

COMMISSION ON STATE MANDATES

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July 16, 2015

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Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road,
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San Diego, CA 92106

Dr. James Novak
Desert Sands Unified
School District
47-950 Dune Palms Road
La Quinta, CA 92253

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

And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Request to Amend Parameters and Guidelines
Immunization Records - Pertussis, 14-PGA-01 (11-TC-02)
Health and Safety Code Section 120335
Statutes 2010, Chapter 434 (AB 354)
Desert Sands Unified School District, Requester

Dear Mr. Palkowitz, Dr. Novak, and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **August 6, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, September 25, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about September 11, 2015. 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 1187.9(b) of the Commission's regulations.

Sincerely,

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

Heather Halsey
Executive Director

ITEM ____

DRAFT PROPOSED DECISION

PROPOSED AMENDMENT to PARAMETERS AND GUIDELINES

Health and Safety Code section 120335, as amended and replaced by
Statutes 2010, Chapter 434 (AB 354)

Immunization Records - Pertussis

14-PGA-01 (11-TC-02)

Desert Sands Unified School District, Requester

EXECUTIVE SUMMARY

This request to amend parameters and guidelines for the *Immunization Records - Pertussis* (*Pertussis*) program proposes to add a unit cost reasonable reimbursement methodology (RRM) of \$9.17 per eligible 7th grade pupil, adjusted each fiscal year for inflation, for all direct and indirect costs of the program, in lieu of requiring claimants to provide detailed documentation of actual costs incurred, beginning July 1, 2014.¹

I. Background

The *Immunization Record - Pertussis* decision was adopted by the Commission on State Mandates (Commission) on July 26, 2013, and approved reimbursement, beginning July 1, 2011, for school districts to verify whether pupils entering the 7th through 12th grades were fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. Beginning July 1, 2012, verification is required only for pupils entering 7th grade.

On December 6, 2013, the Commission adopted parameters and guidelines for reimbursement of the following activities: receiving and reviewing the written records of the pertussis vaccination; receiving and reviewing documentation showing a pupil's permanent medical or personal beliefs exemption; receiving and reviewing documentation showing a pupil's temporary exemption; advising the pupil's parent or guardian of the requirement to exclude the pupil from school if written evidence of the vaccination or exclusion is not provided within ten days; and reporting to the attendance supervisor any pupil excluded for attendance based on the immunization verification requirements.

II. Procedural History

On April 15, 2015, the Desert Sands Unified School District (District) filed a request to amend the parameters and guidelines.² On June 19, 2015, the Department of Finance (Finance)³ and the

¹ Initial claims for reimbursement for fiscal years 2011-2012 and 2012-2013 were due July 15, 2014, and claims for fiscal year 2013-2014 were due February 15, 2015; therefore if the Commission approves this request, the period of reimbursement for the amendment would begin on July 1, 2014 based on the filing date of the request (April 15, 2015), pursuant to Government Code section 17557(d)(1).

² Exhibit A, Request to Amend Parameters and Guidelines, April 15, 2015.

³ Exhibit B, Finance Comments on Request to Amend Parameters and Guidelines, June 19, 2015.

State Controller's Office (Controller)⁴ submitted written comments opposing the request to amend the parameters and guidelines. On July 14, 2015, Commission staff issued the draft proposed decision.

III. Staff Analysis

The District hired a consultant to develop the proposed unit cost of \$9.17 per 7th grade pupil, which is based on unaudited reimbursement claims received by the Controller from 232 school districts for fiscal year 2011-2012 and 175 schools for fiscal year 2012-2013, along with school district enrollment data from the California Department of Education (CDE). From these data sources, a per-pupil claim amount was calculated for each district submitting claims for the two years. The analysis excluded claims made by county offices of education because the District was unable to ascertain how many pupils were covered by those claims. In addition, for each year, one district was excluded from the analysis based on the extreme size of the claims relative to all other districts. Although the analysis was performed for both fiscal years, the recommendation for the adoption of the unit cost is based on findings for fiscal year 2012-2013 only, since the ongoing portion of the mandate applies only to incoming 7th grade pupils beginning that fiscal year. The results of the analysis for fiscal year 2011-2012 were used only as a check for reasonableness. The proposed unit cost of \$9.17 was calculated based on a weighted average of claims, after eliminating outliers.

