

PUBLIC MEETING

COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.

DATE: Friday, March 28, 2014

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
(Commission Chair)
Representative for MICHAEL COHEN, Director
Department of Finance

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Items 2, 3, 16, and 19)

JASON HONE
Assistant Executive Director
(Item 8)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 18)

TYLER ASMUNDSON
Senior Commission Counsel
(Item 3)

GINY CHANDLER
Senior Commission Counsel
(Item 4)

MATTHEW B. JONES
Commission Counsel
(Item 6)



PUBLIC TESTIMONY

Appearing Re Item 3:

For Claimant Los Angeles Unified School District

BARRETT K. GREEN
Littler Mendelson
2049 Century Park East, Fifth Floor
Los Angeles, California 90067

For Department of Finance

LISA MIERCZYNSKI
Department of Finance
915 L Street
Sacramento, California 95814

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant Twin Rivers Unified School District

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
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San Diego, California 92106

For Department of Finance

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

KATHY LYNCH
Department of Finance

Appearing Re Item 6:

For Requestor Department of Finance

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

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

For San Diego County Sheriff, P.D., and D.A.:

TIMOTHY BARRY
Senior Deputy County Counsel
County of San Diego County Counsel's Office
1600 Pacific Highway, Room 355
San Diego, California 92101

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For County of Los Angeles

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor-Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

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



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ERRATA SHEET

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<u>15</u>	<u>23</u>	<u>"mand,ated" should be "mandated"</u>
<u>17</u>	<u>19</u>	<u>"down" should be "done"</u>
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1 BE IT REMEMBERED that on Friday, March 28,
2 2014, commencing at the hour of 10:02 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR ORTEGA: Good morning, everyone. I'd
8 like to call the meeting of the Commission on State
9 Mandates to order. This is the meeting of March 28th.

10 If you could call the roll?

11 MS. HALSEY: Mr. Alex?

12 MEMBER ALEX: Here.

13 MS. HALSEY: Mr. Chivaro?

14 *(No response)*

15 MS. HALSEY: Ms. Olsen?

16 MS. OLSEN: Present.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Here.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Here.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR ORTEGA: Great.

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1 The first item we'll take up is the minutes
2 from the January 24th meeting.

3 Are there any objections or corrections or any
4 public comment on the minutes?

5 MEMBER OLSEN: I'll move adoption.

6 CHAIR ORTEGA: Thank you.

7 MEMBER RAMIREZ: Second.

8 CHAIR ORTEGA: There's a motion and a second.

9 All those in favor?

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

11 CHAIR ORTEGA: Any opposed?

12 *(No response)*

13 CHAIR ORTEGA: Abstentions?

14 *(No response)*

15 CHAIR ORTEGA: None?

16 Okay, the minutes are passed.

17 And Item 2.

18 MS. HALSEY: Now, we'll take up public comment
19 for matters not on the agenda.

20 Please note that the Commission cannot take
21 action on items not on the agenda. However, it can
22 schedule issues raised by the public for consideration at
23 future meetings.

24 *(No response)*

25 CHAIR ORTEGA: Okay, seeing none.

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1 Next is the Consent Calendar.

2 MS. HALSEY: Next, we have a proposal to add
3 Item 7 to the Consent Calendar. After the agenda for
4 this hearing was released, the parties agreed to place
5 Item 7 on consent.

6 CHAIR ORTEGA: Any objection to adding Item 7
7 to the Consent Calendar?

8 *(No response)*

9 CHAIR ORTEGA: Is there any public comment on
10 any of the items on the Consent Calendar?

11 *(No response)*

12 CHAIR ORTEGA: No?

13 Do we have a motion?

14 MEMBER OLSEN: I'll move the Consent Calendar.

15 MEMBER SAYLOR: Second.

16 CHAIR ORTEGA: Motion and a second on the
17 Consent Calendar.

18 All in favor?

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

20 CHAIR ORTEGA: Any opposed or abstentions?

21 *(No response)*

22 CHAIR ORTEGA: The Consent Calendar is adopted.

23 MS. HALSEY: Just for the record, the Consent
24 Calendar consists of Items 7, 8, 9, and 10.

25 Let's move on to the Article 7 portion of the

1 hearing.

2 Item 5 has been postponed to the May 30th,
3 2014, hearing, at the request of the Department of
4 Finance.

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

7 *(Parties and witnesses stood to be sworn*
8 *or affirmed.)*

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

13 *(A chorus of affirmative responses was heard.)*

14 MS. HALSEY: Thank you.

15 Item 2 is reserved for appeals of Executive
16 Director decisions. There are no appeals to consider
17 under Item 2.

18 Senior Commission Counsel Tyler Asmundson will
19 present Item 3, a test claim on *Special Education*
20 *Services for Adult Students in County Jail*.

21 MR. ASMUNDSON: Good morning. This test claim
22 addresses a request for reimbursement as a result of a
23 compliance report issued by the California Department of
24 Education in an Office of Administrative Hearings
25 decision that determined the claimant was responsible

1 for providing special education and related services to
2 eligible students between the ages of 18 and 22 who are
3 incarcerated in county jail.

4 Under existing law, existing state and federal
5 law, eligible students between the ages of 18 and 22 are
6 entitled to receive continuing special education and
7 related services.

8 The claimant argued that the county should have
9 to provide these services to county jail inmates.

10 The CDE compliance report and OAH decision
11 disagreed with the claimant based on the plain language
12 of Education Code section 56041, and found that the last
13 school district of residence before a pupil attains the
14 age of majority, is required to provide special education
15 services, regardless of the fact that the student is
16 incarcerated in county jail.

17 Staff recommends that the Commission deny this
18 test claim.

19 The requirement imposed on the last school
20 district of residence to provide special education and
21 related services to pupils over the age of 18 does not
22 mandate a new program or higher level of service. In
23 addition, there are no costs mandated by the State.

24 Accordingly, staff recommends that the
25 Commission adopt the proposed decision to deny the test

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1 claim.

2 Will the parties and witnesses please state
3 your names for the record?

4 MR. GREEN: Barrett Green for the School
5 District.

6 MS. LYNCH: Kathy Lynch for the Department of
7 Finance.

8 MS. MIERCZYNSKI: Lisa Mierczynski with the
9 Department of Finance.

10 CHAIR ORTEGA: Mr. Green?

11 MR. GREEN: Thank you very much for inviting us
12 today.

13 I'd like to try to address the first part of
14 the staff analysis, which has to do with whether this is
15 a new program or not.

16 So for Prop. 4 purposes, it's a new program if
17 it came into effect anytime after January 1, 1975. I
18 think it's unmistakable that this program did come into
19 effect after January 1, 1975. But I will track the
20 history of it, just to make it clear.

21 The IDEA itself at the time was called the
22 "Education for All Handicapped Act." It was enacted in
23 1975, in November. So already, we're past January 1,
24 1975. But the obligation to serve students in jail,
25 18 to 21, didn't go into effect until 1980.

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1 And so, again, the IDEA itself, which at the
2 time was called the "EAHCA," is not direct federal
3 regulation. It is -- what happens is, the federal
4 government gives money to the states; and in exchange,
5 the state has to provide certain services.

6 So those services for the students at issue in
7 this case were not obligated under state law until 1980,
8 when the State enacted statute that required that those
9 students be served. But even at that point, we still
10 didn't have the services that are mandated in this case.
11 Those services did not get allocated to school districts,
12 actually, until 1993.

13 And the reason for that is that, under federal
14 law, it doesn't tell the states which agency has to serve
15 students in jail. So the issue in this case is special
16 ed. services for students in jail.

17 It leaves it to the states to decide how to
18 allocate that. The state can do it itself, the state can
19 have it down by a county, the jail system -- different
20 states handle it differently. Arizona got sued, and they
21 handled it a certain way.

22 So what happened was in 1992 -- effective
23 January 1, 1993 -- the Legislature passed Ed. Code 56041.
24 That section said that for a student over age 18, the
25 district responsible, essentially, is the district where

1 the parent resided at the time the child turned 18.

