

COMMISSION ON STATE MANDATES

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April 7, 2014

Keith Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

Jill Kanemasu
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

Re: **Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**
Incorrect Reduction Claim
Graduation Requirements, 05-4435-I-50 and 08-4435-I-52
Education Code Section 51225.3, Statutes 1983, Chapter 498
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, and 2001-2002
Clovis Unified School District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **April 28, 2014**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 30, 2014**, at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 16, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Giny Chandler at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM _____
INCORRECT REDUCTION CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Section 51225.3, Statutes 1983, Chapter 498

Graduation Requirements
05-4435-I-50 and 08-4435-I-52

Fiscal Years: 1998-1999, 1999-2000, 2000-2001, and 2001-2002

Clovis Unified School District, Claimant

Executive Summary

Attached is the draft proposed statement of decision for this matter. The executive summary and the proposed statement of decision also function as the draft staff analysis, as required by section 1185.05 of the Commission's regulations.

Overview

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (SCO) to reimbursement claims filed by Claimant, Clovis Unified School District (Clovis) for the *Graduation Requirements* program for fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002. Pursuant to the SCO's second revised audit issued April 30, 2007, reductions were made for claimed teacher salaries, benefits, and related indirect costs in the amount of \$216,502; materials, supplies, and related indirect costs in the amount of \$317,955; and costs for contracted services claimed for construction projects at four high schools in the amount of \$3,377,241. The claimant does not dispute the SCO's reduction of the claimed costs for the construction projects,¹ but continues to dispute the reductions for teacher salaries and benefits, materials and supplies, and their related indirect costs in the amount of \$534,457.² The claimant seeks a determination from the Commission on State Mandates (Commission) pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claims, and requesting that the SCO reinstate the \$534,457 reduced.

¹ Claimant's Revised IRC filed August 4, 2008, page 8.

² In this respect, the claimant's revised IRC notes that the second revised audit was issued and claims that another revised IRC would be filed to address the second revised audit in 2010. The Commission did not receive a revised IRC in 2010. (Exhibit --, page --.) Although the claimant has not specifically addressed the findings in the second revised audit, these IRCs remain pending and are still in dispute.

Procedural History

On October 22, 2004 the SCO issued first audit report on the reimbursement claims at issue in this IRC. On September 6, 2005, Clovis, filed an IRC for fiscal years 1998-1999, 2000-2001, and 2001-2002 (05-4435-I-50). On September 30, 2005, the SCO issued a revised audit report and on April 30, 2007 the SCO issued a second revised audit report. On October 18, 2007, the SCO filed comments on the IRC 05-4435-I-50. On August 4, 2008, Claimant filed a revised IRC for fiscal years 1998-1999, 2000-2001, and 2001-2002 (08-4435-I-52). On August 26, 2008, Commission staff issued a Notice of Complete Revised Filing and Consolidation of IRCs (05-4435-I-50, 08-4435-I-52). On July 13, 2011, the SCO filed comments on the consolidated IRCs.

Claims

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

Subject	Description	Staff Recommendation
Claimant asserts that the audits of the 1998-1999 and 1999-2000 reimbursement claims were conducted beyond the statute of limitations.	At the time these reimbursement claims were filed, Government Code section 17558.5 stated the following: A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.	<i>Deny:</i> Staff finds that audit of the 1998-1999 and 1999-2000 reimbursement claims was timely. The plain language of Government Code section 17558.5 does not require the SCO to "complete" the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur.
Claimant asserts that the reduction made by the SCO for teacher salaries and benefits is inconsistent with the parameters and guidelines, is unreasonable, and is arbitrary and capricious and entirely lacking in evidentiary support.	The reimbursement claims for 1998-1999 and 1999-2000 list the names of teachers, aggregate salary amounts, and a comparison of the number of science teachers in the base year (1985-1986) to the claim year. The documents, however, do not show any correlation between the increase in science teachers claimed and the actual additional science classes taught in order to	<i>Deny:</i> Claimant failed to provide evidence correlating increased costs for teachers salaries and benefits to the mandated program. In addition, SCO's application of the quarter load method to reimburse claimant for these costs was reasonable under these circumstances. SCO's recalculation of the salaries and benefits resulting in a partial reduction for fiscal year 2001-