The primary requirements for the development of an RRM under article XIII B, section 6 and Government Code sections 17557 and 17518.5 are to consider variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants for all costs mandated by the state. In addition, to be approved by the Commission, all requests to amend parameters and guidelines must be supported by substantial evidence in the record.⁵

Staff finds that the proposed unit cost of \$9.17 per pupil appears to be based on a consideration of the variation in costs among local government claimants. The proposal may also balance accuracy with simplicity, and reasonably represent the costs mandated by the state for this program. However, the Commission cannot analyze the merits of the proposal because there is not substantial evidence in the record to verify the data used to support the proposal. The RRM proposal is supported with a statistical analysis report prepared by a consultant allegedly based on unaudited reimbursement claims filed with the Controller and enrollment data from CDE for fiscal years 2011-2012 and 2012-2013. The consultant provides a certification in the report "that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief."⁶ That certification is sufficient to support the consultant's opinions and the methodology used to conduct the analysis.

However, the certification is not sufficient to support the underlying data used by the consultant to form the opinions. The underlying data purportedly consists of the costs claimed by school

⁴ Exhibit C, Controller's Comments on Request to Amend Parameters and Guidelines, June 19, 2015.

⁵ Government Code section 17559(b): "[A] claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record."

⁶ Exhibit A, Request to Amend Parameters and Guidelines, at p. 74.

districts for this program (i.e. the reimbursement claims) and enrollment data from CDE. The underlying data relied on by the consultant are out-of-court statements that have *not* been submitted for the record under oath or affirmation. California Code of Regulations, title 2, section 1187.5(c) requires that all oral or written representations of fact offered by any person shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief. Because neither the actual claims, signed under penalty of perjury, nor a declaration from the Controller that the numbers used in the analysis accurately reflect the claims submitted to the Controller have been submitted for the record, there is no evidence in the record to support the consultant's assertions.

Thus, with this record, the Commission cannot determine if the proposal is based on actual cost information from a representative sample of eligible claimants; the reliability of the cost data and enrollment numbers used by the District; whether the costs used to calculate the proposed unit cost were incurred only for the activities determined to be reimbursable by the Commission in the statement of decision; and whether the proposed unit cost reasonably represents the costs incurred by a school district to comply with the mandate for the fiscal years in the future.

In order for the Commission to properly consider the District's proposal, the District would need to submit copies of the actual reimbursement claims filed with the Controller that have been signed under penalty of perjury by school district claimants, with a certification from either the school districts or the Controller that the copies are true and correct copies of the reimbursement claims filed. Alternatively, since the Controller is required by law to receive reimbursement claims and report the amounts claimed to the Legislature,⁷ the Controller can provide a declaration that the information provided and used in the statistical analysis accurately reflects the costs claimed for this program for fiscal years 2011-2012 and 2012-2013. Pursuant to Evidence Code section 664, the Commission can presume, absent evidence to the contrary, that the official duty of the Controller in reporting the costs claimed for this program, has been regularly performed and is accurate. In addition, direct evidence supporting the enrollment data used would also have to be filed. In this respect, if the CDE publishes information that identifies enrollment by district for the fiscal years in question, the Commission may be able to take official notice of that information.⁸

IV. Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision denying the request to amend the parameters and guidelines, and authorize staff to make any technical, non-substantive changes following the hearing.

⁷ Government Code sections 17560, 17562(b).

⁸ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451, 452, and 1280.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Health and Safety Code section 120335, as
amended and replaced by Statutes 2010,
Chapter 434 (AB 354)

Filed April 15, 2015, by

Desert Sands Unified School District,
Requester

Case No.: 14-PGA-01 (11-TC-02)

Immunization Records - Pertussis

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

(Adopted September 25, 2015)

DECISION

The Commission on State Mandates (Commission) adopted this statement of decision during a regularly scheduled hearing on September 25, 2015. [Witness list will be included in the adopted 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 proposed decision to [approve/deny] the request to amend the parameters and guidelines by a vote of [Vote count will be included in the adopted decision].

I. BACKGROUND

This request to amend parameters and guidelines for the *Immunization Records - Pertussis* (*Pertussis*) program proposes to add a unit cost reasonable reimbursement methodology (RRM) of \$9.17 per eligible 7th grade pupil, adjusted each fiscal year for inflation, for all direct and indirect costs of the program, in lieu of requiring claimants to provide detailed documentation of actual costs incurred, beginning July 1, 2014.⁹

The *Immunization Record - Pertussis* decision was adopted by the Commission on July 26, 2013, and approved reimbursement, beginning July 1, 2011, for school districts to verify whether pupils entering the 7th through 12th grades were fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. Beginning July 1, 2012, verification is required only for pupils entering 7th grade.

⁹ Initial claims for reimbursement for fiscal years 2011-2012 and 2012-2013 were due July 15, 2014, and claims for fiscal year 2013-2014 were due February 15, 2015; therefore if the Commission approves this request, the period of reimbursement for the amendment would begin on July 1, 2014 based on the filing date of the request (April 15, 2015), pursuant to Government Code section 17557(d)(1).

