

**COMMISSION ON STATE MANDATES**

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May 16, 2014

Mr. Arthur Palkowitz Stutz Artiano Shinoff & Holtz 2488 Historic Decatur Road Suite 200 San Diego, CA 92106	Ms. Andra Donovan San Diego Unified School District Legal Services Office 4100 Normal Street, Room 2148 San Diego, CA 92103	Ms. Jill Kanemasu State Controller's Office Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**  
Incorrect Reduction Claim, 05-4452-I-01  
*Notification to Teachers: Pupils Subject to Suspension or Expulsion*  
Education Code Section 49079, Statutes 1993, Chapter 1257  
San Diego Unified School District, Claimant

Dear Mr. Palkowitz, Ms. Donovan, and Ms. Kanemasu:

The draft staff analysis and proposed statement of decision 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 **June 6, 2014**. You are advised that comments filed with the 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, July 25, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about July 11, 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 Tyler Asmundson 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 PROPOSED DECISION**

Education Code Section 49079, Statutes 1993, Chapter 1257

*Notification to Teachers: Pupils Subject to Suspension or Expulsion*  
05-4452-I-01

Fiscal Years: 2001-2002 and 2002-2003

San Diego Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This incorrect reduction claim (IRC) challenges reductions made by the State Controller’s Office (SCO) to reimbursement claims filed by Claimant, San Diego Unified School District (claimant) for the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* program, CSM-4452, for fiscal years 2001-2002 and 2002-2003. Pursuant to the SCO’s final audit issued June 30, 2005, reductions were made for claimed employee salaries, benefits, and related indirect costs in the amount of \$166,791 in fiscal year 2001-2002 and \$187,255 in fiscal year 2002-2003 on the grounds that the claims were not supported by actual time records or a valid “documented” time study. 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 requests that the SCO reinstate the \$354,046 reduced.

As determined in the SCO’s audit in this case, the claimant submitted contemporaneous time logs or activity reports prepared by school site employees that performed the mandated activities showing the actual time spent on the program, and claimed reimbursement for the salary and benefit costs for these employees based on these time logs. These costs are not in dispute.

The disputed costs stem from the claimed reimbursement for the salary and benefit costs for employees that did *not* have actual time logs or other documentation supporting the time spent on the program. For these employees, the claimant reported an average time spent on each reimbursable activity for each student suspended from school. The average time was calculated based on the time logs prepared and submitted by other employees at different schools within the district that documented their time for this program. For fiscal year 2001-2002, the claimant used the average times to calculate the costs for employees at 37 schools that did not have actual time logs. For fiscal year 2002-2003, the claimant used the average times to calculate the costs for employees at 57 schools that did not have actual time logs. The SCO denied the reimbursement claims submitted on behalf of these schools on the grounds that the claims were not supported by actual time records or a valid time study.

**Procedural History**

On June 30, 2005, the SCO issued the final audit report on the reimbursement claims at issue in this IRC. On June 26, 2006, San Diego filed an IRC for fiscal years 2001-2002 and 2002-2003 (05-4452-I-01). On July 6, 2006, Commission staff deemed the incorrect reduction claim filing complete and issued a notice of complete incorrect reduction claim filing and schedule for comments. On November 21, 2007, the SCO filed comments on IRC 05-4452-I-01.

**Claims**

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

<b>Subject</b>	<b>Description</b>	<b>Staff Recommendation</b>
<p>Claimant argues that the reduction made by the SCO for teacher salaries and benefits is incorrect because the parameters and guidelines governing these reimbursement claims allow San Diego to use a time study to support its reimbursement claims.</p>	<p>The SCO reduced salaries, benefits, and other indirect costs claimed for fiscal years 2001-2002 and 2002-2003, on grounds that claimant failed to provide documentation to support salary and benefits costs based on actual time records or an average number of hours supported by a documented time study.</p> <p>Claimant admits that it does not have any documentation to support the actual costs incurred by the schools at issue in this case. However, claimant used cost data from other schools in the district that did collect and maintain source documentation to calculate the average costs incurred for 37 schools in fiscal year 2001-2002 and 57 schools in fiscal year 2002-2003 that did not collect or maintain any source documentation.</p>	<p><i>Deny:</i> The reductions made by the SCO for salaries and benefits are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support.</p>
<p>Claimant asserts that Government Code section 17518.5 allows it to unilaterally develop and implement its own reasonable reimbursement methodology (RRM)</p>	<p>Claimant asserts that the “time study” used to support its undocumented reimbursement claims, qualifies as a RRM.</p>	<p><i>Deny:</i> Claimant’s time study does not constitute a valid reasonable reimbursement methodology, as defined by Government Code section 17518.5.</p>