	<p>comply with the mandate. For fiscal years 2000-2001 and 2001-2002, the Claimant used the quarter load method to claim costs. The SCO recalculated using the quarter load method and the same data as claimant and reached different numbers, partially reducing the claimed costs for fiscal year 2001-2002 and increasing the claimed costs for fiscal year 2000-2001.</p>	<p>2002 was reasonable.</p>
<p>Claimant asserts the reduction made by the SCO for the materials and supplies and related indirect costs is inconsistent with the parameters and guidelines, unreasonable, and is arbitrary, capricious, and entirely lacking in evidentiary support.</p>	<p>For fiscal year 1998-1999 and 1999-2000, Clovis claimed reimbursement for materials and supplies based on a formula, similar to the one used for teacher salaries in the first two claim years, that determined an incremental increase in materials and supplies as a result of the mandate. As determined by the SCO, the formula did not identify the courses taught and did not measure the cost of supplying the additional science course mandated by the state in the claim years. For fiscal years 2000-2001 and 2001-2002, Clovis' claim for reimbursement was based on a formula that applied 50% of all high school science materials and supplies to the mandate. However, there is no evidence in the record to support an allegation that the mandate resulted in a 50% increase in costs for school districts.</p>	<p><i>Deny:</i> The SCO's decision to reject the methodology used by Clovis in these fiscal years was reasonable and based on the plain language of the parameters and guidelines, which requires the claimant to show the increased costs for supplying the new science class mandated and further requires "[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase" to support the costs claimed. In addition, SCO's application of the quarterload method to reimburse claimant for these costs was reasonable under these circumstances.</p>

Analysis

The two main issues in this IRC are as follows:

- 1) Applying a de novo standard of review, was the SCO required by statute to *complete* or only to *initiate* the audit within two years of the final audit report; and
- 2) Were the auditing standards applied by the SCO to reduce the reimbursement claims arbitrary, capricious, or entirely lacking in evidentiary support?

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the SCO and request that the costs in the claim be reinstated.

In hearing and deciding on an IRC, Commission considers issues of law, including the interpretation of the requirements of the parameters and guidelines, de novo. With respect to auditing standards applied by the SCO, the Commission exercises "very limited review 'out of deference to...the legislative delegation of administrative authority of the agency, and to the presumed expertise of the agency within its scope of authority.'"³ The Commission "may not reweigh the evidence or substitute its judgment for that of" the SCO.⁴ The Commission must also review the SCO's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁵

A. The audit was conducted within the statute of limitations applicable to mandate reimbursement claims.

Staff finds that audit of the 1998-1999 and 1999-2000 reimbursement claims was timely. The plain language of Government Code section 17558.5 does not require the SCO to "complete" the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur.

B. The reduction made by the SCO for teachers salaries and benefits is consistent with the parameters and guidelines, is reasonable, and is not arbitrary and capricious or entirely lacking in evidentiary support.

As determined by the SCO, Clovis did not provide documentation to demonstrate that the amounts claimed reflect the actual "increased units of science course enrollment due to the enactment of" the test claim statute. The reimbursement claims for 1998-1999 and 1999-2000 list the names of teachers, aggregate salary amounts, and a comparison of the number of science teachers in the base year (1985-1986) to the claim year. The documents, however, do not show any correlation between the increase in science teachers claimed and the actual additional science

³ *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at p. 230.

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

⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

classes taught in order to comply with the mandate. Thus, the SCO's decision to reject the methodology used by Clovis in these fiscal years was reasonable and based on the plain language of the parameters and guidelines, which requires the claimant to show the increased costs for staffing the new science class mandated and further requires "[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase" to support the costs claimed.