The test claim statute was enacted in response to a pertussis epidemic in California. Under prior law, immunization against pertussis was required prior to the *first* admission to school, typically in kindergarten. The Department of Public Health found that routine childhood immunization against pertussis provided before kindergarten does not provide lasting immunity, that 7th through 12th grade pupils are at the highest risk of waning pertussis immunity, and that without intervention the pertussis epidemic will be prolonged.

On December 6, 2013, the Commission adopted parameters and guidelines for reimbursement of the following activities: receiving and reviewing the written records of the pertussis vaccination; receiving and reviewing documentation showing a pupil's permanent medical or personal beliefs exemption; receiving and reviewing documentation showing a pupil's temporary exemption; advising the pupil's parent or guardian of the requirement to exclude the pupil from school if written evidence of the vaccination or exclusion is not provided within ten days; and reporting to the attendance supervisor any pupil excluded for attendance based on the immunization verification requirements. These parameters and guidelines require school districts to claim reimbursement based on actual costs incurred, and retain all documents used to support the reimbursable activities during the period subject to audit.

More specifically, the following ongoing approved activities are the subject of this proposal:

Beginning July 1, 2012, only for students entering the 7th grade:

- (1) Receive and review the following documents for all pupils entering the 7th grade to determine whether to unconditionally admit or conditionally admit the pupil:
 - a) A written record of the pertussis vaccination (Tdap booster) that contains the name of the pupil, birth date of the pupil, the date of the pertussis vaccination, and the name of the physician or agency administering the vaccine; *or*
 - b) Documentation showing a pupil's permanent medical exemption or personal beliefs exemption to immunization. A permanent medical exemption shall be granted upon the filing of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. A personal beliefs exemption for the pertussis booster shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of minor, or the person seeking admission if an emancipated minor, that such pertussis booster immunization is contrary to his or her beliefs.
 - c) Documentation showing a pupil is temporarily exempted from immunization for medical reasons.

Pupils who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis shall be unconditionally admitted to grade 7. Pupils who have a temporary medical exemption shall be admitted to grade 7 on condition that the required immunization is obtained at the termination of the exemption.

Reimbursement is not required to perform activities generally required to admit students since those activities are not new. Reimbursement is limited to receiving and reviewing the above documents.

- (2) If it is determined that a pupil seeking admission lacks documentation that he or she has been fully immunized against pertussis, and does not have a permanent medical exemption or a personal belief exemption to the pertussis immunization, advise the pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.
- (3) For any already admitted pupil who is later found not to have complied with requirements for conditional admission, notify that pupil's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
- (4) Report to the attendance supervisor or building administrator any pupil excluded from further attendance who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

In addition, the following activities are specifically excluded from reimbursement: (1) reporting the immunization status of students to county health departments or the state; (2) recording and maintaining student immunization records; (3) periodically reviewing student immunization records to ensure compliance with the test claim statute. These activities are not required to implement the test claim statute and are instead addressed by the Department of Public Health regulations that were not properly pled and therefore beyond the Commission's jurisdiction.

II. POSITIONS OF THE PARTIES

A. Requester's Position

The Desert Sands Unified School District proposes to add a unit cost RRM of \$9.17 per eligible pupil, adjusted for inflation, in lieu of requiring claimants to provide detailed documentation of actual costs incurred. After adjusting for inflation, for fiscal year 2014-2015 the proposed unit cost rate is \$9.47.¹⁰

In support of the request, the District provides a Statistical Analysis of Pertussis Mandate Claims (statistical analysis) report prepared by Capitol Matrix Consulting, which presents the findings of the "statistical analysis of reimbursement claims submitted by school districts for the Pertussis mandate contained in AB 354 (Chapter 434, Statutes of 2010)."¹¹ The report states that the proposal is based on unaudited claims data received by the Controller, along with school district enrollment data from CDE for fiscal years 2011-2012 and 2012-2013. From these data sources, a per-pupil claim amount was calculated for each district submitting claims during the two years.

For the analysis, the report excluded claims made by county offices of education because they were unable to ascertain how many pupils were covered by those claims. One district in each

¹⁰ Exhibit A, Request to Amend Parameters and Guidelines, at pp. 1, 10.

¹¹ The report is in Exhibit A, Request to Amend Parameters and Guidelines, at pp. 65-87.

year was excluded based on the extreme size of the claims relative to all other districts. In both cases, the claims exceeded \$100 per pupil – amounts that were nearly double the second largest claim made in each year, and over ten times the overall average claim.¹² Although the analysis was performed for both fiscal years, the recommendation for the adoption of the unit cost is based on findings for fiscal year 2012-2013 only, since the ongoing portion of the mandate applies only to incoming 7th grade pupils beginning that fiscal year. The results of the analysis for fiscal year 2011-2012 were used only as a check for reasonableness. The report explains the analysis as follows:

Controller’s Office claims data. For purposes of this study, we analyzed claims data provided to us by the state Controller’s Office for fiscal years 2011-12 and 2012-13. The data for 2011-12 included claims for 7th through 12th grades for 232 districts, superintendents, and county offices of education, totaling \$6.9 million. The data for 2012-13 includes claims from 175 school districts, superintendents and county offices of education totaling \$1.7 million. The smaller amount of claims in 2012-13 is primarily related to the smaller number of students for which review of immunization records is required. As noted above, only 7th grade students are affected by the mandate in 2012-13 and thereafter.