to support its claimed costs.		
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### Analysis

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

In hearing and deciding an IRC, the 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.’”<sup>1</sup> The Commission “may not reweigh the evidence or substitute it’s judgment for that of” the SCO.<sup>2</sup> 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.<sup>3</sup>

**A. The reductions made by the SCO’s office for salaries and benefits are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support.**

Staff finds that the SCO correctly reduced the claims for fiscal years 2001-2002 and 2002-2003. Section VI B of the parameters and guidelines authorizes reimbursement for salary and benefit costs of an employee performing the mandated activities, but requires the claimant to either specify the actual number of hours an employee devoted to the mandated activities or the average number of hours spent on the program if supported by a “documented” time study. Section VII of the parameters and guidelines further requires supporting data to be kept by the claimant for all costs claimed.

Claimant admits that it does not have any documentation to support the actual costs incurred by the schools at issue in this case.<sup>4</sup> However, claimant used cost data from other schools within the district that did collect and maintain source documentation to calculate the average costs incurred for 37 schools in fiscal year 2001-2002 and 57 schools in fiscal year 2002-2003 that did not collect or maintain source documentation. Section VI B. 1. of the parameters and guidelines provides that claimants may utilize a time study to support claims for reimbursement and that the time study must be documented to show the average time spent by the employee performing the mandated activities. Claimant did not comply with this requirement.

Moreover, San Diego admits that there is no district policy on this mandated program and that each school within the district performs the mandate differently. Thus, San Diego’s use of data

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

<sup>2</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>3</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>4</sup> Exhibit A, San Diego IRC, at p. 4.

from other schools within the district to calculate an average cost for those schools that did not maintain any documentation of the costs does not provide sufficient evidence of the validity of the costs actually incurred by these schools.

Staff further finds that the record supports the SCO's contention that San Diego's extrapolation of data from reporting schools to schools that did not collect and maintain source documentation to support the costs claimed raises valid questions regarding whether the data accurately reflects the undocumented costs from those schools. As the administrative agency responsible for auditing mandate reimbursement claims, the interpretation of the SCO is entitled to great weight. The Commission may not reweigh the evidence or substitute its judgment for that of the SCO.

Thus, the reductions made by the SCO for salaries and benefits are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support.

**B. Claimant's time study does not constitute a valid reasonable reimbursement methodology, as defined by Government Code section 17518.5.**

Staff finds that claimant's purported "time study" does not constitute a valid RRM. Government Code section 17518.5 defines RRM to mean a formula for reimbursing local agencies and school districts for costs mandated by the state. The RRM may be based on a general allocation formula, uniform cost allowance, or other approximations of local costs mandated by the state. The RRM, however, must be adopted by the Commission pursuant to Government Code section 17557. The parties have not submitted a request to include an RRM in the parameters and guidelines for this program, and the Commission has not adopted one.

Conclusion and Recommendation

Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, staff finds that the SCO's reduction of salaries, benefits, and related indirect costs claimed by San Diego in the amount of \$166,791 for fiscal year 2001-2002 and \$192,740 for fiscal year 2002-2003 are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support. Therefore, the reductions are correct.

Staff recommends that the Commission adopt the proposed 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 49079

Statutes 1989, Chapter 1306; Statutes 1993,  
Chapter 1257

Fiscal Years 2001-2002 and 2002-2003

San Diego Unified School District, Claimant.