2 Now, there's two separate components to this
3 case: We have the issue of who has to provide the
4 services and then who has to pay for them.

5 The issue of who has to provide them is very
6 complicated. Until 2008, when Mr. Garcia, in the case
7 that later went to the Supreme Court was decided --
8 Cal Supreme Court was decided in December of this past
9 year -- so 2013 -- he requested services in 2008. As far
10 as everyone knows, that was the first time anyone had
11 ever requested special ed. services in county jail.
12 2008.

13 So from that point forward, appearing on behalf
14 of the CDE, the Deputy Attorney General conceded that
15 this was a gap in the legislation, that the Legislature
16 never foresaw that this would be an issue of who would
17 provide services in jail for county inmates.

18 So what happened is -- one thing led to
19 another. Eventually, this case went all the way to the
20 Ninth Circuit to decide which agency has to provide the
21 services. Again, this doesn't have anything to do with
22 the funding, just the provision of services.

23 The Ninth Circuit was unclear as to who was
24 responsible, so they did what's rarely done: They
25 certified the case, and asked the Cal Supreme Court to

1 decide the case. The Cal Supreme Court agreed in 2012
2 to hear the case; and in December of this past year, they
3 interpreted 56041 as assigning responsibility to the
4 school district.

5 So that is the history of who is responsible.

6 Now, prior to 1992's enactment of 56041, there
7 actually wasn't any agency responsible for those
8 services. That's because when you are an inmate in
9 county jail, you don't have a residence.

10 We all know the term "residence" from tax and
11 other types of purposes, "residence," "domicile" is the
12 place where you intend to permanently reside in. I'm
13 sure most of us do not intend to permanently reside in
14 jail. So there is no issue of how to deal with what the
15 residence is of the student. That's why 56041 applied.

16 So that's the sequence leading up to why this
17 is an increased level of services being imposed on the
18 school district.

19 Now, I'll deal separately in a minute with the
20 issue of whether there was a prior subvention on that.
21 But I just want to see if the commissioners have any
22 questions on that component of it.

23 MEMBER ALEX: What created the obligation to
24 provide services? Is that statutory? Constitutional?
25 Where does that come from?

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1 MR. GREEN: Well, actually, that's a good
2 question.

3 There is no obligation for the state to provide
4 the services. What happens is, the IDEA was enacted, and
5 the federal government said: "We will give you this
6 money if you do these things."

7 One of those increased level of services was to
8 provide these services to adults in county jail. So if
9 the state doesn't want the money, it can say no, and then
10 there's no obligation. But once it takes the money, then
11 it has to perform the services.

12 So that's the background purpose.

13 Once that occurred, it's 56041 that imposed an
14 obligation ultimately on the school district, which --
15 and that happened in 1992, effective '93. But nobody
16 knew that, even, until the Supreme Court gaveled in
17 December. That's how long it really took.

18 So I think if you look at page 21 of the staff
19 analysis -- and I fear that maybe I didn't do a good
20 enough job explaining in my papers, and that's why the
21 staff analysis is written this way.

22 But page 21, at the top, it says, "The
23 enactment of section 56041 in 1992 did nothing to change
24 these requirements and simply provided a means to
25 determine which entity must provide special ed. services

1 to inmates between the ages of 18 and 22 who are
2 incarcerated in county jail. No new mandated duties are
3 required of the claimant."

4 Frankly, I'm telling you, this is mistaken,
5 okay. The obligation was imposed by 56041. That's
6 because the federal government, even though once they
7 give you the money, they require you to provide these
8 services, as explained in the *Garcia* case -- I think you
9 have it in your backup -- there is no specific agency
10 that the federal government says to the state, you must
11 provide the services. The state could just as easily
12 have said, like it does, for example, with Juvenile Hall.
13 Juvenile Hall children are educated by the County Office
14 of Education. They are not educated by the school
15 district of residence of the parents where the child
16 resides.

17 In hospitals, it's done a certain way.

18 So in this particular instance, because of
19 56041, it was allocated to school districts. And that,
20 as reflected in the *Garcia* case, is what imposes it as a
21 state mandate.

22 I don't see how it could not be a state
23 mandate, to be honest with you, on that.

24 MS. SHELTON: If you look on the top of
25 page 21, the part that was not read was, the mandate was

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1 driven by section 56026, not 56041. 56041 designates
2 who; but 56026 is the provision that mandates the
3 activity to provide those services to the students
4 between the ages of 18 and 22.

5 That statute was the subject of a prior
6 Commission decision and settlement agreement between the
7 State and all school districts in the state, which is
8 identified in the back of the analysis. And there was a
9 statute that was enacted to implement that settlement
10 agreement that said any provision of special ed. services
11 as a result of any of these code sections that were
12 enacted before the year 2000 are subject to the
13 settlement agreement, and you cannot bring another test
14 claim to seek reimbursement for that.

15 So there's a couple of things going on: One,
16 56041 is not the statute that imposes the mandate; and,
17 two, any extra costs incurred because of the Supreme
18 Court decision, OAL decision, CDE decision, have been
19 taken care of under the settlement agreement and the
20 statute that was enacted to implement the settlement
21 agreement, which does provide funding per ADA of the
22 school.

23 MR. GREEN: May I reply?

24 CHAIR ORTEGA: Sure.

25 MR. GREEN: Again, I wanted to separate it out

1 because I was only addressing the issue of whether it's
2 a mandate or not, whether it's an increased level of
3 services.

4 56026 actually did not allocate responsibility
5 for that, and the Supreme Court did not say that in
6 *Garcia*. In fact, 56026 involved the definition of
7 "parent," and it involves issues of residency.

8 There was no -- prior to 56041's enactment in
9 1992, there was nothing that allocated responsibility to
10 school districts for the services in county jail. As
11 I said, there is no residency for an inmate in jail. And
12 that's the only reason the Cal Supreme Court took the
13 case. They took the case because otherwise you'd be able
14 to say, "Well, the student is a resident. He lives in
15 Los Angeles, so he is a resident of the system." But
16 because there is no residency in jail, that's how it's
17 written.

18 But even for the sake of argument, if we could
19 say -- and it's not correct -- that 56026 already imposed
20 it, that itself was enacted in 1980, which is after
21 January 1, 1975, which would make it still a mandated
22 cost.

23 Now, I will get to the second part of the point
24 that was raised involving this supposed later subvention.
25 But I wanted to separate that out and deal with the issue

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1 of "Is it an increased level of services?" first.

2 MR. ASMUNDSON: If I may?

3 The Supreme Court actually did address 56026.
4 They said that -- and this is a quote -- "*In the present*
5 *matter, there is no dispute that under the IDEA in the*
6 *California statutes that implement its policies, the*
7 *individual on whose behalf this action was brought,*
8 *Garcia, was entitled to continue to receive a FAPE while*
9 *incarcerated in the county jail.*" And they cite
10 56026(c)(4).

11 MR. GREEN: That is not an allocation of who is
12 responsible for the services. That's simply a statement
13 of what is well-known already, which is that the student
14 was already entitled to receive services in jail. The
15 whole case was about what agency is responsible. And in
16 the case -- and I invite the commissioners to read the
17 case -- the whole discussion is, how did that obligation
18 become imposed on school districts? And it was imposed
19 by 56041.

20 But as I said, it doesn't even matter, because
21 even if it was 56026, that was enacted in 1980; so it,
22 likewise, is covered by Proposition 4, Article XIII B, of
23 the Constitution.

24 So the only possible area where the mandated
25 service, in my view, can be denied as a subvention, is to

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1 make the second argument, which I will gladly address if
2 the commissioners would like, regarding whether there has
3 already been a subvention. And I'm happy to do that.
4 But I want to make it clear that there can be no argument
5 that this is an increased level of services even if you
6 argue that 56026 imposed it.