The Controller’s data for both years includes the total dollar value of claims for each district, as well as a breakout of how the costs are distributed among the four reimbursable activities. However, the Controller’s data does not include information regarding the specific number of students involved in each activity. Thus, the data is not amenable to creation of separate reimbursement rates for each activity.

School enrollment data. To determine the cost-per-student claim amounts, we extracted from the California Department of Education database information on enrollment by grade level for each district submitting claims under this mandate. Next, we backed out the number of students in each district that were enrolled in charter schools (which are ineligible to claim mandate reimbursements). We then divided claim amounts for each district by the number of non-charter school students in the 7th through 12th grades for 2011-12, and by non-charter school students in the 7th grade for 2012-13, to arrive at an average per-student claim amount for each of the districts.

For our analysis, we excluded claims made by county offices of education and superintendents of public instruction because we were unable to ascertain how many students were covered by those claims. We also excluded one district in each year based on extreme size of the claims relative to all other districts. In both cases, the claims exceeded \$100 per student – amounts that were nearly double the second largest claim made in each year, and over ten times the overall average claim.

After these exclusions, the remaining dataset on which we conducted our analysis included 214 districts with claims totaling \$6.6 million in 2011-12, and 158

¹² For example, the report indicates that Huntington Beach City Elementary had an average claim of \$136.20 per student in fiscal year 2011-2012, and that Central Unified had an average claim of \$105.00 per student in fiscal year 2012-2013. The report states that the claims from these districts were excluded from the analysis. (Exhibit A, at pp. 77, 83.)

districts with claims totaling \$1.6 million in 2012-13. The data used in our analysis are included in Appendix 2 of the report.¹³

For fiscal year 2012-2013, the distribution of per-pupil claims by district, for over one half of the districts “(which covered nearly two-thirds of the 7th grade students in districts making claims in 2012-13),” ranged from \$1 to \$10. Another one-quarter of the districts submitted claims ranging from \$10 to \$20 per pupil, and the remaining quarter submitted claims ranging from \$20 to \$60 per pupil.¹⁴ The report calculates the average and median amounts claimed in 2012-2013 for performing the mandated activities for 7th graders as follows:

- The unweighted average claim for all districts was \$12.87 per pupil. The unweighted average reflects the expected size of a claim drawn from a randomly selected district, regardless of the district’s size.
- The weighted average claim, taking into account the relative number of 7th graders in each district, was \$9.64. The weighted average reflects the expected size of a claim associated with a randomly selected pupil in a district. In the weighted calculation, the number of pupils in each district matters. Districts with 1,000 pupils would have 10 times the weight of the smaller district.
- After eliminating outliers (approximately 5 percent of the districts) the weighted average was \$9.17 per pupil. The methodology used to eliminate outliers compared actual per-pupil claim levels to the expected value for each district, taking into account its size and proportion of claims attributable to follow-up activities. “Specifically, we (1) estimated a regression-based equation relating per-student claiming amounts to district size and percentage of claims related to follow-up activities, (2) calculated the standard error of the estimate (the average variation around the predicted value), and (3) eliminated observations that were more than two standard deviations from their expected values.” The report states that the advantage of this methodology is it does not automatically eliminate districts with high or low claim rates. Rather, it compares each district’s per-pupil claim to its expected value, given its size and proportion of claims related to follow-up activities.
- The median per-district claim amount was \$8.88 per pupil.¹⁵

The District asserts that the proposed RRM based on the statistical analysis resulting in \$9.17 per pupil, considers the variation of costs among school districts and implements the mandate in a costs effective manner because it is based on the number of pupils determined to be immunized at each district.¹⁶

B. Department of Finance Position

On June 19, 2015, Finance submitted written comments on the District’s request to amend the parameters and guidelines. Finance argues in its comments that “[t]o the extent that school districts desire simplicity of per unit funding for mandated activities, they can participate in the Mandate Block Grant program,” which in the 2015 budget, includes \$1.7 million Proposition 98

¹³ *Id.* at p. 68.

¹⁴ *Ibid.*

¹⁵ *Id.* at pp. 66, 70, 72.

¹⁶ Exhibit A, Request to Amend Parameters and Guidelines, at pp. 10-11, 67.

General Funds to specifically reimburse local educational agencies for mandated costs. Finance also argues that adoption of an RRM is premature because the Controller has not conducted field audits of the reimbursement claims submitted for the *Pertussis* program and therefore it is impossible to substantiate the validity of the costs claimed to date. Finance asserts that this could result in the establishment of a base funding level on unaudited claims, which could prove detrimental to the state if the true costs are ultimately determined to be lower. Finally, Finance asserts that because the Controller has not audited the claims, and since the Controller historically disallows claimed costs in excess of 50 percent on average, it would be inappropriate to adopt an RRM for the *Pertussis* program based on unaudited data.¹⁷

C. State Controller Position

On June 19, 2015, the State Controller's Office submitted written comments on the request to amend the parameters and guidelines. The Controller asserts that the proposed RRM should not be adopted "since the unit cost per student shows significant variances ranging from \$1 to \$105."¹⁸

III. DISCUSSION

The District proposes to amend Section V. of the parameters and guidelines to include a unit cost RRM in lieu of filing detailed documentation of actual costs, based on evidence of the average costs of complying with the mandate. The following analysis will examine the statutory and constitutional requirements of an RRM, and then apply those requirements in considering whether the District has presented substantial evidence which would support a legally sufficient Commission decision to amend the parameters and guidelines as requested.

A. The Requirements for Adopting a Reasonable Reimbursement Methodology

1. The RRM shall consider the variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse eligible claimants for costs mandated by the state.

Article XIII B, section 6 provides: "[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]..." This reimbursement obligation was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."¹⁹ Section 17561(a) states: "[t]he state *shall* reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514." (Emphasis added.) The courts have interpreted the Constitutional and statutory scheme as requiring "full" payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.²⁰

¹⁷ Exhibit B, Finance Comments on Request to Amend Parameters and Guidelines, pp. 1-2.

¹⁸ Exhibit C, Controller's Comments on Request to Amend Parameters and Guidelines, pp. 1-2.

¹⁹ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

²⁰ *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.²¹ Prior section 17557 provided authority for the Commission, extending back to 1984, to “adopt an allocation formula or uniform allowance.”²² The current version of section 17557 provides, and has since 2004, that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider [an RRM] that balances accuracy with simplicity.”²³

Express statutory authority for the adoption of an RRM was originally enacted in 2004, and was amended in 2007 to promote greater flexibility in the adoption of an RRM.²⁴ The former section 17518.5 provided that an RRM must “meet the following conditions:”

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.²⁵

In a 2007 report, the Legislative Analyst’s Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the SCO’s audit reductions. The report identifies, under the heading “Concerns With the Mandate Process,” the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”) typically require local governments to document their actual costs to carry out each element of the mandate.

XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

²¹ Government Code section 17500 et seq.

²² Government Code section 17557 (Stats. 1984, ch. 1459).

²³ Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

²⁴ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

²⁵ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856)).

- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller’s Office.

The LAO’s recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute²⁶

The LAO’s recommendations were implemented through Statutes 2007, chapter 329 (AB 1222) which amended 17518.5 to define an RRM as follows:

- (a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs
- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party.²⁷

²⁶ “State-Local Working Group Proposal to Improve the Mandate Process,” Legislative Analyst’s Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 2856 (2004), concurrence in Senate Amendments of August 17, 2004; Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007. These bill analyses identify the purpose of the RRM process is to “streamline the documentation and reporting process for mandates.”; Kaufman & Broad Communities, Inc. v. Performance Plastering (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst’s Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

²⁷ Government Code section 17518.5 (b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

Thus, Government Code section 17518.5, as amended in 2007, provides a flexible definition, which focuses on the sources of the information used to develop an RRM,²⁸ and only requires that the end result “balances accuracy with simplicity.” Given the LAO’s “Concerns with the Mandates Process” to which the amendments were addressed, the new statute should also be interpreted as imposing less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.²⁹

As noted above, an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of other local costs.”³⁰ Section 1183.12 of the Commission’s regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”³¹ The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly, the regulations provide that a “representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”³² The statute provides that an RRM “[w]henver possible... shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs.”³³ There is no requirement that the data upon which an RRM is based include actual cost claimed, or audited data as argued by Finance; an “approximation” is sufficient. The section expressly provides for an RRM as an alternative to the requirement for detailed documentation of actual costs.³⁴

Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity.*”

By determining a unit cost RRM based on approximations or averages of local costs pursuant to section 17518.5, some local entities may receive more than their actual costs incurred to comply with a state-mandated program and some may receive less. And, thus, for any given program with a unit cost, there may be some entities that are not reimbursed the full costs actually incurred, as the courts have determined is required by article XIII B, section 6. Nevertheless, the Legislature has the power to enact statutes, such as Government Code section 17518.5, that provide “reasonable” regulation and control of the rights granted under the Constitution. The

²⁸ Government Code section 17518.5 (as amended, Stats. 2007, ch. 329 (AB 1222)).

²⁹ *Kaufman & Broad Communities, supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

³⁰ Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

³¹ Register 2008, number 17.

³² Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

³³ Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

³⁴ See Exhibit X, Assembly Floor Analysis, AB 1222 [“Establishes a streamlined alternative state mandate reimbursement process...”].

Commission must presume that Government Code section 17518.5 meets this standard and is constitutionally valid. Additionally, the Commission has the duty of applying Government Code section 17518.5 in a constitutional manner. If the Commission approves a unit cost that does not comply with the requirements of section 17518.5 and does not represent a reasonable approximation of costs incurred by an eligible claimant to comply with the mandated program, then the Commission's decision could be determined unconstitutional and invalid by the courts.

Based on the foregoing, the Commission finds that the primary requirements for the development of an RRM are to consider variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants for costs mandated by the state.

2. The RRM must be based on substantial evidence in the record.

a. *Substantial evidence standard for Commission proceedings*

Government Code section 17559 requires that Commission decisions be based on substantial evidence in the record. Section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, "to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence."³⁵

Code of Civil Procedure section 1094.5, in turn, provides:

Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. *In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.*³⁶

The latter finding is required for Commission decisions: when reviewing a decision of an administrative body exercising quasi-judicial power, "the reviewing court is limited to the determination of whether or not the decision is supported by substantial evidence and the court may not substitute its view for that of the administrative body, nor reweigh conflicting evidence."³⁷ Moreover, Government Code section 17559 expressly "requires that the trial court review the decision of the Commission under the substantial evidence standard."³⁸

The evidence required to adopt an RRM is necessarily more relaxed than an actual cost reimbursement methodology.³⁹ However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission's findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be

³⁵ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

³⁶ Code of Civil Procedure section 1094.5 (Stats. 2011, ch. 296 § 41 (AB 1023)).

³⁷ *Board of Trustees of the Woodland Union High School District v. Munro* (Cal. Ct. App. 3d Dist. 1958) 163 Cal.App.2d 440, 445.

³⁸ *City of San Jose v. State* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, 1810.

³⁹ See Government Code 17518.5 [Statute employs terms like "projections;" "approximations"].

harmonized with the statutory framework as a whole.⁴⁰ In 2011, the Commission clarified its regulations to specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.⁴¹ Thus, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM.

b. Evidence rules for Commission proceedings.

The Commission is not required to observe strict evidentiary rules, but its decisions cannot be based on hearsay evidence alone. As indicated above, substantial evidence in the record is required to support the findings of the Commission. The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.⁴²

Section 1187.5(a) of the Commission's regulations provides that when exercising the quasi-judicial functions of the Commission, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."⁴³ This regulation is borrowed from the evidentiary requirements of the Administrative Procedures Act (APA), which contains substantially the same language.⁴⁴ Section 1187.5(c) requires that oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of

⁴⁰ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

⁴¹ California Code of Regulations, Title 2, section 1187 (Register 2010, No. 44.)

⁴² *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. The board based its denial of land use permit for a race track on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to "reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." *Id.* at p. 456.

⁴³ Code of Regulations, Title 2, section 1187.5.

⁴⁴ Government Code section 11513.

perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.

Both the Commission's regulations, and the APA provisions in the Government Code, provide that hearsay evidence is admissible if it is inherently reliable, but *will not be sufficient in itself* to support a finding unless the evidence would be admissible over objection in a civil case with a hearsay exception.⁴⁵ Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence.⁴⁶

Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated. Under the evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination. However, under the relaxed rules of evidence in section 1187.5 of the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁴⁷

Out-of-court statements that are *not* made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence alone cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁴⁸ There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁴⁹

In addition, the Commission may take official notice of any facts which may be judicially noticed by the courts.⁵⁰ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.

Section 1187.5(d) further provides that each party has the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing witnesses. The regulation further states that "[i]f declarations are to be used in lieu of testimony, the party proposing to use the declarations shall comply with Government Code section 11514."⁵¹ Government Code section 11514, in turn, provides:

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in

⁴⁵ Code of Regulations, Title 2, section 1187.5; Government Code section 11513.

⁴⁶ California Code of Regulations, title 2, section 1187.5.

⁴⁷ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁴⁸ *People v. Cudjo* (1993) 6 Cal.4th 585.

⁴⁹ See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁵⁰ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

⁵¹ California Code of Regulations, Title 2, section 1187.5.

subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, *shall be given the same effect as if the affiant had testified orally*. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.⁵²

Note that the Commission’s regulations use the word “declaration,” and the Government Code refers to an “affidavit.” An affidavit, by definition, if it is to be used before a court, must “be taken before any officer authorized to administer oaths,” usually a judge.⁵³ But under the Code of Civil Procedure, section 2015.5, a declaration made *under penalty of perjury* is given the same force and effect as an affidavit sworn before an authorized officer. Such declaration must be in writing, must be “subscribed by him or her,” and must name the date and place of execution.⁵⁴

For expert testimony, an expert must be qualified, pursuant to section 720 of the Evidence Code, which provides:

(a) A person is qualified to testify as an expert if he has special knowledge, skill, expertise, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

(b) A witness’ special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.⁵⁵

The California Supreme Court has held that an expert witness is qualified “if his peculiar skill, training, or experience enable him to form opinion that would be useful to the jury.”⁵⁶ And in order to lay the foundation to introduce expert testimony, “[it is] the province of the court to determine, from the examination as to the witness’ qualifications, whether he [is] competent to testify as an expert.”⁵⁷ An expert’s testimony is intended to make complicated facts or information more understandable to the fact finder, and in so doing may rely on any information, including that which is not admissible in itself, but may not make legal conclusions.⁵⁸

⁵² Government Code section 11514(a) (Stats. 1947, ch. 491 § 6) [emphasis supplied].

⁵³ Code of Civil Procedure section 2012 (Stats. 1907, ch. 393 § 1).

⁵⁴ Code of Civil Procedure section 2015.5 (Stats. 1980, ch. 889 § 1).

⁵⁵ Evidence Code section 720 (Stats. 1965, ch. 299 § 2).

⁵⁶ *People v. Davis* (1965) 62 Cal.2d 791, at p. 800.

⁵⁷ *Bossert v. Southern Pacific Co.* (1916) 172 Cal. 504, at p. 506.

⁵⁸ Evidence Code section 805; *WRI Opportunity Loans II LLC v. Cooper* (Cal. Ct. App. 2d Dist. 2007) 154 Cal.App.4th 525, at p. 532, fn 3 [“Generally, Evidence Code section 805 permits expert testimony on the ultimate issue to be decided by the fact finder. However, this rule does not ... authorize ... an ‘expert’ to testify to legal conclusions in the guise of expert opinion. Such legal conclusions do not constitute substantial evidence.” (internal citations omitted)].

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge:

- Commission decisions must be supported by “substantial evidence” under Government Code section 17559.
- Any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely. Oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant’s personal knowledge, information, or belief.⁵⁹
- Hearsay evidence may be used to supplement or explain, although it shall not be sufficient alone to support a finding unless admissible over objection in civil actions.⁶⁰
- Under Government Code section 11514, as referenced in the Commission’s regulations, an affidavit or declaration may be “given the same effect as if the affiant had testified orally,” if properly noticed and an opportunity to cross-examine the affiant is given.⁶¹
- Expert testimony, in the form of an affidavit or declaration is admissible if the Commission finds a witness qualified by special skill or training, and the testimony is helpful to the Commission.
- The Commission may take official notice of any facts which may be judicially noticed by the courts, including official acts of any legislative, executive, or judicial body and records of the court.
- Furthermore, surveys and other cost analyses of eligible claimants as a method of gathering cost data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission’s regulations and the evidence rules, as discussed above.⁶²

B. The proposed RRM is supported only by the consultant’s report, which contains assertions of fact that are not supported by substantial evidence in the record.

Finance and the Controller both oppose the proposed RRM. The Controller states that the cost per pupil shows significant variance, ranging from \$1 to \$105. Finance asserts that the Commission should deny the request because the underlying data has not been audited by the Controller. Finance further asserts that if school districts want simplicity in claiming costs, the education mandates block grant, which provides funding for this program, is available to school district claimants.

The District’s proposal is based on the consultant’s review of the costs per pupil allegedly claimed by 232 school districts for fiscal year 2011-2012 and 175 schools for fiscal year 2012-2013. Because of the variance of costs claimed by different school districts, the consultant

⁵⁹ California Code of Regulations, title 2, section 1187.5.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Government Code section 17518.5; Code of Regulations, title 2, section 1183.13.

excluded the extreme costs claimed (including the claim of \$105 per pupil) from the analysis, and proposed a methodology that eliminates “observations that were more than two standard deviations from their expected values.” Neither Finance nor the Controller have specifically addressed or objected to the District’s statistical analysis, the methodology used, or the consultant’s findings. And, as indicated above, the fact that the underlying data has not been audited does not defeat the request. Government Code sections 17557 and 17518 specifically authorize the Commission to adopt a unit cost RRM in the original parameters and guidelines *before* reimbursement claims are filed. In addition, the education block grant is governed by Government Code section 17581.6, which authorizes a school district to receive block grant funding, in lieu of filing reimbursement claims with the Controller, for costs mandated by the state for over 40 state-mandated programs; this program is included in the block grant beginning on July 1, 2015 (one year after the potential period of reimbursement for this request). If a school district “elects” to receive block grant funding in a given fiscal year, it must submit a letter to the Superintendent of Public Instruction. School districts are not required to participate in the block grant funding program, any may continue to request reimbursement through the parameters and guidelines. Nor does section Government Code section 17518.6 defeat the right of a local government claimant that does not participate in the block grant program to request a parameters and guidelines amendment to add a unit cost RRM, or defeat the authority of the Commission to approve such a request.

The Commission finds that the proposed unit cost of \$9.17 per pupil appears to be based on a consideration of the variation in costs among local government claimants. The proposal may also balance accuracy with simplicity, and reasonably represent the costs mandated by the state for this program. However, the Commission cannot analyze the merits of the proposal because there is not substantial evidence in the record to verify the data used to support the proposal.

The RRM proposal is supported with a statistical analysis report prepared by a consultant based on unaudited reimbursement claims filed with the Controller and enrollment data from CDE for fiscal years 2011-2012 and 2012-2013. The consultant provides a certification in the report “that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.”⁶³ That certification is sufficient to support the consultant’s opinions and the methodology used to conduct the analysis.

However, the certification is not sufficient to support the underlying data used by the consultant to form the opinions. The underlying data purportedly consists of the costs claimed by school districts for this program and enrollment data from CDE. Since the consultant is not employed by a school district or CDE, there is no evidence that the consultant has any first-hand knowledge of the actual costs claimed by school districts or pupil enrollment data for fiscal years 2011-2012 and 2012-2013.

Rather, the consultant’s report states that the analysis is based on a review of data maintained by the Controller’s Office and CDE. The underlying data relied on by the consultant are out-of-court statements that are *not* provided in this record under oath or affirmation. California Code of Regulations, title 2, section 1187.5(b) requires that all oral or written representations of fact offered by any person shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant’s personal knowledge, information, or belief. The District is using the out-of-court responses to prove the truth of the matter asserted; for example that the

⁶³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 74.

“proposed unit cost rates are derived from annual reimbursement claim cost data pursuant to the Statement of Reimbursable activities in the parameters and guidelines that were adopted by the Commission and are presumed to be the most cost efficient manner of implementing the mandated activities for the program” and that “the proposed uniform cost allowance considers the variation in costs among the districts to implement the mandate in a cost efficient manner because they are dependent on the number of students determined to be immunized at each district.”⁶⁴

Thus, with this record, the Commission cannot determine if the proposal is based on actual cost information from a representative sample of eligible claimants; the reliability of the cost data and enrollment numbers used by the District; whether the costs used to calculate the proposed unit cost were incurred only for the activities determined to be reimbursable by the Commission in the test claim statement of decision and parameters and guidelines; and whether the proposed unit cost reasonably represents the costs incurred by a school district to comply with the mandate for the fiscal years in the future.

In order for the Commission to properly consider the District’s proposal, the District would need to submit copies of the actual reimbursement claims filed with the Controller that have been signed under penalty of perjury by school district claimants, with a certification from either the school districts or the Controller’s Office that the copies are true and correct copies of the reimbursement claims filed.⁶⁵ Alternatively, since the Controller is required by law to receive reimbursement claims and report the amounts claimed to the Legislature,⁶⁶ the Controller can provide a declaration that the information provided and used in the statistical analysis accurately reflects the costs claimed for this program for fiscal years 2011-2012 and 2012-2013. Pursuant to Evidence Code section 664, the Commission can presume, absent evidence to the contrary, that the official duty of the Controller in reporting the costs claimed for this program, has been regularly performed and is accurate. In addition, direct evidence supporting the enrollment data used would also have to be filed. In this respect, if the CDE publishes information that identifies enrollment by district for the fiscal years in question, the Commission may be able to take official notice of that information.⁶⁷

Based on this record, however, the proposed RRM is not supported by substantial evidence in the record.

IV. CONCLUSION

There is not substantial evidence in the record to approve the request to amend the parameters and guidelines and, therefore, the request is denied.

⁶⁴ *Id.* at p. 11

⁶⁵ See, Evidence Code section 1530.

⁶⁶ Government Code sections 17560, 17562(b).

⁶⁷ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451, 452, and 1280.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 July 16, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Request to Amend Parameters and Guidelines

Immunization Records - Pertussis, 14-PGA-01 (11-TC-02)

Health and Safety Code Section 120335

Statutes 2010, Chapter 434 (AB 354)

Desert Sands Unified School District, Requester

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 July 16, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/8/15

Claim Number: 14-PGA-01 (11-TC-02)

Matter: Immunization Records - Pertussis

Requester: Desert Sands Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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