Case No.: 05-4452-I-01

*Notification to Teachers: Pupils Subject to  
Suspension or Expulsion*

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

*(Adopted July 25, 2014)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on July 25, 2014. [Witness list will be included in the final decision.]

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

The Commission [adopted/modified] the staff analysis to approve the IRC and remand this matter to the State Controller’s Office (SCO) at the hearing by a vote of [vote count will be included in the final decision].

**Summary of the Findings**

This IRC filed by San Diego Unified School District (claimant) challenges reductions made by the SCO to the District’s reimbursement claims for costs incurred in fiscal years 2001-2002 and 2002-2003 for the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* program, CSM-4452. Following an audit, the SCO reduced the claims in the amount of \$166,791 in fiscal year 2001-2002 and \$187,255 in fiscal year 2002-2003 on the grounds that the district claimed employee time that was not supported by actual time records or a valid “documented” time study.

The Commission denies this IRC and finds that the reductions made by the SCO for salaries and benefits are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support.

The parameters and guidelines authorize reimbursement for salary and benefit costs of an employee performing the mandated activities, but require the claimant to either specify the actual number of hours an employee devoted to the mandated activities or the average number of hours spent on the program if supported by a “documented” time study. The parameters and guidelines

further require claimants to maintain supporting documentation to evidence the validity of the costs claimed.

Claimant admits that it does not have any documentation to support the actual costs incurred by the schools at issue in this case. However, claimant used cost data from other schools within the district that did collect and maintain source documentation to calculate the average costs incurred for 37 schools in fiscal year 2001-2002 and 57 schools in fiscal year 2002-2003 that did not collect or maintain source documentation. Although Section VI B. 1. of the parameters and guidelines provides that claimants may utilize time studies to support claims for reimbursement, the time studies must be documented to show the average time spent by the employee performing the mandated activities. Here, claimant did not comply with these requirements. Moreover, claimant admits that there is no district policy on this mandated program and that each school within the district performs the mandate differently. Thus, claimant's use of data from other schools within the district to calculate an average cost for those schools that did not maintain any documentation of the costs, does not provide sufficient evidence of the validity of the costs actually incurred by these schools.

The Commission further finds that the record supports the SCO's contention that claimant's extrapolation of data from reporting schools to schools that did not collect and maintain source documentation to support the costs claimed raises valid questions regarding whether the data accurately reflects the undocumented costs from those schools. As the administrative agency responsible for auditing mandate reimbursement claims, the interpretation of the SCO is entitled to great weight. The Commission may not reweigh the evidence or substitute its judgment for that of the SCO.

Finally, the Commission finds that claimant's assertion that its "time study" qualifies as a reasonable reimbursement methodology, is not supported by the law. Government Code section 17518.5 defines reasonable reimbursement methodology (RRM) to mean a formula for reimbursing local agencies and school districts for costs mandated by the state. The RRM may be based on a general allocation formula, uniform cost allowance, or other approximations of local costs mandated by the state. The RRM, however, must be adopted by the Commission pursuant to Government Code section 17557, following a request, an opportunity for comment by the parties, a public hearing, and the adoption of a decision on the matter. The parties have not submitted a request to include an RRM in the parameters and guidelines for this program, and the Commission has not adopted one. The mandates process does not allow a party, on its own, to use a formula for claiming reimbursement of state-mandated costs.

Accordingly, the Commission denies this incorrect reduction claim.

## COMMISSION FINDINGS

### **Chronology**

- 01/19/1995 The Commission approved the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* test claim.
- 07/20/1995 The Commission adopted parameters and guidelines.<sup>5</sup>
- 06/30/2005 SCO issued final audit for fiscal years 2001-2002 and 2002-2003.
- 06/26/2006 Claimant filed an incorrect reduction claim for fiscal years 2001-2002 and 2002-2003.
- 07/06/2006 Commission staff deemed the incorrect reduction claim filing complete and issued a notice of complete incorrect reduction claim filing and schedule for comments.
- 11/21/2007 SCO filed comments on San Diego's incorrect reduction claim for fiscal years 2001-2002 and 2002-2003.