7 MR. ASMUNDSON: That might be true. But that
8 statute was -- that's a 1980 statute, and you filed your
9 test claim 28 years after that.

10 MR. GREEN: Well, first of all, no one had ever
11 requested services until 2008.

12 And secondly, it wasn't -- it took the Cal
13 Supreme Court, because nobody knew who was responsible.
14 They hear, what, 20 cases a year that are civil cases, to
15 decide who was responsible. Plus, I'm unaware of any
16 statute of limitations in Article XIII B.

17 The people said, "We don't want the State to
18 impose costs on local agencies." They didn't say that if
19 the State -- if the people are unaware of that until a
20 later date, that somehow it's waived. It is the
21 obligation of the officers who swear an oath to the
22 Constitution that enforce that request of the people.

23 CHAIR ORTEGA: Go ahead.

24 MS. SHELTON: Just to clarify a couple of
25 points.

1 There has been no pleading on 56026. And the
2 staff recommendation and position is that the mandate
3 comes from 56026. 56041 designates who. But the
4 mandate -- the activity is not mandated by 56041.
5 So 56026 has not been plead. There's no pleading on
6 that.

7 So the statute of limitations -- there is a
8 statute of limitations in the codes that require the test
9 claim to be filed. So we don't even need to get to that
10 issue.

11 MR. GREEN: Well, let me just say, if there is
12 a statute of limitations, it can't run until anybody has
13 a clue as to who is responsible. The Ninth Circuit
14 didn't know. They certified it to the Cal Supreme Court
15 who decided it.

16 And it, frankly, has two pleadings. I mean,
17 this isn't a court; this is a question of, is this a
18 mandated service? And if you would like, I would gladly
19 provide supplemental briefing on 56026 and its
20 application.

21 Certainly, it would be a waste of everyone's
22 time for me to re-file a test claim addressing 56026
23 which wasn't part of our original point.

24 I mean, in good faith, we brought this claim
25 as soon as we knew. The first person to ever request

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1 services was Mr. Garcia in 2008. Nobody had a clue who
2 was responsible. It goes to the Cal Supreme Court. They
3 issued it, and now we're here.

4 CHAIR ORTEGA: Thank you, Mr. Green.

5 Are there any other questions of Mr. Green?
6 Finance?

7 MS. LYNCH: We don't have any questions.

8 MR. GREEN: But I would like to address the
9 subvention, if I can, issue.

10 Okay, so that is, to me, the only issue that
11 there might be an argument on. And I want to explain why
12 I believe that is not a proper subvention.

13 You can't do a waiver -- this is the argument:
14 There was a test claim brought by Santa Barbara, I
15 believe, in the eighties, involving the requirement that
16 you serve students 18 to 21.

17 Again, at that time, nobody was aware of a
18 claim that you have to serve adult students in county
19 jail. There was some settlement relating to that, but
20 there is no evidence of that in the record.

21 The only evidence in the record is reference to
22 an Ed. Code section or a Government Code section
23 regarding a subvention.

24 The argument of the staff is that that --
25 because it was worded as including any and all claims

1 known and unknown, that that includes a subvention for
2 this claim.

3 To be honest with you, that's just not a
4 good-faith statement. We know that this couldn't have
5 been included. Nobody was even aware that there might
6 be claims for services in county jail.

7 Now, it's one thing to say we have an
8 approximation of the number of children that exist, that
9 are 18 to 21; and, therefore, we're doing this ADA
10 enhancement to cover that. It's a completely other,
11 different thing to say that we're going to cover students
12 who are seeking services in county jail. And I won't
13 bore you by repeating the whole history again. Nobody
14 knew until the *Garcia* case that there was going to be a
15 request for these services. And they're not cheap.

16 Now, to be honest with you, I don't think it's
17 a huge subvention because there aren't many requests.
18 So if this Commission were to grant the test claim or
19 sustain it, then I don't think it would be a huge
20 expenditure because there aren't that many students
21 requesting services.

22 But it is a large amount per student; and
23 there's no way they could possibly have intended it with
24 the subvention. There's no reference to it. And this
25 isn't like, you know, me and another person have a

1 dispute and we settle any and all claims with a 1542
2 waiver. That's not the way a subvention has to be done.
3 It requires that there be a specific allocation to
4 address the specific amount of money in question.
5 Otherwise, there is no point to the whole Prop. 4 system.

6 So I won't bore with you any further comments.
7 But if you have any questions on that, I'd be delighted
8 to answer them.

9 CHAIR ORTEGA: Any questions?

10 Ms. Ramirez?

11 MEMBER RAMIREZ: I'd like our counsel to
12 respond to the last items that Mr. Green has raised.

13 MR. ASMUNDSON: The settlement agreement and
14 Education Code -- let me specifically refer to it --
15 56836.156 states that *"The settlement funds are to be*
16 *used for costs of any state-mandated special education*
17 *services established pursuant to sections 56000 to 56885,*
18 *inclusive, as those sections read on or before July 1st,*
19 *2000."* That includes the code section here, 56041.

20 MS. SHELTON: Let me also clarify. When that
21 settlement agreement was resolved, there were many
22 outstanding test claims that had not come to a final
23 determination by the Commission. So it resolves -- there
24 were, like, 13, I think -- Rick may remember those --
25 there were, like, 13 test claims. They had not all been

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1 resolved yet. So it was a settlement agreement that sort
2 of bypassed the Commission's process.

3 MR. GREEN: If I may briefly address that?

4 Again, these were -- the settlement agreements
5 were, I'm sure, all related to this generic
6 18-to-21-year-olds, where you have a small number per
7 school district where you have disabled children who
8 don't graduate when they normally would, and they just
9 keep going for a little while.

10 There is no way that this was intended to cover
11 services for students in jail. And that's the whole
12 purpose of the subvention process.

13 MEMBER SAYLOR: I think that's an interesting
14 point.

15 Was there any reference to the county jail
16 services that are being discussed now in those earlier
17 settlement language or any of the subvention --

18 MS. SHELTON: Not to my recollection, no.

19 I understand that it may be a new argument or
20 interpretation by the Court. And certainly, the L.A.
21 Unified School District is considering those to be new
22 costs for them.

23 Now, new costs alone can't result in a
24 reimbursable state-mandated program. We're not disputing
25 that they have new costs or that they didn't -- it's

1 clear that from the record, they didn't believe they had
2 a duty in law to provide those services to students in
3 jail.

4 But the Court is interpreting existing law.
5 And, again, our position is that the mandate does not
6 come from 56041, but it comes from 56026.

7 MEMBER SAYLOR: If the claimant had identified
8 56026 in their pleadings, would our judgment be
9 different?

10 MS. SHELTON: No, because you have that
11 settlement statute, and by the plain language we have to
12 presume is correct, and interpreting it, it says any
13 state-mandated special education service established
14 pursuant to all those code sections are included within
15 the settlement agreement. So it's already -- by law,
16 there are no costs mandated by the State.

17 MR. ASMUNDSON: In addition, it specifically
18 refers to section 56026. It says: "*Special education*
19 *for pupils ages 3 to 5, inclusive, and 18 to 21,*
20 *inclusive, established pursuant to section 56026, as that*
21 *section read on July 1st, 2000.*"

22 MEMBER SAYLOR: May I? A question for Tyler or
23 Camille then, is: Were there other groups of students
24 who are served in other settings, who were also not
25 identified specifically in this settlement agreement?

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1 And is that -- do you understand my question?

2 MR. ASMUNDSON: No group is specifically
3 referred to. It's the age groups that receive those
4 services.

5 MEMBER SAYLOR: Right. Was there any other
6 setting where these students are served that was not --
7 since no setting was identified, have there been any
8 other settings or groups of students that have come
9 forward with similar kinds of claims? Were there any
10 others, or is this the only one?

11 MS. SHELTON: This is the only one that I'm
12 aware of since the settlement agreement. We haven't had
13 any other issues being raised.