In fiscal years 2000-2001 and 2001-2002, Clovis used the quarter load method to calculate salaries and benefits. However, the SCO's audit recalculated using the claim data provided by Clovis and its recalculation resulted in a different total for fiscal year 2001-2002. Based upon this recalculation, the SCO partially reduced the claimed costs for fiscal year 2001-2002 and increased the allowable claimed costs for 2000-2001. Staff further finds that the SCO's application of the quarter load method to re-calculate the costs for teacher salaries and benefits in each fiscal year claimed by Clovis is reasonable. Although not applicable to these reimbursement claims, the Commission amended the parameters and guidelines in 2008 by adopting the quarter load method as a reasonable reimbursement methodology to determine the teacher salary and benefit costs as a result of the mandate, finding that the formula uses each school district's actual numbers for enrollment, average science class size, and average teacher salary. The Commission's decision to adopt the quarter load method for this program was upheld by the court.⁶ The claimant has filed no arguments or evidence in the record to oppose the SCO methodology in this case

C. The reduction made by the SCO for the materials and supplies and related indirect costs is consistent with the parameters and guidelines, reasonable, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The parameters and guidelines at issue in this case provide that school districts may claim the "[i]ncreased cost to school district for . . . supplying the new science classes mandated," and further requires "[d]ocumentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase" to support the costs claimed.⁷

For fiscal year 1998-1999 and 1999-2000, Clovis claimed reimbursement for materials and supplies based on a formula, similar to the one used for teacher salaries in the first two claim years, that determined an incremental increase in materials and supplies as a result of the mandate. As determined by the SCO, the formula did not identify the courses taught and did not measure the cost of supplying the additional science course mandated by the state in the claim years.

For fiscal years 2000-2001 and 2001-2002, Clovis' claim for reimbursement was based on a formula that applied 50 percent of all high school science materials and supplies to the mandate. However, there is no evidence in the record to support an allegation that the mandate resulted in a 50 percent increase in costs for school districts.

Although the state mandates schools to provide two science courses in grades 9 to 12 (with the test claim statute increasing the state requirement of one science course to two science courses) -

⁶ *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2010-80000529 (2013).

⁷ Parameters and guidelines, Exhibit ___, page ___.

state law, in Education Code section 51225.3(a)(2), also allows school districts to offer, at their discretion, “other coursework as the governing board of the school district may by rule specify.” Thus, the actual total costs to a school district for science materials and supplies for a claim year may include costs for more than the state-mandated two science courses. In this respect, the 50 percent method proposed by Clovis could result in reimbursement for materials and supplies for courses that are not mandated by the state.

The SCO’s decision to reject the methodology used by Clovis in these fiscal years was reasonable and based on the plain language of the parameters and guidelines, which requires the claimant to show the increased costs for supplying the new science class mandated and further requires “[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase” to support the costs claimed.

Staff further finds that the SCO’s application of the quarter load method to re-calculate the costs for science materials and supplies is reasonable.

Conclusion and Recommendation

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission’s regulations, staff concludes that the SCO conducted the audits within the required timeframes and that SCO’s partial reduction of claimed costs for teacher salary and benefits, materials and supplies, and related indirect costs is reasonable, and not arbitrary, capricious, or entirely lacking in evidentiary support. Therefore the reductions are correct.

Staff recommends that the Commission adopt the proposed statement of decision to deny this IRC and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 51225.3, as Added
by Statutes 1983, Chapter 498

Fiscal Years 1998-1999, 1999-2000, and
2000-2001, and 2001-2002

Clovis Unified School District, Claimant.

Case No.: CSM 05-4435-I-50, 08-4435-I-52

Graduation Requirements

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

(Adopted May 30, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 30, 2014. [Witness list will be included in the final statement of decision.]

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

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

Summary of the Findings

This IRC challenges reductions made by the State Controller’s Office (SCO) to reimbursement claims filed by Claimant, Clovis Unified School District (Clovis) for the *Graduation Requirements* program for fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002. Pursuant to the SCO’s second revised audit issued April 30, 2007, reductions were made for claimed teacher salary, benefits, and related indirect costs in the amount of \$216,502; and for materials, supplies, and related indirect costs in the amount of \$317,955. The claimant seeks a determination from the Commission pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claims, and requests that the SCO reinstate the \$534,457 reduced.