### **I. Introduction**

This IRC challenges reductions made by the SCO to reimbursement claims for costs incurred in fiscal years 2001-2002 and 2002-2003 for the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* program, CSM-4452. Following an audit, the SCO reduced the claims in the amount of \$166,791 in fiscal year 2001-2002 and \$187,255 in fiscal year 2002-2003<sup>6</sup> on the grounds that claimant claimed employee time that was not supported by actual time records or a valid time study.

Claimant seeks a determination from the Commission pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claim, and requests that the SCO reinstate the \$354,046 reduced.

#### **Summary of the Program**

Under the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* program, school districts are eligible to claim reimbursement for the costs to perform the following activities:

- (1) From records maintained in the ordinary course of business or received from law enforcement agencies, identify pupils who have, during the previous three years, engaged in, or are reasonably suspected to have engaged in, any of the acts described in any of the subdivisions of Education Code section 48900, except subdivision (h).

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<sup>5</sup> Exhibit X. Note that the parameters and guidelines have since been amended twice: once on August 1, 2008 and again on May 27, 2010. However, the amended parameters and guidelines are not relevant to this IRC.

<sup>6</sup> For the 2002-03 claim, the IRC shows a disputed amount that differs from the amount noted in the conclusion of the IRC. The difference represents audit adjustments in the amount of \$5,485 related to costs funded from restricted fund sources. (See Exhibit B, Controller's Comments on San Diego's IRC, attachment Exhibit I, Audit Report dated June 2005.) The claimant has not disputed that adjustment.



- (2) Provide this information to teachers on a routine and timely basis.
- (3) Maintain the information regarding the identified pupils for a period of three years, and adopt a cost effective method to assemble, maintain and disseminate the information to teachers.<sup>7</sup>

Parameters and guidelines for the program were adopted in 1995.<sup>8</sup> Section VI B. of the parameters and guidelines provide instructions on supporting documentation for claiming reimbursement for employee salaries and benefits, and requires the claimant to either specify the actual number of hours an employee devoted to the mandated activities or the average number of hours spent on the program if supported by a “documented time study” as follows:

#### B. Supporting Documentation

Claimed costs should be supported by the following information:

##### 1. Employee Salaries and Benefits

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

Section VII of the parameters and guidelines requires supporting data to be kept by the claimant, which evidences the validity of the costs claimed as follows:

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than four years after the end of the calendar year in which the reimbursement claim is filed, and made available on the request of the SCO.

#### The SCO's Audit

As determined in the SCO's audit in this case, claimant submitted contemporaneous time logs or activity reports prepared by school site employees that performed the mandated activities showing the actual time spent on the program, and claimed reimbursement for the salary and benefit costs for these employees based on these time logs for several schools. These costs are not in dispute.

The disputed costs stem from claimed reimbursement for the salary and benefit costs for employees of schools that did *not* maintain actual time logs or maintain other documentation supporting the time spent on the program. For these employees, claimant reported an average time spent on each reimbursable activity for each student suspended from school. The average

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<sup>7</sup> Exhibit C, statement of decision on test claim adopted January 19, 1995.

<sup>8</sup> Exhibit D, parameters and guidelines adopted on July 25, 1995. Although the parameters and guidelines for the *Notification to Teachers: Pupils Subject to Suspension or Expulsion* (CSM-4452) program were subsequently amended and consolidated with a later claim, the amended and consolidated parameters and guidelines are not applicable to San Diego's IRC.

time was calculated based on the time logs prepared and submitted by other employees at different schools within the district that documented their time for this program. For fiscal year 2001-2002, claimant used the average times to calculate the costs for employees at 37 schools that did not have actual time logs. Claimant explains the costs claimed as follows:

For fiscal year 2001-2002, the District has time logs from 66 schools totaling \$236,587. These schools reported a total of 6,451 suspensions that qualified for the teacher notification program, which breaks down to \$36.67 per student. In their audit, the SCO accepted these activity reports as reasonable reimbursement. The District extrapolated costs for 37 additional schools totaling \$157,270. The additional 37 schools had a total of 4,681 suspensions that qualified for the teacher notification program, which breaks down to \$33.60 per student, approximately \$3.00 less than the supported costs accepted by the SCO. The District argues that this is a reasonable estimate of the actual costs for these 37 schools.<sup>9</sup>

For fiscal year 2002-2003, claimant used the average times to calculate the costs for employees at 57 schools that did not have actual time logs. Claimant explains the costs claimed as follows:

For fiscal year 2002-2003, the District has time logs from 83 schools totaling \$224,356. These schools reported a total of 6,327 suspensions that qualified for the teacher notification program, which breaks down to \$35.46 per student. In their audit, the SCO accepted these time logs as reasonable reimbursement. The District extrapolated costs for 57 additional schools totaling \$181,006. The additional 57 schools had a total of 5,307 suspensions that qualified for the teacher notification program, which breaks down to \$34.11 per student, \$1.35 less than the supported costs accepted by the SCO. The District contends this is a reasonable estimate of the actual costs for these 57 schools.<sup>10</sup>

The SCO denied the reimbursement claims submitted on behalf of these schools on the grounds that the claims were not supported by actual time records or a valid time study.

## **II. Positions of the Parties**

### **A. Claimant, San Diego Unified School District**

Claimant argues that the SCO incorrectly reduced costs of salaries, benefits, and related indirect costs claimed in fiscal years 2001-2002 and 2002-2003 in the amount of \$354,046. Claimant seeks a determination from the Commission pursuant to Government Code section 17551(d) that the SCO incorrectly reduced the claim, and requests that the SCO reinstate the full amount reduced.

Although claimant admits that it did not provide actual time records to support some of its reimbursement claims, claimant argues that the parameters and guidelines governing these reimbursement claims allow it to use “the average number hours devoted to each function” as long as it is “supported by a documented time study.”<sup>11</sup> Claimant asserts that its reimbursement

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<sup>9</sup> Exhibit A, San Diego IRC, at pp. 4-5.

<sup>10</sup> *Ibid.*

<sup>11</sup> Exhibit A, San Diego IRC, at p. 4.

claims are supported by a time study which “used an average derived from contemporaneous activity reports submitted by school site staff members who performed the [reimbursable] activities to calculate an average rate per mandated activity, per student suspended.”<sup>12</sup> Claimant contends that its extrapolation of actual time records to determine salaries and benefits that are not supported by actual time records is a valid time study.<sup>13</sup> Claimant contends that the averages developed by the time study are “conservative” and not excessive for the following reasons:

- The total hours submitted by each school was divided by the total number of qualifying students suspended at that school regardless of whether the staff turned in time for all students. In cases where school site employees did not turn in all of their contemporaneous activity logs for the year, the average time per student is driven down below the actual average time.
- To be conservative, data with the highest hours reported was eliminated when calculating the average time per student. San Diego made this adjustment to the average so that it would be more representative of the typical reimbursement situation.
- The per student cost for extrapolated schools was less than the per student audited costs supported by contemporaneous activity reports.

Claimant further asserts that, in addition to supporting its claims with a time study, Government Code section 17518.5 allows it to unilaterally develop and implement its own reasonable reimbursement methodology to support its claimed costs.<sup>14</sup> Claimant asserts that its time study qualifies as a reasonable reimbursement methodology.<sup>15</sup>

#### **B. State Controller’s Office**

The final audit report concluded that \$354,046 in salaries, benefits, and related indirect costs were unallowable, because “the District failed to provide documentation to support salary and benefits costs based on actual time records or an average number of hours supported by a documented time study, and indirect costs for these disallowed claimed costs.”<sup>16</sup> The SCO asserts that its audit was appropriate and the IRC should be denied for the following reasons:

- Government Code section 17518.5 does not allow a local government to unilaterally develop and implement a reasonable reimbursement methodology.
- Claimant failed to provide any evidence that employees performed activities that were not accounted for on contemporaneous activity logs. There is no evidence that the non-reporting schools performed all of the mandated activities, performed the activities in the same manner as those schools that submitted time records, or performed the activities

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Exhibit A, San Diego IRC, at pp. 4 and 7.

<sup>15</sup> *Ibid.*

<sup>16</sup> Exhibit B, Controller’s Comments on San Diego IRC, at p. 124.

with the same frequency as those schools that submitted time records. Claimant admits that it does not have a district-wide policy or procedure governing this program.

- Claimant’s method of calculating average times was inconsistent between fiscal years. For fiscal year 2001-2001, the district calculated average times based on time logs completed by employees in certain positions, rather than on all employees who performed each mandated activity. For the activity of identifying students, claimant used only time reported by principals and vice principals. For the activities of information maintenance and notifying teachers, claimant used only time reported by school clerks, school secretaries, and similar positions. In 2002-2003, however, claimant calculated time based on all employees who submitted time logs. In that year, claimant also excluded the “max school” that reported the highest number of hours for each activity, but not the highest hours per student.
- Claimant’s methodologies for both fiscal years do not constitute valid statistical analyses. The projections were based on employees that submitted time logs, rather than on randomly selected employees. Claimant provided no documentation to show that the employees used in the calculations were representative of the population.
- The time logs that were submitted indicate that time studies are not appropriate for these activities because the times reported per student varied significantly.
- Reimbursement claims submitted by large school districts indicate that the costs claimed by the claimant were excessive and unreasonable. For fiscal year 2001-2002, claimant’s average claimed cost per pupil was \$2.87, while the average claimed cost per pupil by 17 other populous school districts in the state was \$0.62 per pupil. For fiscal year 2002-2003, claimant’s average claimed cost per pupil was \$2.95, while the average claimed cost for the 17 other districts in the state was \$0.81 per pupil.

## V. 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 SCO determines is excessive or unreasonable. Government Code section 12410 further requires the SCO to:

[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 1185.9 of the

Commission’s regulations requires the Commission to send the 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.<sup>17</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”<sup>18</sup>

Thus, with respect to the SCO’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.’”<sup>19</sup> The Commission “may not reweigh the evidence or substitute it’s judgment for that of” the SCO.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.”<sup>23</sup>

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<sup>17</sup> *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.

<sup>18</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pp. 547-548.

<sup>19</sup> *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at p. 230.

<sup>20</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>21</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>22</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>23</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

**A. The reductions made by the SCO for salaries and benefits are consistent with the parameters and guidelines, reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support.**

The SCO reduced salaries, benefits, and other indirect costs claimed in the amount of \$166,791 for fiscal year 2001-2002 and \$192,740 for fiscal year 2002-2003, on grounds that claimant failed to provide documentation to support salary and benefits costs based on actual time records or an average number of hours supported by a documented time study.<sup>24</sup>

Claimant admits that it does not have any documentation to support the actual costs incurred by the schools at issue in this case.<sup>25</sup> However, claimant used cost data from other schools in the district that did collect and maintain source documentation to calculate the average costs incurred for 37 schools in fiscal year 2001-2002 and 57 schools in fiscal year 2002-2003 that did not collect or maintain any source documentation.

The Commission finds that the SCO correctly reduced these claims. Although Section VI B. 1. of the parameters and guidelines provides that claimants may utilize time studies to support a claim for reimbursement, the time study must be documented showing the employee's average times spent on the program. In addition, Section VII of the parameters and guidelines requires the claimant to maintain supporting source documentation of the costs incurred to show evidence of the validity of the claim. Here, claimant did not comply with these requirements.

Moreover, claimant admits that there is no district policy on this mandated program and that each school within the district performs the mandate differently. Thus, claimant's use of data from other schools within the district to calculate an average cost for those schools that did not maintain any documentation of the costs, does not provide sufficient evidence of the validity of the costs actually incurred by these schools.

In addition, the record supports the SCO's contention that claimant's extrapolation of data from reporting schools to schools that did not collect and maintain any source documentation raises valid questions whether the data accurately reflects the undocumented costs from other schools. The SCO contends that claimant's costs claimed are unallowable for the following reasons:

- Claimant's procedures for performing mandates activities do not lend themselves to time studies because claimant does not have uniform district-wide procedures for the mandated activities.
- Claimant based its projections on employees who submitted time logs rather than on statistically valid random sample of all employees performing each mandated activity and claimant failed to provide documentation showing that the employees used were representative of the population performing each mandated activity.
- Claimant did not provide any evidence that non-reporting schools: (1) performed all the mandated activities; (2) performed the activities in the same manner as those schools that submitted time records; and (3) performed the activities with the same frequency as those schools that submitted time records.

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<sup>24</sup> Exhibit B, Controller's Comments on San Diego IRC, at p. 124.

<sup>25</sup> Exhibit A, San Diego IRC, at p. 4.

Claimant has not submitted evidence to rebut these findings.

As the administrative agency responsible for auditing mandate reimbursement claims, the interpretation of the SCO is entitled to great weight; the courts have long held that “[a]n agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts.”<sup>26</sup> The Commission “may not reweigh the evidence or substitute its judgment for that of” the SCO.<sup>27</sup>

Based on the foregoing, the Commission finds claimant did not comply with the parameters and guidelines for claiming reimbursement for the costs of salaries and benefits, and therefore the SCO’s disallowance of salaries, benefits, and related indirect costs in the amount of \$166,791 for fiscal year 2001-2002 and \$192,740 for fiscal year 2002-2003, was not arbitrary, capricious, or entirely lacking in evidentiary support.

**B. San Diego’s time study does not constitute a valid reasonable reimbursement methodology, as defined by Government Code section 17518.5.**

Claimant asserts that Government Code section 17518.5 “allows and even encourages the use of a reasonable reimbursement methodology.”<sup>28</sup> San Diego further asserts that the “time study” used to support its undocumented reimbursement claims, qualifies as a reasonable reimbursement methodology.<sup>29</sup>

Claimant is wrong. Government Code section 17518.5 defines reasonable reimbursement methodology (RRM) to mean a formula for reimbursing local agencies and school districts for costs mandated by the state. The RRM may be based on a general allocation formula, uniform cost allowance, or other approximations of local costs mandated by the state. The RRM, however, must be adopted by the Commission pursuant to Government Code section 17557, following a request, an opportunity for comment by the parties, a public hearing, and the adoption of a decision on the matter.<sup>30</sup> The parties have not submitted a request to include an RRM in the parameters and guidelines for this program, and the Commission has not adopted one. The mandates process does not allow a party, on its own, to use a formula for claiming reimbursement of state-mandated costs.

Based on the above discussion, the Commission finds claimant’s time study does not qualify as an RRM within the meaning of Government Code section 17518.5.

**VI. Conclusion**

Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations, the Commission finds that the SCO’s reductions of salaries, benefits, and related indirect costs claimed by San Diego in the amount of \$166,791 for fiscal year 2001-2002 and \$192,740 for fiscal year 2002-2003 are consistent with the parameters and guidelines,

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<sup>26</sup> *Shapell Industries, supra*, 1 Cal.App.4th 218, at p. 230.

<sup>27</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>28</sup> Exhibit A, San Diego IRC, at p. 6, citing Government Code section 17518.5 as added by Statutes of 2004, chapter 890.

<sup>29</sup> *Ibid.*

<sup>30</sup> California Code of Regulations, Title 2, 1183.10-1183.13, as effective on July 1, 2014.

reasonable, and not arbitrary and capricious or entirely lacking in evidentiary support. Therefore, the reductions are correct.

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 May 16, 2014, I served the:

**Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments,  
and Notice of First Hearing**

Incorrect Reduction Claim, 05-4452-I-01

*Notification to Teachers: Pupils Subject to Suspension or Expulsion*

Education Code Section 49079, Statutes 1993, Chapter 1257

San Diego 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 May 16, 2014 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/16/14

**Claim Number:** 05-4452-I-01

**Matter:** Notification to Teachers: Pupils Subject to Suspension or Expulsion

**Claimant:** San Diego Unified School District

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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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