14 And, in fact, you know, the statutes don't get
15 to that level of detail, so these are questions of law.

16 And you know, 56026 requires the provision of
17 those services to all students, you know, within the
18 jurisdiction, within the ADA. They don't divide or
19 distinguish who they may or may not be.

20 It was the Supreme Court decision that
21 determined that, you know, reading 56041, it's all
22 students based on the parents' residence, and even those
23 that are housed in county jail.

24 MEMBER SAYLOR: Uh-huh.

25 MR. GREEN: May I follow up on Commissioner

1 Saylor? Because you raise a very important point, and
2 it's this distinction: There is something special about
3 this case that's unlike all the other services. When
4 you're a student, 18 to 21, as long as you're in the
5 district, then you're covered. The difference is that
6 under the IDEA, it's left to the states to decide who is
7 going to serve these students in jail.

8 And under the other -- any other scenario, it's
9 clear that it's the local district where the student
10 resides.

11 The Legislature elected, because of 56041, to
12 assign that to school districts. It could easily have,
13 in 1992, said, "We would like the county" -- and,
14 frankly, we thought this would be the better outcome,
15 anyway -- "the county that's already been assigned the
16 responsibility to serve in juvenile hall, let them
17 continue. When the child hits 18, they go from juvenile
18 hall to jail." It makes more sense for the county to do
19 that.

20 But instead, as interpreted by the Supreme
21 Court, they assigned it directly to the school districts.

22 It was a choice of the Legislature. And that's also set
23 forth in the *Garcia* case. They say the federal
24 government leaves it to the states to decide. It's not
25 in 56026. It required an act of the Legislature to do

1 it.

2 MS. SHELTON: Can I also just mention, the
3 settlement agreement is based on a per-ADA number. If
4 those are new students that are included within your ADA,
5 it would seem, maybe if Finance could discuss on their
6 budget, your ADA has just increased with this new
7 student. So that it's already covered by the settlement
8 agreement.

9 MR. ASMUNDSON: And, actually, the student has
10 to be identified before they enter the jail. So they
11 already would be covered. They would have been receiving
12 services prior to being incarcerated.

13 MR. GREEN: Well, the -- I'm sorry, did the
14 staff want to respond?

15 MS. MIERCZYNSKI: Yes.

16 No, that's correct, you receive special
17 education state funding per-ADA, as well as federal
18 funding.

19 MR. GREEN: So if the costs of the services in
20 jail were covered -- and I think we've laid this out in
21 our test-claim papers -- by any ADA, we wouldn't be here.
22 The cost to service -- let me just describe briefly so
23 the commissioners are aware of what's going on.

24 For Mr. Garcia, they had to take a separate
25 teacher, train him. He had to meet with the Sheriff's

1 Department, learn all the security precautions, go to the
2 jail, wait there, deal with whatever is going on on that
3 particular day with a locked-down inmate, go in, provide
4 services to that inmate, leave, back, all sorts of stuff.

5 The costs of servicing that one inmate is
6 enormous. It's way beyond the typical cost. And that is
7 why we brought the test claim. Otherwise, we wouldn't
8 have brought it.

9 CHAIR ORTEGA: Go ahead.

10 MS. LYNCH: Could I just add one point?

11 CHAIR ORTEGA: Yes.

12 MS. LYNCH: Kind of in line with what the
13 Commission has stated.

14 I think what counsel is stating here is, it
15 is really, what I would call a distinction without a
16 difference because the code section says "any mandated
17 special education services." That doesn't break it down
18 whether it's a jail or another circumstance which nobody
19 here is aware of. So that's what we're dealing with.

20 These fall within state-mandated special
21 education services. So counsel's distinction that,
22 "Oh, it's in the jail," I don't think it makes a
23 difference here because that's what the plain language
24 of the statute says.

25 MR. GREEN: May I briefly reply?

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1 Okay, tomorrow, the Legislature could say,
2 "From now on, we've now funded every possible mandate
3 that might ever exist." Well, the fact that they put
4 it in the statute, that doesn't make it so.

5 And in this case, it's clear that they didn't
6 fund it, no matter what the delay -- this isn't a
7 settlement agreement where we have a dispute and later
8 on you say, "Look, this is done. We wrapped it with a
9 release."

10 It's designed to address specific costs that
11 are subvented. And we know that there's nothing in the
12 record -- literally, zero in the record -- to suggest
13 that anyone was mindful of this allocation of
14 responsibility to school districts for jail.

15 MR. ASMUNDSON: When the school districts
16 entered into the settlement agreement, I believe they
17 understood that it might not cover all costs. The
18 statute specifically says that the funds are considered
19 full payment for all reimbursable state mandates.

20 So what does it cover or not --

21 MS. LYNCH: You have to presume the Legislature
22 knew what -- had that background information. If it
23 wanted to put in "excluding jails," it would have put it
24 in.

25 MR. GREEN: Well, I'm happy you raise that,

1 because if you read the *Garcia* case, the Supreme Court
2 even stated that they agree that it wasn't the intent,
3 even, in '92, to impose this; it was just a consequence
4 of the actions of the Legislature in '92 of adding 56041.

5 It wasn't even intentional.

6 So there is no way the Legislature intended to
7 provide a subvention for this.

8 And the fact that a recipient -- or there's a
9 statute that says, "We're accepting this as everything,"
10 I can't even waive it. If I were the mayor of a city,
11 and I said, you know, "I'm giving up any claim for a
12 subvention," I can't waive it. The Constitution
13 controls.

14 Prop. 4 was passed for a reason; and the reason
15 is exactly this type of case. There's a new cost on
16 school districts, and it should be funded by the State.

17 CHAIR ORTEGA: Are there any other questions?

18 MEMBER SAYLOR: May I?

19 CHAIR ORTEGA: Yes?

20 MEMBER SAYLOR: So this point about the ADA
21 funding being available for this service, for these
22 students in this setting, I'm not sure I buy that
23 entirely because the ADA -- the question would be, does
24 ADA go up to cover these costs? And we have a pretty
25 good idea that in local school districts, the cost of

1 IDEA is not covered by the amounts of funds that go to
2 them for those students. The ADA is not sufficient to
3 cover the full-service cost.

4 So that's an issue that seems to me to be
5 relevant. And if one of our underpinnings for rejecting
6 this claim is that it is funded through either a
7 subvention settlement or ongoing average daily attendance
8 support, I think a case could be made.

9 MS. HALSEY: I just wanted to clarify that the
10 settlement is for an additional subvention based on ADA
11 for special ed. It's not just the regular ADA.

12 MEMBER SAYLOR: Okay.

13 I think there's another comment that I want to
14 draw on, because the presenter -- Mr. Green, is it?
15 Mr. Barrett Green -- described a process for delivering
16 service in a county jail that involved a school district
17 having somebody go in and serve one student with a whole
18 series of steps, and then leaving. That's the school
19 district's choice, to provide the service in that
20 fashion.

21 The school district could just as easily
22 contract with the county, who is providing -- who is
23 operating the jail. They could still carry out the
24 responsibility by being the agency that does the
25 contracting, and somebody else could do it in a manner

1 that would be much less costly than you describe.

2 MR. GREEN: If I may briefly reply? I
3 appreciate you raising that.

4 I actually had to personally go -- and since
5 I'm sworn, I can lay the foundation for this.

6 I personally went to the jails, and they were
7 talking about possibly developing services. But the
8 first thing that happened was, they originally were
9 serving non-disabled students in jail; but then they were
10 worried -- through a potential charter, but they were
11 worried that they would be held responsible for this, so
12 they stopped doing that. And so they are not serving the
13 inmates.

14 And if they were, then the district could
15 contract with them; but they're not providing those
16 services. There's no economy of scale.

17 The other thing is, number one, there is no
18 economy of scale because there's not a lot of disabled
19 students seeking the services; and, secondly, the
20 students can be very transient in the sense that
21 sometimes they come in, and they're there for five days
22 or a week or two weeks, et cetera, so they don't have
23 the -- and they haven't set it up.