The Commission denies this IRC. The parameters and guidelines require the claimant to show the increased costs for staffing and supplying the new science class mandated, and further requires “[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase” to support the costs claimed. As determined by the SCO, the claimant did not provide documentation to demonstrate that the amounts claimed reflect the actual “increased units of science course enrollment due to the enactment of” the test claim statute, as required by the parameters and guidelines. Thus, the SCO’s decision to reject the methodology used by the claimant was reasonable and based on the parameters and guidelines.

The Commission further finds that the SCO's application of the quarter load method to recalculate the costs for teacher salaries and benefits, and for materials and supplies, in each fiscal year claimed is reasonable. The claimant has filed no arguments or evidence in the record to oppose the SCO's methodology in this case.

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission concludes that the SCO's partial reduction of claimed costs for teacher salary and benefits, materials and supplies, and related indirect costs in the amount of \$534,457 is reasonable, and not arbitrary, capricious, or entirely lacking in evidentiary support.

COMMISSION FINDINGS

Claimant

Clovis Unified School District

Chronology

- 10/22/04 SCO issued first audit report.
- 09/06/05 Claimant, Clovis Unified School District, filed an IRC for fiscal years 1998-1999, 2000-2001, and 2001-2002 (05-4435-I-50).
- 09/16/05 Commission staff issued the Notice of Complete Filing.
- 09/30/05 SCO issued a revised audit report.
- 04/30/07 SCO issued a second revised audit report.
- 10/18/07 SCO filed comments on the IRC 05-4435-I-50.
- 08/04/08 Claimant filed a revised IRC for fiscal years 1998-1999, 2000-2001, and 2001-2002 (08-4435-I-52).
- 08/26/08 Commission staff issued a Notice of Complete Revised Filing and Consolidation of IRCs (05-4435-I-50, 08-4435-I-52).
- 08/28/08 Commission staff issued a Notice of Corrected IRC Number.
- 07/13/11 SCO filed comments on the consolidated IRCs.
- 04/07/14 Commission staff issued draft staff analysis and proposed statement of decision.

I. Background

This IRC challenges reductions made by the SCO to reimbursement claims filed by Clovis for the *Graduation Requirements* program for fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002. Pursuant to the SCO's second revised audit issued April 30, 2007, reductions were made for claimed teacher salary, benefits, and related indirect costs in the amount of \$216,502; materials, supplies, and related indirect costs in the amount of \$317,955; and costs for contracted services claimed for construction projects at four high schools in the amount of \$3,377,241. The claimant does not dispute the SCO's reduction of the claimed costs for the construction projects,⁸ but continues to dispute the reductions for teacher salaries and benefits, materials and

⁸ Claimant's Revised IRC filed August 4, 2008, page 8.

supplies, and their related indirect costs in the amount of \$534,457.⁹ The claimant seeks a determination from the Commission pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claims, and requests that the SCO reinstate the \$534,457 reduced.

The Graduation Requirements Program

On January 22, 1987, the Commission adopted a statement of decision approving the *Graduation Requirements* test claim on Education Code section 51225.3, as added by Statutes 1983, chapter 498. The test claim statute increased the number of science courses required for high school graduation from one science course to two science courses. The Commission determined that the test claim statute constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma. The parameters and guidelines, as last amended in 1991, are relevant for this IRC and authorize reimbursement for the “increased cost to school district[s] for staffing and supplying the new science classes mandated.”

Reductions to Salaries and Benefits

For fiscal years 1998-1999 and 1999-2000, Clovis claimed reimbursement for teacher salaries and benefits based on a formula to determine the incremental increase in teacher salary costs as a result of the mandate. The formula calculated the increase in the number of high school science teachers between the 1985-1986 base year and the claim years, and reduced that amount by the percentage increase in high school enrollment for that same period. That number was then multiplied by the claim year’s average annual salaries and benefits of a high school science teacher to determine the amount claimed for reimbursement. As originally determined by the SCO, the formula did not identify the courses taught; included salary and benefit costs of non-physical and biological science teachers; and did not deduct the percentage increase in science teachers related to factors other than the mandate, such as enrollment growth. For fiscal years 2000-2001 and 2001-2002, Clovis’ claim for reimbursement used the quarter class load method. This method divides one-fourth of the total number of grade 9-12 pupils by the average science course size to arrive at the additional science courses required for the mandate. That number is then divided by the number of daily courses taught per teacher to determine the increased science teachers required by the mandate. That number is then multiplied by the claim years’ average science teacher salaries and benefits. Clovis did not identify any offsetting cost savings in its claims.

Before issuing the second revised audit report, the SCO issued audit reports in October 2004 and September 2005 for the Clovis reimbursement claims, reducing all costs claimed for science teacher salaries and benefits on several grounds including the fact that the district did not identify or report any offsetting cost savings or provide adequate supporting documentation. At the time these audit reports were released, a case challenging the offset issue in the

⁹ In this respect, the claimant’s revised IRC notes that the second revised audit was issued and claims that another revised IRC would be filed to address the second revised audit in 2010. The Commission did not receive a revised IRC in 2010. (Exhibit --, page --.) Although the claimant has not specifically addressed the findings in the second revised audit, these IRCs remain pending and are still in dispute.

Graduation Requirements program was pending.¹⁰ Clovis was a party to the litigation and challenged the reduction of costs claimed for salaries and benefits in fiscal year 1997-1998. The court concluded that Commission decisions on IRCs, upholding the SCO's actions in several audits that reduced claims for teacher salary and benefits to \$0 on the ground that school districts failed to identify cost savings as a result of the layoff authority found in Education Code section 44955, were invalid. The court ruled that Education Code section 44955 did not require school districts to offset new science course requirements by laying off teachers in non-science positions; it merely allowed school districts to exercise their discretion whether to lay off teachers.¹¹ Because the court ruled that school districts were not required to use section 44955 as an offset, the court invalidated that portion of the IRCs and the SCO's audit findings that precluded reimbursement by requiring the offset under section 44955. For purposes of remand back to the SCO for re-evaluation and to the Commission for determination, the court concluded that the SCO could properly require school districts to provide detailed documentation of offsetting savings directly resulting from their provision of the second science course.¹² The court further states on page 18 of its Ruling that:

Such a documentation requirement has a firm legal basis in subdivision (e) of Government Code section 17556 and California Code of Regulations, title 2, section 1183.1(a)(9). Further, the documentation requirement reflects a reasonable expectation that savings to offset the science teachers' salaries may be generated when students taking the second science course do not increase the number of classes that they take overall. Thus, the Controller can properly require claimants to demonstrate that the second science course has not increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided.

On remand, the SCO stated that the school districts failed to provide any documentation showing changes to the school day or school year as a result of the test claim statute. The SCO therefore presumed there were no changes to the school day or school year and that the district had offsetting cost savings for any science teachers hired to teach the mandated course. The SCO continued to deny the claimed amounts in full.

In its decisions on the IRCs that followed the SCO's determination to continue to deny reimbursement, the Commission determined that the SCO's presumptions were not supported by evidence, and conflicted with the court's decision that the test claim statute required an additional class that did not require a reallocation of resources.¹³ Following that decision, the SCO reinstated all costs claimed, including those claimed by Clovis in fiscal year 1997-1998.

Following the Commission's decisions on remand, the SCO reevaluated the reimbursement claims in this case and issued the second revised audit report on April 30, 2007. The SCO

¹⁰ *San Diego Unified School district v. Commission on State Mandates* (2004) Superior Court Case No. 02CS11401.

¹¹ *Id.* at p. 17.

¹² *Id.* at pp. 17-18.

¹³ Item 19, Final Staff Analysis, Reevaluation of Reimbursement Claims on Remand from Superior Court Decision, adopted July 28, 2006.

determined that \$4,066,050 in teacher salary and benefits costs claimed by Clovis in fiscal years 1998-1999, 1999-2000, 2000-2001, and 2001-2002 was eligible for reimbursement, and reduced the remaining costs claimed for teacher salaries and benefits in the amount of \$216,502.¹⁴ The SCO re-calculated the amount eligible for reimbursement by applying the quarter class load method to teacher salary and benefit costs.¹⁵ Although Clovis provided a written response to the second revised audit, it did not respond to the validity of the recalculation for teacher salary and benefits.¹⁶

The *San Diego* court ruling did not address reimbursement for materials and supplies. However, in its second revised audit, the SCO took the documentation that Clovis provided and applied the quarter class load methodology to the costs claimed for materials and supplies, which resulted in a reduction in the amount of \$317,955 for the four fiscal years claimed. Although Clovis provided a written response to the second revised audit, it did not respond to the validity of the recalculation for materials and supplies.¹⁷

II. Position of the Parties

A. Claimant's Position

Although Clovis has not responded to the second revised audit, it has not withdrawn this IRC and generally asserts that its claims for teacher salary and benefits, materials and supplies, and related indirect costs should be fully reimbursed based upon the claims submitted in each fiscal year. In addition, with respect to the 1998-1999 and 1999-2000 reimbursement claims, Clovis argues that the audit was conducted outside the statute of limitations and is therefore void.

B. State Controller's Office's Position

The SCO contends that the audit, based on the second revised audit report, is correct and that this IRC should be denied. The SCO also contends that the audit was properly conducted within the statute of limitations.

III. Discussion

Government Code section 17561(b) authorizes the SCO to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable. Government Code section 12410 further requires the Controller to:

¹⁴ Exhibit --,SCO Second Revised Final Audit.

¹⁵ In 2008, the Commission amended the parameters and guidelines for the *Graduation Requirements* program by adopting the quarter class load methodology for teacher salary and benefit costs. The Commission's adoption of this RRM formula was upheld by the court in *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2010-80000529 (2013).

¹⁶ Exhibit --. Clovis' comments were focused on the concept that teachers and supplies funded with categorical funds be viewed as offsetting revenue. That issue has not been identified or challenged in this IRC.

¹⁷ Exhibit --

[S]uperintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

Although the SCO is required to follow the parameters and guidelines when auditing a claim for mandate reimbursement, the SCO has broad discretion in determining how to audit claims. Government Code section 12410 provides in relevant part:

Whenever, in [the Controller’s] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination.* (Italics added.)

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission’s regulations requires the Commission to send the statement of decision to the SCO and request that the costs in the claim be reinstated.

The Commission must determine in this case whether the SCO’s audit decisions were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁸ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”¹⁹

Thus, with respect to the Controller’s authority and responsibility over state audits, the Commission exercises “very limited review ‘out of deference to...the legislative delegation of administrative authority of the agency, and to the presumed expertise of the agency within its scope of authority.’”²⁰ The Commission “may not reweigh the evidence or substitute its judgment for that of” the Controller.²¹ The Commission must also review the Controller’s audit

¹⁸ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁹ *American Bd. of Cosmetic Surgery, Inc. supra*, 162 Cal.App.4th at pgs. 547-548.

²⁰ *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at p. 230.

²¹ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²² .

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

A. The audit was conducted within the statute of limitations applicable to mandate reimbursement claims.

Clovis argues that the audit for the 1998-1999 and 1999-2000 reimbursement claims was completed beyond the statute of limitations provided by Government Code section 17558.5 and is therefore void with respect to those claim years. The reimbursement claim for fiscal year 1998-1999 was filed December 27, 2000. The reimbursement claim for fiscal year 1999-2000 was filed on December 29, 2000. At the time these reimbursement claims were filed, Government Code section 17558.5 stated the following:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.²⁵

Clovis contends that funds were appropriated for this program for the 1998-1999 and 1999-2000 claim years and, thus, the first sentence of section 17558.5 applies. Clovis asserts that the first sentence requires the SCO “to complete” the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. Applying Clovis’ argument in this case, then, would require the completion of the audit for the 1998-1999 and 1999-2000 claims no later than December 31, 2003, and December 31, 2002, respectively. The SCO did not complete its first audit of these claims until October 22, 2004.

The SCO asserts that the “subject to audit” language in section 17558.5 refers to the time the audit is initiated. In this case, the SCO states that the audit was initiated on November 1, 2002,

²² *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

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

²⁴ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁵ Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)).

and an audit entrance conference occurred on November 18, 2002, and that both dates are within two years after the end of the calendar year in which the claims were filed.

The Commission finds that audit of the 1998-1999 and 1999-2000 reimbursement claims was timely. The plain language of Government Code section 17558.5 does not require the SCO to “complete” the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are “subject to audit” within two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which establishes a longer period of time to initiate the audit when no funds are appropriated for the program. In this case, the reimbursement claims filed in 2000 and 2001 were subject to audit at any time before December 31, 2002 and 2003. Since the audit began in November 2002, it was timely.

Moreover, section 17558.5 was amended in 2002 to establish, for the first time, a requirement to “complete” the audit two years after the audit is commenced. As amended, it reads:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date the actual reimbursement claim is filed or last amended whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.²⁶

The 2002 amendment became effective on January 1, 2003, after the reimbursement claims were filed in 2000 and 2001 and, thus, does not apply to the audit in this case.²⁷ Based on the foregoing, the Commission finds that the audit of Clovis’ reimbursement claims for fiscal years 1998-1999 and 1999-2000 is not barred by the statute of limitations.

B. The reduction made by the SCO for teacher salaries and benefits is consistent with the parameters and guidelines, reasonable, and is not arbitrary, capricious or entirely lacking in evidentiary support.

As indicated above, Government Code section 17561(b) authorizes the SCO to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable. On review, the Commission must determine whether the SCO’s audit decisions were arbitrary, capricious, or entirely lacking in evidentiary support. The Commission exercises “very limited review ‘out of

²⁶ Government Code section 17558.5, (Amended by Stats. 2002, ch. 1128 (A.B. 2834) §14.5. Underline indicates changed text.

²⁷ Because this change in law affects the rights and liabilities of the parties, it may only be applied prospectively to reimbursement claims filed after January 1, 2003. (*Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.)

deference to...the legislative delegation of administrative authority of the agency, and to the presumed expertise of the agency within its scope of authority.”²⁸ The Commission “may not reweigh the evidence or substitute it’s judgment for that of” the SCO.²⁹ The Commission must also review the SCO’s audit in light of the fact that Government Code section 17560(a) requires a claimant to file an annual reimbursement claim “that details costs actually incurred for that fiscal year,” and that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.³⁰ In addition, the parameters and guidelines at issue in this case provide that school districts may claim the “[i]ncreased cost to school district for staffing and supplying the new science classes mandated,” and further requires “[d]ocumentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase” to support the costs claimed.³¹

As determined by the SCO, Clovis did not provide documentation to demonstrate that the amounts claimed reflect the actual “increased units of science course enrollment due to the enactment of” the test claim statute. The reimbursement claims for 1998-1999 and 1999-2000 list the names of teachers, aggregate salary amounts, and a comparison of the number of science teachers in the base year (1985-1986) to the claim year. The documents, however, do not show any correlation between the increase in science teachers claimed and the actual additional science classes taught in order to comply with the mandate. Thus, the SCO’s decision to reject the methodology used by Clovis in these fiscal years was reasonable and based on the plain language of the parameters and guidelines, which requires the claimant to show the increased costs for staffing the new science class mandated and further requires “[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase” to support the costs claimed.

In fiscal years 2000-2001 and 2001-2002, Clovis used the quarter load method to calculate teachers’ salaries and benefits. In its Second Revised Final Audit, the SCO reviewed the claims and, using the claim data provided by Clovis, recalculated the claimed costs. The SCO’s recalculation resulted in a slightly lower total cost for teacher salaries and benefits for fiscal year 2001-2002. For fiscal year 2000-2001, though, the SCO’s recalculation resulted in an increase in the allowable claimed costs for teachers’ salaries and benefits.

The Commission further finds that the SCO’s application of the quarter load method to recalculate the costs for teacher salaries and benefits in each fiscal year claimed by Clovis is reasonable. Although not applicable to these reimbursement claims, the Commission amended the parameters and guidelines in 2008 by adopting the quarter load method as a reasonable reimbursement methodology to determine the teacher salary and benefit costs as a result of the mandate, finding that the formula uses each school district’s actual numbers for enrollment, average science class size, and average teacher salary. The Commission’s decision to adopt the

²⁸ *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at p. 230.

