issue and, instead, find that the Controller's office

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1 acted reasonably with respect to the audit, and,  
2 therefore, that the reductions made for those two  
3 employees were correct?

4 MEMBER ALEX: A far better statement of my  
5 motion.

6 MS. SHELTON: Okay.

7 MEMBER CHIVARO: And I second.

8 CHAIR ORTEGA: Any comments or --

9 (No response)

10 CHAIR ORTEGA: Okay. Call the roll.

11 MS. HALSEY: Mr. Alex?

12 MEMBER ALEX: Yes.

13 MS. HALSEY: Mr. Chivaro?

14 MEMBER CHIVARO: Yes.

15 MS. HALSEY: Ms. Olsen?

16 MEMBER OLSEN: Yes.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Yes.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Yes.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Yes.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: No.

25 MR. PETERSEN: Congratulations.

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1 MS. SHELTON: We do need findings on the other  
2 issues that were not disputed. So I do need a motion on  
3 the other.

4 MR. PETERSEN: Well, they were disputed.

5 MS. SHELTON: Okay, well, that were not  
6 discussed in testimony today.

7 MS. HALSEY: The remainder of the staff  
8 analysis.

9 MR. PETERSEN: Well, splitting hairs has  
10 become --

11 CHAIR ORTEGA: Do we have a motion on the  
12 balance of the staff recommendation?

13 MEMBER OLSEN: I will move adoption of the  
14 remaining portions of the staff analysis.

15 MEMBER CHIVARO: I'll second.

16 MS. HALSEY: Mr. Alex?

17 MEMBER ALEX: Yes.

18 MS. HALSEY: Mr. Chivaro?

19 MEMBER CHIVARO: Yes.

20 MS. HALSEY: Ms. Olsen?

21 MEMBER OLSEN: Yes.

22 MS. HALSEY: Ms. Ortega?

23 CHAIR ORTEGA: Yes.

24 MS. HALSEY: Ms. Ramirez?

25 MEMBER RAMIREZ: Yes.

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1 MS. HALSEY: Mr. Rivera?

2 MEMBER RIVERA: Yes.

3 MS. HALSEY: Mr. Saylor?

4 MEMBER SAYLOR: Yes.

5 MS. SHELTON: Okay, the decision has been made  
6 and it has been adopted.

7 The staff recommendation was to allow staff to  
8 make any non-substantive changes.

9 I don't think it's that difficult to make this  
10 change and issue it to the parties with respect to the  
11 two individuals to strike and rewrite that portion of the  
12 analysis.

13 Does the Commission want to see the decision  
14 again at the next hearing or allow the parties, if we  
15 issue, to object and bring any objections to the  
16 Commission?

17 CHAIR ORTEGA: The second.

18 MEMBER OLSEN: The latter, yes.

19 MEMBER SAYLOR: Yes.

20 CHAIR ORTEGA: Everybody agrees? Yes.

21 MR. PETERSEN: Excuse me, you're saying it's  
22 not a scheduled item unless somebody objects?

23 MS. SHELTON: They've adopted their decision.  
24 We will issue the decision consistent with the  
25 Commission's ruling today.

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1           If you don't --

2           MS. HALSEY: If you think we didn't capture it  
3 properly, you could object.

4           MR. PETERSEN: Does that put that in the 30-day  
5 rule for errors?

6           MS. HALSEY: Yes.

7           MS. SHELTON: Yes.

8           MR. PETERSEN: When is your next hearing?

9           MS. SHELTON: January.

10          MR. PETERSEN: 24<sup>th</sup>. All right.

11          Will that be 30 days?

12          MS. SHELTON: We could work that out at the  
13 staff level when we issue it. We could do the letter in  
14 half a day.

15          MR. PETERSEN: The decision will be more than  
16 30 days on January 24.

17          MS. SHELTON: I see what you're saying.

18          It might be safer to keep your decision and  
19 bring back a decision for adoption at the January  
20 hearing.

21          MS. HALSEY: Just to adopt the SOD.

22          MS. SHELTON: Just to adopt the SOD.

23          CHAIR ORTEGA: That's fine, yes.

24          MS. HALSEY: So the sole issue for  
25 determination will be whether the decision you see

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1 reflects the decision you made today.

2 CHAIR ORTEGA: Okay, that's fine.

3 Thank you.

4 MS. HALSEY: Item 11 and Item 12 are on the  
5 Consent Calendar.

6 Item 13 is reserved for county applications for  
7 a finding of significant financial distress or SB 1033  
8 applications. No SB 1033 applications have been filed.

9 Item 14, Commission Staff Member Kerry Ortman  
10 will present the legislative update.

11 MS. ORTMAN: This one will be pretty easy,  
12 guys.

13 Commission staff continues to monitor  
14 legislation for bills that might affect the mandates  
15 process. There are no new mandates bills at this time.

16 Staff has additionally been monitoring the  
17 treatment of state-mandated programs in the Budget Act  
18 and trailer bills.

19 Along those lines, staff has reviewed the  
20 Education Omnibus trailer bill, AB 86. The bill made the  
21 following three changes relative to education mandates.

22 First, the trailer bill amended the Education  
23 Code relative to the *Behavioral Intervention Plans*  
24 program to direct the Superintendent of Public Education  
25 to repeal the regulations governing the use of behavioral

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1 interventions with individuals with exceptional needs  
2 receiving special education and related services. The  
3 amendments also prohibit the adoption of any additional  
4 regulations.

5 Second, following the Budget Act addition of  
6 \$50 million to the Education Mandate Block Grant Fund,  
7 the trailer bill amended the Government Code to add  
8 *Graduation Requirements and Pupil Expulsions and*  
9 *Suspensions* to the listed programs funded by the block  
10 grant.

11 Finally, the trailer bill also amended the  
12 Government Code to reflect the suspension in the Budget  
13 Act of state mandated education programs previously  
14 included in the block grants.

15 Thank you.

16 CHAIR ORTEGA: Any questions regarding the  
17 legislative report?

18 *(No response)*

19 CHAIR ORTEGA: Okay.

20 MS. HALSEY: Item 15, Chief Legal Counsel  
21 Camille Shelton will present the Chief Legal Counsel  
22 report.

23 MS. SHELTON: As I've noted in this report, the  
24 Second District Court of Appeal did issue their decision  
25 on the *Stormwater and Urban Runoff Discharge* case filed

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1 by the County of L.A. and the associated cities, finding  
2 that that permit was mandated by federal law.

3 Since I issued this report, the County and the  
4 Cities have filed a petition for review with the  
5 California Supreme Court, and that remains pending.

6 CHAIR ORTEGA: Any questions?

7 *(No response)*

8 CHAIR ORTEGA: No?

9 MS. HALSEY: Item 16 is the Executive  
10 Director's report.

11 And today, I've kept it short. I'm just  
12 reporting on workload and tentative agenda items for the  
13 next meeting.

14 After today's hearing, we have 21 test claims  
15 pending. Ten of those are the *NPDES* claims, which are on  
16 hold pending outcome of Supreme Court decision.

17 Also, we have two parameters and guidelines,  
18 five parameters and guidelines amendments, six statewide  
19 cost estimates, and 79 IRCs, and also three mandate  
20 redeterminations.

21 So the Commission is making good progress  
22 towards eliminating our backlog and hearing claims in  
23 a timely manner, particularly test claims.

24 We expect to hear all of the remaining test  
25 claims with the exception of the *NPDES* claims by March or

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1 May, at the latest, if there is requests or extensions or  
2 postponements, and barring any complications with these  
3 matters.

4 We also expect to present a significant number  
5 of IRCs to the Commission for determination in the new  
6 year. So we'll have a lot more of these kinds of issues  
7 that we had today. We haven't seen many of those in a  
8 while. So that will be the trend for 2014.

9 Tentative agenda items: Please check the  
10 agenda to see if your items are coming up. If you have  
11 any test claims pending, they are coming up in the next  
12 hearing or two. So expect to receive draft staff  
13 analyses for your review and comment about eight to ten  
14 weeks prior to the hearing date, and then a final staff  
15 analysis about two weeks prior to the hearing.

16 And that's all I have.

17 CHAIR ORTEGA: Okay, we're now going to recess  
18 into closed session.

19 The Commission will meet in closed session  
20 pursuant to 11126(e) of the Government Code to confer  
21 with and receive advice from legal counsel, for  
22 consideration and action, and as necessary and  
23 appropriate, upon the pending litigation listed on the  
24 published notice and agenda; and to confer and receive  
25 advice from legal counsel regarding potential litigation.



**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

*In witness whereof*, I have hereunto set my hand on the 31<sup>st</sup> of December 2013.



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