24 MEMBER SAYLOR: I'm sorry, this is clearly not
25 a central issue, but it is an issue that I was interested

1 in.

2 CHAIR ORTEGA: Any additional questions or
3 comments?

4 MEMBER SAYLOR: No.

5 MEMBER RAMIREZ: I have a question. And I'd
6 like our counsel to comment on it.

7 Mr. Green has mentioned, and it's in the
8 pleadings, what the additional cost was. I realize it
9 was pretty significant.

10 At the same time, I would like to just get
11 your comment on that, or someone's comment on that,
12 because it was -- I think it's an additional \$33,000
13 for one student's services.

14 MR. ASMUNDSON: Yes, I believe that's close,
15 but --

16 MEMBER RAMIREZ: What is the significance of
17 that in light of our mandate here?

18 MR. ASMUNDSON: I don't think there is any
19 significance. They've pled that they have increased
20 costs. But, again, we say that those are offset by the
21 settlement agreement.

22 MEMBER RAMIREZ: And is it our position that
23 ADA -- I understand it's Finance's position that ADA
24 covers that, theoretically?

25 MS. SHELTON: It's not ADA. It's the

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1 settlement agreement which is on top of ADA.

2 MEMBER RAMIREZ: Okay.

3 MS. SHELTON: So the settlement agreement is
4 extra money, and it's appropriated per ADA. So this
5 is another student within the ADA, and it's already
6 receiving funding under the settlement agreement.

7 MR. GREEN: And to briefly reply on that.

8 It was pointed out by Commissioner Saylor that the -- we
9 all know that special ed., in general, encroaches on the
10 general fund. There is no way it's a fully mandated --
11 or a fully funded cost. But this is way beyond that.

12 The typical student -- let's say you'd have
13 ADA of 5,000 or 6,000, plus the additional stipend from
14 federal government, you might have another thousand.
15 Usually, the enrollment might be a few thousand on top
16 of that. But here, it's way beyond that. Basically,
17 200, 300 percent on top. So there's no way it covers it.

18 MR. ASMUNDSON: And, again, I don't really
19 think that matters because the settlement statute said
20 the payment is considered full payment in full
21 satisfaction of all costs incurred.

22 MR. GREEN: I don't think in any way that could
23 waive an entitlement to a state claim. I mean, this is a
24 constitutional provision. You can't just say in a
25 legislative pronouncement that "You're done, regardless

1 of it, if it doesn't cover it."

2 And there's a competing section that says the
3 subvention has to be specifically designed to address the
4 costs.

5 MR. ASMUNDSON: The settlement statute was
6 based on a settlement agreement that was signed by every
7 school district in the state. So every school district
8 agreed to this language.

9 MR. GREEN: And just for the record, it's
10 17556(e) that requires that the subvention, quote,
11 *"Specifically intended to fund the costs of the state*
12 *mandate in an amount sufficient to fund the cost of the*
13 *state mandate."*

14 CHAIR ORTEGA: Ms. Olsen, did you have a
15 comment?

16 MEMBER OLSEN: No.

17 CHAIR ORTEGA: Camille?

18 MS. SHELTON: Just to clarify, you know,
19 when the settlement agreement was going through, the
20 Commission had not adopted parameters and guidelines,
21 had not gotten to the point of identifying specific
22 reimbursable activities. It was settled before that
23 point.

24 So the school districts were fully aware that
25 they were getting an agreement based on any and all

1 services that would be provided under those Education
2 Code statutes that were enacted before 2000, when they
3 signed the agreement.

4 It's in the plain language of the settlement
5 agreement, so...

6 CHAIR ORTEGA: I'm not persuaded that the
7 Legislature can't codify an agreement, knowing full well
8 that it may not cover the universe of costs that may come
9 up. You know, it's a trade-off in making an agreement,
10 so I think the Legislature has that authority.

11 MR. GREEN: Well, just to briefly reply to
12 that. I think the whole purpose is to not have that
13 occur. I don't think that it's the intent of Prop. 4 to
14 pay in advance for what we think might be future claims.

15 The whole idea behind Prop. 4 was to say: Not
16 a penny more, not a penny less. Whatever the cost is
17 that the State is imposing on the local agency has to be
18 covered by the State.

19 If we as a state decide we want a service, then
20 we have to bear the burden collectively, and not impose
21 it on one particular agency.

22 MEMBER ALEX: If that were the case, you could
23 never have a settlement agreement because you'd never
24 have the exact amount beforehand. And that seems to be
25 your position, but it's not --

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1 MR. GREEN: Well, no, I wouldn't -- thank you
2 for raising that.

3 No, I don't think that's the case -- and I'll
4 give two answers to that.

5 One, it is possible that there's no intent to
6 have a settlement agreement in cases of subventions; that
7 there should never be an agreement. It should simply be
8 a subvention. That makes sense, because that can change.
9 So basically, there's a test claim, you determine that
10 there is a new level of services. Any dispute that
11 follows is, "How much do you owe me for this year?"

12 There is no good reason to have an agreement in
13 advance, prospectively. It's not like an agreement
14 dispute between parties where you want to end it once and
15 for all. The whole concept of Prop. 4 is to reimburse
16 the actual costs.

17 The second thing is, I would say if you could
18 have a settlement agreement, it should be over known
19 claims. You can't have a settlement agreement that
20 covers a subvention of unknown claims. I think it's
21 anathema to the system to have that, and it's not good
22 policy; because you're either paying too much or you're
23 paying too little.

24 MEMBER ALEX: Well, as it happens, I don't
25 think this Commission can -- you've raised what may be

1 a constitutional question. And, as such, it's kind of
2 outside of the jurisdiction of the Commission.

3 MR. GREEN: Well, I would submit that it isn't,
4 to the extent that my argument is not asking you to
5 invalidate the whole process. I'm simply saying that you
6 can find that there wasn't a subvention to cover this.
7 And you don't have to make a broad conclusion that no
8 agreement will ever stand, et cetera.

9 There aren't a lot of these cases coming out
10 there. This is a very unusual case. And it's reflected
11 by the fact that the Ninth Circuit had to punt to the
12 Supreme Court, and the Supreme Court agreed to hear it.
13 I mean, this isn't happening every day. And it's L.A.
14 Unified bringing it because it's an issue that happens
15 for all districts; but they -- you know, not every
16 district can afford to bring a test claim like this.

17 MS. HALSEY: May I just add one thing?

18 The settlement agreement is captured in
19 statute. And Article III, section 3.5 of the California
20 Constitution does require us to presume that statutes
21 are constitutional, as the Commission, so...

22 MR. GREEN: I'm not arguing that it's -- well,
23 I won't say I'm not arguing, because you never know what
24 I might argue in appeal. So let's say maybe I'm
25 preserving that argument.

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1 MEMBER RAMIREZ: I have just a last question --
2 CHAIR ORTEGA: Go ahead.
3 MEMBER RAMIREZ: -- about precedential value of
4 this.
5 Just assume we were to allow this claim. Would
6 there be precedential value?
7 I have to say that in my months here, this is
8 probably one of the best-argued -- I'm not sure it trumps
9 our mandate -- but the best-argued cases I've heard.
10 MS. SHELTON: Our decisions are not
11 precedential, but there is a rule governing any quasi
12 judicial body that their decisions need to be consistent
13 and not arbitrary and capricious. And so you do have
14 also rules of administrative collateral estoppel that may
15 apply later, down the road.
16 So, yes, it does have a snowball -- it could
17 have a snowball effect.
18 MR. GREEN: Well, briefly.
19 I don't think so. This is just one test claim.
20 It is true, I do believe this is a pure legal issue. And
21 I hope I can persuade the Commission to do the right
22 thing and to grant the test claim. But it is a pure
23 legal issue, which would
24 be reviewed de novo in my 1094.5 mandamus and then on
25 appeal, et cetera.

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1 So, you know, I think that's where we are.