²⁹ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

³⁰ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³¹ Parameters and guidelines, Exhibit __, page __.

quarter load method for this program was upheld by the court.³² The claimant has filed no arguments or evidence in the record to oppose the SCO methodology in this case.

Therefore, the Commission finds that the partial reduction of claimed costs for salary and benefits and related indirect costs in the amount of \$216,502 is reasonable, and not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The reduction made by the SCO for the materials and supplies and related indirect costs is consistent with the parameters and guidelines, reasonable, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

As indicated above, the Commission must determine whether the SCO's audit decision to reduce materials and supplies was arbitrary, capricious, or entirely lacking in evidentiary support. On this issue, the Commission exercises "very limited review 'out of deference to' to the SCO."³³ The Commission "may not reweigh the evidence or substitute it's judgment for that of" the SCO.³⁴ The Commission must also review the SCO's audit in light of the fact that Government Code section 17560(a) requires a claimant to file an annual reimbursement claim "that details costs actually incurred for that fiscal year," and that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.³⁵

The parameters and guidelines at issue in this case provide that school districts may claim the "[i]ncreased cost to school district for . . . supplying the new science classes mandated," and further requires "[d]ocumentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase" to support the costs claimed.³⁶

For fiscal year 1998-1999 and 1999-2000, Clovis claimed reimbursement for materials and supplies based on a formula, similar to the one used for teacher salaries in the first two claim years, that determined an incremental increase in materials and supplies as a result of the mandate. As determined by the SCO, the formula did not identify the courses taught and did not measure the cost of supplying the additional science course mandated by the state in the claim years.

For fiscal years 2000-2001 and 2001-2002, Clovis' claim for reimbursement was based on a formula that applied 50 percent of all high school science materials and supplies to the mandate. However, there is no evidence in the record to support an allegation that the mandate resulted in a 50 percent increase in costs for school districts. Although the state mandates schools to provide two science courses in grades 9 to 12 (with the test claim statute increasing the state requirement of one science course to two science courses) - state law, in Education Code section 51225.3 (a)(2), also allows school districts to offer, at their discretion, "other coursework as the governing board of the school district may by rule specify." Thus, the actual

³² *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2010-80000529 (2013).

³³ *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at p. 230.

³⁴ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

³⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³⁶ Parameters and guidelines, Exhibit __, page __.

total costs to a school district for science materials and supplies for a claim year may include costs for more than the state-mandated two science courses. In this respect, the 50 percent method proposed by Clovis could result in reimbursement for materials and supplies for courses that are not mandated by the state.

Thus, the Commission finds that the SCO's decision to reject the methodology used by Clovis in these fiscal years was reasonable and based on the plain language of the parameters and guidelines, which requires the claimant to show the increased costs for supplying the new science class mandated and further requires "[d]ocumentation of increased units of science course enrollments due to the enactment of [the test claim statute] necessitating such an increase" to support the costs claimed.

The Commission further finds that the SCO's application of the quarter load method to recalculate the costs for science materials and supplies is reasonable. The method applied to materials and supplies is similar to the method applied for teacher salaries and benefits. It identifies the number of mandated classes taught in the claim year, and then multiplies that number by the average allocation for material and supply costs given to all science classes. The claimant has filed no arguments or evidence in the record to oppose the SCO methodology.

Therefore, the Commission finds that the partial reduction of claimed costs for materials and supplies and related indirect costs in the amount of \$317,955 is reasonable, and not arbitrary, capricious, or entirely lacking in evidentiary support.

IV. Conclusion

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission concludes that the SCO's partial reduction of claimed costs for teacher salary and benefits, materials and supplies, and related indirect costs is reasonable, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this incorrect reduction claim.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 7, 2014, I served the:

Notice of Draft Staff Analysis, Schedule for Comments, and Notice of Hearing
Incorrect Reduction Claim
Graduation Requirements, 05-4435-I-50 and 08-4435-I-52
Education Code Section 51225.3; Statutes 1983, Chapter 498
Fiscal Years: 1998-1999, 1999-2000, 2000-2001, and 2001-2002
Clovis Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 7, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/7/14

Claim Number: 05-4435-I-50 Consolidated with 08-4435-I-52

Matter: Graduation Requirements

Claimant: Clovis Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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