2 MEMBER RAMIREZ: I don't want to encourage
3 litigation, but that might be appropriate.

4 MR. GREEN: Let's hope the Commission goes the
5 right way here, and we won't have to do that.

6 CHAIR ORTEGA: Are there any additional
7 questions or comments?

8 *(No response)*

9 CHAIR ORTEGA: So we have a staff
10 recommendation to deny the test claim before us.

11 MEMBER ALEX: I'll move the staff
12 recommendation.

13 CHAIR ORTEGA: Is there a second?

14 MEMBER CHIVARO: I'll second.

15 CHAIR ORTEGA: A motion and a second.

16 MS. HALSEY: Motion by Ken Alex and a second by
17 Richard Chivaro.

18 I'll go ahead and call the roll.

19 Mr. Alex?

20 MEMBER ALEX: Aye.

21 MS. HALSEY: Mr. Chivaro?

22 MEMBER CHIVARO: Aye.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: *(No audible response)*

25 MS. HALSEY: Ms. Ortega?

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1 CHAIR ORTEGA: Aye.

2 MS. HALSEY: Ms. Ramirez?

3 MEMBER RAMIREZ: Aye.

4 MS. HALSEY: Mr. Rivera?

5 MEMBER RIVERA: Aye.

6 MS. HALSEY: Mr. Saylor?

7 MEMBER SAYLOR: *(No audible response)*

8 MS. HALSEY: Ms. Olsen, I didn't hear your
9 response.

10 MEMBER OLSEN: Aye.

11 MS. HALSEY: Thank you.

12 The motion carries.

13 CHAIR ORTEGA: Motion carries.

14 MR. GREEN: Did Mr. Saylor register a vote?

15 CHAIR ORTEGA: He did.

16 MEMBER SAYLOR: Aye.

17 MR. GREEN: Thank you very much for your time.
18 I appreciate it.

19 CHAIR ORTEGA: Item 4?

20 MS. HALSEY: Item 4.

21 Senior Commission Counsel Giny Chandler will
22 present Item 4, a test claim on *Race to the Top*.

23 MS. CHANDLER: Good morning.

24 This test claim alleges reimbursable
25 state-mandated costs related to three new education

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1 programs enacted by the Legislature in 2009 and 2010, to
2 make California competitive in the federal Race to the
3 Top education grant program.

4 Staff finds that the test-claim statutes and
5 regulation governing the State's Race to the Top Program,
6 Parent Empowerment Program, and Open Enrollment List
7 Program, impose new state-mandated activities on school
8 districts, resulting in increased costs mandated by the
9 State.

10 Staff further finds that the school improvement
11 grants have been awarded to some persistently lowest
12 achieving schools to implement one of the four
13 intervention models for turning a school around; and,
14 thus, these funds should be identified as offsetting
15 revenues.

16 Staff recommends that the Commission adopt the
17 proposed decision, partially approving the test claim.

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

20 MR. PALKOWITZ: Good morning. Art Palkowitz on
21 behalf of the claimant.

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

23 Ms. KISSEE: Jillian Kisse, Department of
24 Finance.

25 CHAIR ORTEGA: Thank you.

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1 Mr. Palkowitz?

2 MR. PALKOWITZ: Yes, thank you. Good morning.

3 As mentioned, this test claim involves new
4 activities that are meant to improve pupil achievement
5 throughout the state of California.

6 Once schools that are low-achieving are
7 identified, it provides parents with enhanced choices
8 for their students, it provides students with additional
9 options to allow them to attend schools outside of their
10 residence. It also empowers schools to create turnaround
11 models that involves increasing or changing staff, and
12 provides additional options as far as programs.

13 Upon a review of the staff analysis, the
14 claimant agrees with the activities that have been
15 recommended for funding for a new state mandate.

16 I would like an opportunity to respond to any
17 comments by any other agency.

18 CHAIR ORTEGA: Okay.

19 Ms. Lynch?

20 MS. LYNCH: The Department of Finance also
21 agrees with the staff analysis.

22 And we appreciate you calling out the SIG
23 funds. They are significant, and we believe there will
24 be considerable offsetting savings here.

25 Also, the Commission staff on page 16

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1 referenced additional funding. So to the extent that
2 there is additional funding out there, there will also be
3 additional offsetting savings.

4 But, again, we agree with the staff, and we
5 appreciate the acknowledgment of the offsetting savings.

6 CHAIR ORTEGA: Any questions or comments from
7 the members?

8 *(No response)*

9 CHAIR ORTEGA: No?

10 Is there a motion?

11 MEMBER RAMIREZ: Move the recommendation.

12 CHAIR ORTEGA: Moved by Ms. Ramirez.

13 MEMBER RIVERA: Second.

14 CHAIR ORTEGA: Second by Mr. Chivaro.

15 MS. HALSEY: Go ahead and call the roll?

16 MEMBER RIVERA: Rivera.

17 CHAIR ORTEGA: I didn't hear.

18 Sorry, it was Mr. Rivera who seconded.

19 MS. HALSEY: Mr. Alex?

20 CHAIR ORTEGA: He was to the right of me.

21 MEMBER ALEX: Aye.

22 MS. HALSEY: Did you get that, Dan?

23 THE REPORTER: Yes.

24 MS. HALSEY: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 CHAIR ORTEGA: Aye.

5 MS. HALSEY: Ms. Ramirez?

6 MEMBER RAMIREZ: Aye.

7 MS. HALSEY: Mr. Rivera?

8 MEMBER RIVERA: Aye.

9 MS. HALSEY: Mr. Saylor?

10 *(No response.)*

11 MS. HALSEY: The motion carries.

12 Item 5 was postponed to May, the May hearing.

13 Item 6, Commission Counsel Matt Jones will
14 present a parameters and guidelines amendment on *Sexually*
15 *Violent Predators*.

16 MR. JONES: Good morning. This is Item 6,
17 *Sexually Violent Predators* parameters and guidelines.

18 These parameters and guidelines pertain to the
19 new test-claim decision adopted for the *Sexually Violent*
20 *Predators* mandate.

21 The proposed parameters and guidelines are
22 effective July 1, 2011, pursuant to the filing date of
23 the redetermination request, and provide for the ending
24 of reimbursement for six of eight activities approved
25 in the prior test-claim decision, and continuing

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1 reimbursement for activities related to the preparation
2 of both county counsel and indigent defense counsel for
3 the state-mandated probable-cause hearing, and
4 transportation costs related to the state-mandated
5 probable-cause hearing.

6 Yesterday, representatives from the County of
7 San Diego contacted staff to raise an issue regarding
8 costs of housing of potentially sexually violent
9 predators pending or during the state-mandated
10 probable-cause hearing.

11 Staff explored this issue and determined that
12 while the Commission expressly struck reimbursement for
13 housing of potential sexually violent predators awaiting
14 trial, the findings did not specifically and expressly
15 address housing costs pending the probable-cause hearing.
16 And, therefore, the statement of decision will require a
17 clarification before adoption.

18 Staff would be pleased to answer questions
19 following testimony from the parties.

20 Will the parties and witnesses please state
21 your names for the record?

22 MR. BARRY: Timothy Barry, Office of County
23 Counsel, on behalf of the San Diego County District
24 Attorney's office, Probation Department, and Sheriff.

25 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of

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1 County of Los Angeles.

2 MR. OSAKI: Craig Osaki with the L.A. County
3 Public Defender's Office.

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

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

7 CHAIR ORTEGA: Okay, Mr. Barry?

8 MR. BARRY: Thank you.

9 In preparing for the hearing, I realized
10 yesterday, in reading over both the executive summary and
11 the proposed statement of decision, that in reading the
12 last two sentences on page 4 of the executive summary and
13 the last two sentences on page 10 of the statement of
14 decision, under section I, small I, which reads: The
15 Commission's findings state expressly that the approved
16 activity of transportation between the courthouse and
17 a secure facility for probable-cause hearings, quote,
18 "does not include housing potentially sexually violent
19 predators pending the probable-cause hearing or trial."

20 And then it cites a footnote to Exhibit E,
21 which is the new test-claim statement of decision at
22 page 55. When we went back and looked at page 55, the
23 quoted language does not appear there. And so I raised
24 that question with staff yesterday.

25 Now, the reason that's important is because

1 the next sentence within both the executive summary
2 and the proposed statement of decision says that
3 determination is final and no longer subject to
4 reconsideration; and, therefore, costs pertaining to
5 housing a potentially sexually violent predator are not
6 reimbursable in these parameters and guidelines.

7 Well, it's our position because the statement
8 of decision is, in fact, silent with respect to the
9 housing of sexually violent predators, that that is not
10 an issue that was previously decided by the Commission,
11 or certainly not expressly decided by the Commission.
12 So it's an appropriate subject matter for the discussion
13 today.

14 We have actually filed declarations in our
15 comments with respect to the housing costs that the
16 Sheriff incurs for housing the sexually violent predators
17 from the time that they're brought from state prison to
18 the county facilities through the actual trial.

19 In staff's comments in the actual statement of
20 decision, there is comment about -- and I'll read it:
21 However, whether or not the probable cause hearing is
22 held, the, quote, "stay in San Diego County," end quote,
23 for which the county seeks reimbursement ultimately
24 concludes with the SVP trial which the Commission has
25 determined is no longer reimbursable. The county

1 fails to allege an incremental increase in service or
2 costs that is required to house an inmate pending a
3 probable-cause hearing over and above that required to
4 house the same person only for trial.

5 So if there was any certainty with respect to
6 those costs, we actually allege what our daily costs
7 are, we can identify the period of time frame from when
8 they're brought to the county facilities through and
9 including the conclusion of the probable-cause hearing.

10 We understand that for the purposes of our
11 discussion today, the Commission has already decided that
12 the housing costs and other costs relating to trial are
13 not reimbursable. But with respect to the housing costs,
14 we believe those are something that should -- with
15 respect to the probable-cause hearing, those are
16 something that should be reimbursable.

17 The staff recommendation is that the costs for
18 transportation to the probable-cause hearing be
19 reimbursable; that the preparation of the attorneys for
20 the probable-cause hearing be reimbursable; that the
21 retention of professionals, investigators, and experts
22 for the probable-cause hearing be reimbursable. And we
23 see no reason why the housing costs relating to the
24 probable-cause hearing should not also continue to be
25 reimbursable.

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1 Mr. Osaki is here from the Los Angeles County's
2 Public Defender's Office who, in fact, if there is any
3 confusion with respect to how it actually works in
4 practice, I think he can address that issue with respect
5 to how things work in Los Angeles County.

6 MS. YAGHOBYAN: Thank you.

7 Just to add one point, not repeating what
8 Mr. Barry said; the problem with housing is like
9 sometimes these probable-cause hearings take, if not
10 years, it take months. And these inmates have to be
11 housed in the L.A. County Sheriff's Department jail
12 facility. So who is responsible for that cost?

13 So we are not talking about a small cost
14 related with the probable-cause hearing. This is a
15 huge cost. For L.A. County only, it is like almost
16 \$600,000 a year.

17 So like Mr. Barry said, if you are allowing
18 all those activities for probable-cause hearing, how
19 about the housing? So we believe the housing should be
20 reimbursable, too, for the probable-cause hearing which,
21 like I said -- and some inmates sometimes have more than
22 one probable-cause hearing. They go through one, they go
23 through the second one. And the whole time, they have to
24 be jailed in the L.A. County Sheriff's facilities. So we
25 think that that should be reimbursable, too, the housing

1 costs while, for a probable-cause hearing, they are
2 waiting.

3 MR. OSAKI: Members of the Commission and
4 Staff, my name is Craig Osaki. I'm the deputy in charge
5 of the L.A. County Public Defender's office SVP Branch.
6 I'm here today to just speak to two issues.

7 First, I want to thank the Commission staff for
8 its inclusion of costs related to necessary experts and
9 professionals for the probable-cause hearing. Experts
10 are a necessary part of our practice, and we would not
11 be competent without access to such services. So thank
12 you for that.

13 Second, I want to address this housing issue;
14 and I want to provide a little bit of background so that
15 you understand what happens to an individual from state
16 prison, and as they go through the SVP process.

17 When I read the statement of decision, I
18 thought that there may have been an assumption that the
19 person remains in county jail from the time they come
20 from state prison, all the way to the SVP trial. And
21 that just happens not to be the case.

22 What happens is that the individual subject to
23 the SVP petition is transported from state prison to the
24 county jail, and there he remains for perhaps several
25 months, until we prepare for the probable-cause hearing.

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1 Now, there is a statutory provision that
2 indicates that he does have a right to have this hearing
3 within ten days; but because of the complexities of the
4 case, it just almost never happens.

5 Now, once the probable cause is found by the
6 Court, the individual is generally transported to the
7 state hospital.

8 Now, the authority for this proposition is
9 Welfare and Institutions Code 6602.5, and the case of
10 *People versus Ciancio*. It's a 2003 California Appellate
11 Court decision -- Ciancio being C-I-A-N-C-I-O --
12 109 Cal.App.4th 175.

13 The individual will remain at the hospital
14 until such time the attorney is ready to proceed to
15 trial, whereupon the individual is then transferred back
16 to county jail to await his trial.

17 Now, since the costs associated with the
18 probable-cause hearing has been found to be reimbursable
19 but not the costs associated with the trial, so according
20 to the Commission's analysis, it would just seem
21 appropriate that the individual's first day at the
22 county jail prior to the probable-cause hearing would be
23 reimbursable, and then perhaps his second stay pending
24 trial perhaps would not be under that analysis.

25 But thank you for your time and attention.

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1 I'd be happy to answer any questions.

2 CHAIR ORTEGA: Finance?

3 MR. BYRNE: The housing issue, this is the
4 first we've heard of it when we got here this morning.
5 We haven't had a chance to analyze it or even take a look
6 at it.

7 The Governor's budget, which was heard on the
8 Assembly and Senate this week, includes funding for the
9 Activity 4 and Activity 8. And so I don't know if that
10 money is adequate to fund the housing. I don't know if
11 the housing issue is going to be sustained by the
12 Commission. And I kind of -- I look toward the staff
13 for direction here. The process is on its way; and,
14 you know, we really don't have any comment.

15 CHAIR ORTEGA: Okay, thank you.

16 Go ahead.

17 MR. JONES: First, let me say that Mr. Osaki
18 is correct, that my assumption in writing this analysis
19 was, indeed, that the potential SVP would remain in
20 county custody for the entire time pending trial. And
21 there was perhaps -- I don't want to say there was
22 nothing in the record to indicate otherwise; but there
23 wasn't enough in the record to indicate otherwise, to
24 clue me into the idea that we were talking about two
25 separate stays in county custody. And given that, I

1 think we probably -- I think we'd recommend that this --
2 well, the current statement of decision is probably not
3 correct then, and the parameters and guidelines.

4 MS. SHELTON: I was going to say, it needs to
5 be analyzed. Finance has not had the opportunity to talk
6 about it, think about it, and respond to that.

7 You know, all the declarations to this point,
8 as Matt indicated, there was a touch of housing
9 discussion in there, but it wasn't fleshed out. Most of
10 the arguments were really seeking reimbursement for, you
11 know, preparation of the probable-cause hearing.

12 I think it is a valid issue. And it sounds
13 like there's a lot of costs tied to that one particular
14 element. So it might be worth having further discussions
15 and briefing on the issue.

16 CHAIR ORTEGA: Can I ask Mr. Osaki a question?
17 What happens if there isn't space in the state
18 hospital?

19 MR. OSAKI: You know, actually, that just
20 hasn't been the case.

21 What's been unusual is that, from what I'm
22 aware of, the Coalinga State Hospital had been one of the
23 more underutilized state hospitals. And, in fact, they
24 were taking in not only just SVP individuals, but I
25 believe the Department of State Hospitals was also

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1 starting to transfer in like MDOs, mentally disordered
2 offenders, and other people just to kind of fill it up a
3 little bit.

4 So we have never -- I don't believe they've
5 ever dealt with an issue of overcrowding at that state
6 hospital.

7 CHAIR ORTEGA: Okay.

8 MR. BARRY: May I comment, please?

9 CHAIR ORTEGA: Yes.

10 MR. BARRY: In the comments that we filed with
11 the Commission with respect to the proposed parameters
12 and guidelines at page 3, I dedicated an entire page to
13 the process and the costs related to housing inmates; and
14 we also submitted a declaration, which is Attachment B,
15 from John Ingrassia, who is with the Sheriff's Department
16 and in charge of the housing of these SVP prisoners
17 during the course and time that they're at San Diego
18 County facilities.

19 So there is information in the record with
20 respect to those costs and what those costs consist of.
21 And it seems that perhaps if we had a motion to adopt
22 the proposed parameters and guidelines with an amendment
23 to include housing costs through and including the
24 conclusion of the probable-cause hearing, subject to
25 continuing that for 30 days or two months, to allow

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1 Finance to comment, if they deem it appropriate, then if
2 we need to come back at some point in time, we could do
3 that.

4 CHAIR ORTEGA: Yes, I mean, I would rather just
5 postpone the decision, the action today, and give Finance
6 a chance to respond and staff a chance to analyze further
7 this discussion, and then bring the..

8 MS. SHELTON: As Matt indicated, I think the
9 way the decision was written was based on two assumptions
10 that were not correct. So, you know, regardless, the
11 first one has to be changed and modified; and the second
12 was based on an assumption of fact that is different than
13 what Mr. Osaki was indicating.

14 So it would need to be rewritten, definitely,
15 on that part.

16 CHAIR ORTEGA: Okay, so procedurally, do we
17 need a motion to postpone, or can we just...?

18 MS. SHELTON: Today you can all agree to
19 postpone it.

20 CHAIR ORTEGA: Is there any objection to
21 postponing action on this item to a future hearing?

22 *(No response)*

23 CHAIR ORTEGA: Seeing none, that will be the
24 action.

25 Thank you, everyone.

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1 MR. BARRY: Thank you.

2 CHAIR ORTEGA: Okay, let's see, 7, 8, 9, and 10
3 were --

4 MS. HALSEY: They are all on consent, yes.

5 And Item 11 is reserved for county applications
6 for a finding of significant financial distress, or
7 SB 1033. No SB 1033 applications have been filed.

8 Item 12, Assistant Executive Director Jason
9 Hone will present the legislative update.

10 MR. HONE: Good morning, Commissioners.

11 Commission staff continues to monitor
12 legislation for bills that might affect the mandates
13 process. At this time, there are no new mandates bills
14 to report. However, AB 1861, which was introduced
15 February 19th, would amend the Budget Act of 2013 by
16 removing *Voter Identification Procedures* from the list
17 of suspended mandates, and would appropriate
18 approximately seven and a half million dollars to fund
19 that mandate, taking effect immediately as a budget bill.
20 This bill is currently in the Assembly Budget Committee.

21 Thank you.

22 CHAIR ORTEGA: Thank you.

23 MS. HALSEY: Thank you.

24 Item 13, Chief Legal Counsel Camille Shelton
25 will present the Chief Legal Counsel report.

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1 MS. SHELTON: On March 10th, 2014, the County
2 of San Diego and other counties have served the
3 Commission with a petition and writ of mandate for the
4 *SVP* redetermination, challenging the constitutionality
5 of those statutes and the Commission's decision on
6 redetermination.

7 CHAIR ORTEGA: Okay, thank you.
8 Heather?

9 MS. HALSEY: Item 14, Executive Director's
10 report.

11 In my report, you can see that we're well on
12 track to exceed our claims heard over last year, as
13 well as being just about complete with our test claims
14 and parameters and guidelines amendments and mandate
15 redetermination requests that are pending. In fact, all
16 of those claims are tentatively set for the next two
17 hearings. And after that, it's IRCs. And we're getting
18 really into the IRCs and starting to analyze those now.

19 Also, this week was the Commission's budget
20 hearings. We had our budget hearing in the Assembly and
21 the Senate. The Assembly didn't have really any
22 questions for us; they were really more focused on which
23 mandates to fund and suspend. And most of their
24 questions were targeted at Finance and the LAO.

25 The Senate, though, did have more questions

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1 for us. In particular, they did ask for a report on
2 how we were doing with our backlog reduction, and also
3 with our BCP from last year: Were we on target to
4 increase productivity, in line with what we had promised.
5 And I was able to answer that, yes, we are. So they
6 voted to approve our budget as proposed, in both
7 committees.

8 And that's all I have.

9 MEMBER RAMIREZ: I have a question.

10 CHAIR ORTEGA: Yes, go ahead.

11 MEMBER RAMIREZ: I have a question.

12 Thank you for that report.

13 Can you just elaborate a little on what your
14 response was to the Committee, or just to us generally,
15 about how you've accomplished this reduction of backlog?

16 MS. HALSEY: Well, I didn't get into that much
17 detail.

18 We did get two additional staff for this fiscal
19 year. So in our BCP last year, we had proposed the
20 additional staff. We had also laid out what our average
21 rate of production is per employee. And we anticipated
22 a 20 percent increase in items heard, which we are on
23 target to make. And so I had that all charted out for
24 them on a couple-page document.

25 And I didn't really get into -- I know we are

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1 doing a lot of other things, as well as streamlining the
2 process.

3 The expedited P's & G's, I did talk about that.
4 That has really speeded up the process. You know, we
5 started doing, as a policy, about a year or so ago,
6 expediting parameters and guidelines for all the matters
7 that are approved by the Commission. And what that means
8 is that the Commission staff then drafts the first draft
9 of parameters and guidelines rather than the claimant,
10 and the claimant then can comment on them.

11 And that does actually save a lot of time for
12 both the claimant and the Commission, and it gets the
13 parameters and guidelines heard in about two-thirds less
14 time than it takes under the traditional method. So that
15 is one of the ways we've sped things up.

16 MEMBER RAMIREZ: Thank you so much. That's
17 great.

18 CHAIR ORTEGA: Any other questions?

19 *(No response)*

20 CHAIR ORTEGA: Okay, are we ready to move into
21 closed session?

22 The Commission will meet in closed executive
23 session pursuant to Government Code section 11126(e) to
24 confer with and receive advice from legal counsel for
25 consideration and action, as necessary and appropriate,

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1 upon the pending litigation listed on the published
2 notice and agenda, and to confer with and receive advice
3 from legal counsel regarding potential litigation.

4 The Commission will also confer on personnel
5 matters pursuant to Government Code section 11126(a)(1).

6 We will reconvene in open session in
7 approximately 15 minutes.

8 *(The Commission met in closed executive*
9 *session from 11:07 a.m. to 11:17 a.m.)*

10 CHAIR ORTEGA: The Commission met in closed
11 executive session pursuant to Government Code section
12 11126(e)(2) to confer with and receive advice from legal
13 counsel for consideration and action, as necessary and
14 appropriate, upon the pending litigation listed on the
15 published notice and agenda, and to confer with and
16 receive advice from legal counsel regarding potential
17 litigation, and pursuant to Government Code section
18 11126(a)(1) to confer on personnel matters.

19 Is there any public comment on anything?

20 *(No response)*

21 CHAIR ORTEGA: With no further business to
22 discuss, we will be adjourned.

23 Thank you.

24 *(The meeting concluded at 11:18 a.m.)*

25 --oOo--

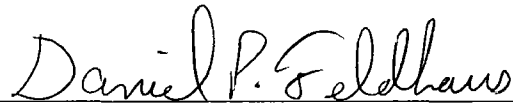
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 21st of April 2014.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter