

**DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)
PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)
EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
48918, 48918.5, 48923, 48926

As Amended by Statutes 1995, Chapters 972 and 974;
Statutes 1996, Chapters 915 937, and 1052; Statutes 1997, Chapter 637;
Statutes 1998, Chapter 498; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147;
Statutes 2001, Chapter 116

By San Juan Unified School District, Kern County Superintendent of Schools, Claimants

Beginning Fiscal Year 2012-2013 Consolidated with

PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)

Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;
Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)

Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916, and 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes
1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622; Statutes 1987,
Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters
1255, 1256, and 1257; Statutes 1994, Chapter 146

PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668;
Statutes 1983, Chapter 498

By the San Diego Unified School District, San Diego County Office of Education,
Claimants

This draft staff analysis, issued with the six sets of parameters and guidelines, is intended to explain: (1) how the attached parameters and guidelines reflect the statement of decision for the *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan For Expelled Pupils* test claims, and (2) how the parameters and guidelines are consistent with and (beginning fiscal year 2012-2013) consolidated with the preexisting parameters and guidelines for the *Pupil Suspensions from School, Pupil Expulsion from School, and Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) program (sometimes referred to as “preexisting parameters and guidelines”).

STAFF ANALYSIS

Claimants

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| San Diego Unified School District: | Pupil Expulsions from School (CSM-4455), Pupil Suspensions from School (CSM-4456) |
| San Diego Unified School District, San Diego County Office of Education: | Pupil Expulsion Appeals (CSM-4463) |
| San Juan Unified School District: | Pupil Expulsions II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18), Pupil Suspensions II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17) |
| Kern County Superintendent of Schools: | Educational Services Plan For Expelled Pupils (97-TC-09) |

I. Background

Attached are six sets of parameters and guidelines that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*. Each subsequent set of parameters and guidelines for these test claims adds activities that correspond to the statutes with later operative dates (between 1995 and 2002) that were determined by the Commission on State Mandates (Commission) to impose reimbursable state-mandated activities on school districts (including county offices of education). The six sets of parameters and guidelines, each covering one or more fiscal years, are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

Suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463), which relate to the statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

Beginning with the sixth (or final) parameters and guidelines (fiscal year 2012-2013 and beyond), all reimbursable activities from the preexisting test claims: *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under this set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under the preexisting parameters and guidelines. Following is the background on these preexisting parameters and guidelines.

A. Pupil Suspensions from School (CSM 4456)

On December 19, 1996, the Commission adopted its statement of decision determining that certain provisions of Education Code section 48911, subdivisions (b) and (e), impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The mandate is limited to the following reimbursable activities for suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive (October 11, 1993 to December 31, 1993):

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable (§ 48911, subd. (b));¹ and
- A report of the cause of each school suspension to the district board. (§ 48911, subd. (e).)

B. Pupil Expulsions from School (CSM 4455)

On May 26, 1997, the Commission adopted its statement of decision, and on May 26, 2005, adopted its amended statement of decision pursuant to the California Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, finding that certain provisions of the Education Code impose a new program or higher level of service on school districts within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514:

To suspend a pupil for possessing a firearm,² and recommend expulsion of a pupil for:

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion. (§ 48915, subd. (a), Stats. 1983, ch. 498 Stats. 1993, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

When a pupil is expelled for any of the following:

- (a) Causing serious physical injury to another person, except in self defense;

¹ References are to the Education Code unless otherwise indicated.

² The statement of decision also lists: From October 11, 1993 to December 31, 1993, suspending a pupil for possession of a firearm, knife of no reasonable use to the student or possession of an explosive.

- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion.

Then it is reimbursable to include specified provisions in the notice of hearing to the pupil, and on request, allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as specified. (§ 48915, subd. (a), Stats. 1983, ch. 498, Stats. 1983, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

If the pupil is expelled for the following:

From October 11, 1993, to December 31, 1993, for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 48915, subd. (b), Stats. 1993, ch. 1255.)

From January 1, 1994 to the present, for possession of a firearm. (§ 48915, subd. (b), Stats. 1993, ch. 1256.)

Then it is reimbursable to: (1) send written notice of specified provisions (§ 48918, subd. (i)); (2) maintain a record of each expulsion, including the cause thereof (§ 48918, subd. (j).); and (3) record expulsion orders and the causes thereof as specified, and, on request, forward the record to any school in which the pupil subsequently enrolls. (§ 48918, subd. (j).)

For a pupil expelled for possessing a firearm, the following is reimbursable: (1) Set a date when the pupil may apply for readmission to a district school; (2) Make available to the same pupil and his or her parent or guardian a description of the procedure for readmission; and (3) Adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission. (§ 48916.)

The following were also found to be reimbursable for school districts that do not have an interdistrict transfer agreement with another school district: (1) determine whether a pupil expelled by another school district, would pose a potential danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion (§ 48915.1, subd. (d)); (2) respond to a receiving district's request for recommendation (§ 48915.1) if the pupil is expelled for the following offenses: (a) from October 11, 1993 to December 31, 1993, for possession of a firearm, knife of no reasonable use to the student, or explosive; (§ 48915, subd. (b), Stats. 1993, ch. 1255); and (b) from January 1, 1994 to the present, for possession of a firearm (§ 48915, subd. (b), Stats. 1993, ch. 1256); (3) include in the notice of hearing specified information (§§ 48915.1, 48915.2, and 48918, subd. (b)); (4) allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing upon request, as specified (§§ 48915.1, 48915.2, and 48918, subd. (b)); (5) maintain records as specified (§§ 48915.1, 48915.2, and 48918, subd. (b)).

(j)); and (6) notify the applicant and parent/guardian of the governing board's determination, as specified. (§§ 48915.1, subd. (a), 48915.2 & 48918, subd. (i).)

C. Pupil Expulsion Appeals (CSM 4463)

On March 27, 1997, the Commission adopted its statement of decision finding that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all student expulsion appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals;
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal;
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents);
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo;
- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education; and
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915, subdivision (b) (as amended by Stats. 1993, chs. 1255 & 1256), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil or the pupil's parent or guardian, as follows:
 1. If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 2. If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).³

³The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school

3. Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
4. If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
5. If ordered by the county board of education, expunge the district's and the pupil's records of the expulsion.

D. *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils*

The statement of decision on *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and issued in May 2011.

The test claim statutes added or amended Education Code sections⁴ that govern the grounds and procedures for handling pupil expulsions⁵ suspensions,⁶ rehabilitations, readmissions, and related activities, as well as expulsion appeals and county office of education plans for educational services to expelled pupils. The Commission found that these test claim statutes impose a partially reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Pupil expulsions fall into three categories of offenses: (1) the most serious offenses (§ 48915, subd. (c)) for which the principal or superintendent must immediately suspend the pupil and recommend him or her for expulsion, and for which the governing board must order expulsion;⁷ (2) those offenses (§ 48915, subd. (a)) for which the principal or superintendent must recommend a pupil for expulsion unless the principal or superintendent finds that expulsion is

district. 20 U.S.C. Section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

⁴ All references are to the Education Code unless otherwise indicated.

⁵ Expulsion procedures are in section 48915. An expulsion means “removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in Section 46300.” (§ 48925, subd. (b).)

⁶ Suspension procedures are in section 48911. A suspension means “removal of a pupil from ongoing instruction for adjustment purposes.” The statutory definition also includes what suspension “does not mean.” (§ 48925, subd. (d).)

⁷ Subdivision (d) of section 48915 requires expulsion for the subdivision (c) offenses, which are: possessing a firearm without permission, brandishing a knife at another person, unlawfully selling a controlled substance, committing or attempted commission of a sexual assault or sexual battery, or possession of an explosive. (§ 48915, subd. (c).)

inappropriate due to the circumstances;⁸ and (3) the less serious offenses (§ 48915, subds. (b) & (e)) for which a pupil may be expelled if either (i) other means of correction are not feasible or have repeatedly failed to bring about the proper conduct, or (ii) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.⁹ Expelled pupils are required to be referred to programs of study that meet specified conditions, in addition to other requirements.

Whenever the principal or superintendent recommends a pupil for expulsion, the pupil is entitled to a hearing pursuant to the procedures in section 48918.¹⁰ The suspension and expulsion statutes trigger other test claim statutes as explained in the statement of decision.

The statement of decision lists the following reimbursable activities, with headers to show which set of parameters and guidelines they are in (subsequent parameters and guidelines include activities in earlier parameters and guidelines unless otherwise indicated by a termination date):

1995-1996 Parameters and Guidelines

1. Beginning January 1, 1996 (the § 48911 suspension procedures¹¹ are part of these activities, as well as the § 48918 expulsion hearing procedures):

⁸ Those offenses are: causing serious physical injury to another person, except in self defense, possessing a knife, explosive, or other dangerous object of no reasonable use to the pupil, possession of a controlled substance (except the first offense of possession of one ounce or less of marijuana), robbery or extortion, or assault or battery or threat thereof on a school employee. (§ 48915, subd. (a).)

⁹ Other offenses are listed, all referring to those in section 48900 et seq. for which suspension or expulsion may be imposed.

¹⁰ *San Diego Unified School Dist v. Commission on State Mandates* (2004) 33 Cal.4th 859, 870. The principal or superintendent is required to recommend expulsion for the offenses in subdivisions (c) and (a) of section 48915.

¹¹ The suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil (defined to include "a pupil's parent or guardian or legal counsel" § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person. (§ 48915, subd. (c)(2), Stats. 1995 ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
- For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil's expulsion, and for the governing board to order a pupil's expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil's expulsion, and for the governing board to order the pupil's expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)

2. Also beginning January 1, 1996:

- For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) The section 48918 expulsion hearing procedures are part of this activity.
- For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

1996-1997 Parameters and Guidelines

3. Beginning July 1, 1996:

- For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)

- For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.¹² This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
- For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)

¹² Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, ch. 974):
 - Review the pupil for readmission. (§ 48916, subd. (a).)
 - Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
 - If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (Stats. 1995, ch. 974.)
- Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
 - Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)

- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.)
 - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
4. From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):
- Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
 - Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
 - Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
5. Beginning September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
6. Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
- (A) The number of pupils recommended for expulsion.
 - (B) The grounds for each recommended expulsion.
 - (C) Whether the pupil was subsequently expelled.
 - (D) Whether the expulsion order was suspended.
 - (E) The type of referral made after the expulsion.
 - (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

7. Beginning January 1, 1997:

- For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined.¹³ (§ 48915, subs. (c)(4) & (d), Stats. 1996, ch. 1052.) The section 48911 suspension procedures listed on pages 27-28 of the statement of decision are part of this activity, as well as the expulsion hearing procedures in section 48918.
- For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- For the one-time activity of amending the school district's rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
 - A complaining witness shall be given five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. (*Ibid.*)
 - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code¹⁴ at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

¹³ A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code. (§ 48900, subd. (n).)

¹⁴ Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the

- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. (*Ibid.*)
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. (*Ibid.*)
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
 - The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
 - For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)
 - For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
8. For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
- At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)

- Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- If the hearing is to be conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) for the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) for the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) the governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) for the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) for the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses; (7) for the prosecuting witnesses to be excluded from the courtroom during that testimony; (8) when the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti¹⁵ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony." (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)

¹⁵ The corpus delicti is the basic element or fact of a crime.

- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

1997-1999 Parameters and Guidelines

9. Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)). (§ 48900.8, Stats. 1997, ch. 637.)
10. Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows (§ 48918, subd. (a), Stats. 1998, ch. 498) (this is a one-time activity):
 - If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.

1999-2001 Parameters and Guidelines

11. Beginning January 1, 2000:
 - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser; and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332.) These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.
12. Beginning January 1, 2001:
 - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for any expulsion.
 - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing); (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the

education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k).) (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).

2001-2012 Parameters and Guidelines

13. Beginning January 1, 2002, for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds. (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures listed on pages 27-28 of the statement of decision are part of this activity.

The sixth (2012-2013 and beyond) set of parameters and guidelines includes all the activities above, consolidated with the reimbursable activities in the preexisting parameters and guidelines.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The parameters and guidelines shall include the following information: summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of a reasonable reimbursement methodology (RRM); and any offsetting revenue or savings that may apply.¹⁶

The Commission may adopt an RRM for inclusion in the parameters and guidelines.¹⁷ An RRM may be proposed by the claimant, an interested party, the Department of Finance, the Controller's Office, or another affected state agency. An RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases where local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of an RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

¹⁶ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

¹⁷ Government Code section 17557, subdivision (b); California Code of Regulations, Title 2, section 1183.131.

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 local costs. In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.¹⁸

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.¹⁹ Under Article 7, the Commission's decision is based on evidence in the record. Oral or written testimony offered by any person shall be under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any 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. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.²⁰

After it adopts the parameters and guidelines, the Commission submits them to the State Controller's Office to issue claiming instructions to local government, and to pay and audit reimbursement claims.²¹ Issuance of the claiming instructions constitutes the notice of the right of local government to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.²²

III. Discussion

Following is an explanation of staff's proposed parameters and guidelines.

A. Summary of the Mandate

The Summary of the Mandate does the following: (1) explains why six sets of parameters and guidelines accompany this statement of decision; (2) provides background information on the preexisting parameters and guidelines adopted for the same program (*Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463, enacted from 1975 – 1994); and (3) summarizes the statement of decision that is the basis for these parameters and guidelines. (*Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*, 96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09, enacted from 1995-2001.)

¹⁸ Government Code section 17518.5.

¹⁹ California Code of Regulations, Title 2, section 1187.

²⁰ California Code of Regulations, Title 2, section 1187.5.

²¹ Government Code section 17558.

²² Government Code section 17561, subdivision (d)(1).

B. Eligible Claimants

This section defines an eligible claimant as any “school district,” as defined in Government Code section 17519, except for community colleges. County offices of education may also be eligible claimants for some activities specified in the statement of decision. Charter schools are not eligible claimants.

C. Period of Reimbursement

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. *Pupil Suspensions II* and *Pupil Expulsions II* were filed in December 1996, so eligibility for reimbursement begins July 1, 1994.

The *Educational Services Plan for Expelled Pupils* test claim was filed in December 1997, so eligibility for reimbursement begins July 1, 1995. This date, however, only applies to section 48926 because the other statutes pled in 97-TC-09 have an earlier reimbursement eligibility date because they were pled in the earlier test claims (statement of decision, page 25).

Reimbursement does not begin before the operative date of a statute. So, for example, the 1995-1996 parameters and guidelines are for the period from July 1, 1995 through June 30, 1996. But because the operative date of Statutes 1995, chapter 972 is January 1, 1996, the reimbursement period for the first parameters and guidelines begins on January 1, 1996.

The parameters and guidelines that consolidate the preexisting parameters and guidelines (for *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463) with the present parameters and guidelines (for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*, 96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09) are for the period of reimbursement beginning July 1, 2012 and beyond.

D. Reimbursable Activities

For purposes of consistency, the six parameters and guidelines follow the framework of the activities in the preexisting parameters and guidelines adopted for the same program. (*Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463, enacted from 1975 – 1994.) The preexisting framework also shows how new offenses that require a suspension or expulsion trigger hearing or other activities in the preexisting parameters and guidelines. For example, the activity “recommendation of expulsion” (#3 below) does not change from the preexisting parameters and guidelines, but new offenses are added that trigger the recommendation to expel.

New activities from the statement of decision are inserted into the framework of these preexisting parameters and guidelines. These new activities include the following sections: (1) expulsions based on allegations of sexual assault or attempted sexual assault, or sexual battery (#5 below); (2) referral of expelled pupil to different schoolsite, rehabilitation plan, and education program (#7 below); and (3) school district data collection (#12 below).

1. Adoption and Revision of Rules and Procedures (one-time activity)

The parameters and guidelines authorize reimbursement for adopting rules and procedures on pupil suspensions and expulsions and related activities, which is consistent with the preexisting parameters and guidelines.

As new statutes are enacted, the rules and procedures may be revised to reflect the new statutory requirements. For example, the 1995-1996 parameters and guidelines authorize reimbursement for adopting and revising rules and procedures “establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapter 972.”

Subsequent parameters and guidelines reflect statutes that added suspension and expulsion offenses and procedures and related activities. Other examples of reimbursable activities that fall into this category are as follows.

According to the statement of decision (pp. 83-85) it is reimbursable, beginning July 1, 1996, for school districts to adopt rules and regulations establishing the procedure for filing and processing requests for readmission. (§ 48916, Stats. 1995, ch. 974.) This is reflected in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

The statement of decision also states (p. 99) that it is reimbursable for school district governing boards to adopt a plan for providing education services to all expelled pupils if the county superintendent of schools develops the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.) This is reflected also in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

The statement of decision further states that, starting January 1, 1997, it is reimbursable for school districts to adopt rules and regulations governing procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery. (§ 48918.5.) This is also reflected in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

Adopting and revising the rules and procedures are one-time activities, and correspond to statutory changes because as new mandatory expulsion offenses are added, the district’s rules and procedures should be revised to reflect them. Revising existing rules and procedures is not an on-going activity. Training was moved from section IV.J in the preexisting parameters and guidelines, and is limited to one-time per employee.

2. Suspensions II (in the consolidated parameters and guidelines, Suspensions I and II) (on-going activity)

This section of the parameters and guidelines specifies the offenses (§ 48915, subd. (c)) that require immediate suspension, as well as the procedures (§ 48911) that must be followed for each pupil suspended. The suspension offenses in the 1995-1996 and later parameters and guidelines are:

- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);²³
- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);

The offense added in the 1996-1997 and later parameters and guidelines is:

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997).

And the offense added in the 2001-2012 and later parameters and guidelines is:

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, operative Jan. 1, 2002).

Suspending a pupil for possessing an explosive was found to be a state mandate (statement of decision p. 39-40) even though expelling a pupil for this offense, as discussed below, was found to be a federal mandate.

The statement of decision (p. 27) states that the following suspension procedures are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil²⁴ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

²³ The statute states that the offense is "possessing, selling or otherwise furnishing a firearm" (§ 48915, subd. (c)) but suspending and expelling for firearm possession was in prior law and not added by the test claim statutes (statement of decision p. 28).

²⁴ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

The Commission found that one more suspension activity, as discussed in the statement of decision (p. 100), is also reimbursable as follows:

5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

This activity is in the 1997-1998 and later parameters and guidelines, and it applies to possessing a firearm.

The preexisting parameters and guidelines lists activities that correspond the first four activities above when a pupil is suspended for firearm possession. These were found to be reimbursable in the *Pupil Suspensions, Expulsions and Expulsion Appeals* parameters and guidelines. The consolidated parameters and guidelines (2012-2013 and beyond) reflect the suspension procedures listed in the statement of decision (pp. 27, 100), and adds “identifying suspensions in the pupil’s record” (no. 5 above) for a suspension involving firearm possession.

3. Recommendation of Expulsion (on-going activity)

This section specifies the offenses (§ 48915, subd. (c)) for which a principal or superintendent must recommend expulsion of a pupil (references to the principal include the superintendent).

Most serious offenses in section 48915, subdivision (c): The offenses for which a principal must recommend expulsion of a pupil are listed in the 1995-1996 and later parameters and guidelines:

- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);²⁵
- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972).

Recommending that a pupil be expelled for selling a controlled substance (except not more than one avoirdupois ounce of marijuana) was not found to be a new program or higher level of service in the statement of decision (p. 29). But since the exemption for the first offense of selling not more than one ounce of marijuana was removed from the statute, expelling for this offense was found to be reimbursable in the statement of decision (p. 30).

Because it was effective January 1, 1997, committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052) was added to the 1996-1997 and later parameters and guidelines as an offense for which a principal recommends expulsion.

Under the Gun Free Schools Act and later, the No Child Left Behind Act of 2001, states are required to expel a pupil for possessing an explosive at school. Thus, the Commission found in

²⁵ The statute states that the offense is “possessing, selling or otherwise furnishing a firearm” (§ 48915, subd. (c)) but expelling for firearm possession was in prior law and not added by the test claim statutes (statement of decision p. 28).

the statement of decision (pp. 30-39) that expelling a pupil for possession of an explosive (§ 48915, subd. (c)(5), Stats. 2001, ch. 116) is a federal mandate, so recommending that a pupil be expelled for this offense is not a reimbursable mandate.

Serious offenses in section 48915, subdivision (a): According to this subdivision “the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance.” In the statement of decision (pp. 47-49), the Commission found it is reimbursable when the principal or superintendent recommends that a pupil be expelled for the following offenses:

- Possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.)
- Committing assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052, § 2.)

Even though the principal may not recommend an expulsion for these offenses (in § 48915, subd. (a)) if the circumstances do not warrant it, the principal has no control over the circumstances. So the Commission found (statement of decision, pp. 47-49) that recommending an expulsion for these offenses in subdivision (a) is reimbursable. The following discussion concerns the remaining offenses in subdivision (a) of section 48915.

Consolidation with preexisting parameters and guidelines: The preexisting parameters and guidelines state that it is reimbursable for a principal or superintendent to recommend that a pupil be expelled for other offenses (now in § 48915, subds. (a) or (c)) as follows:

- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil (§ 48915, subds. (a)(2), (c)(1) & (c)(5));
- Unlawful sale of any controlled substance ... except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3));
- Robbery or extortion (§ 48915, subd. (a)(4)).

Unlawful sale of a controlled substance (§ 48915, subd. (c)(3)) is reimbursable in the consolidated parameters and guidelines (2012-2013 and beyond). There is no longer an exception in statute for the first offense of selling not more than one avoirdupois ounce of marijuana, so this exception has been deleted from the consolidated parameters and guidelines.

The preexisting parameters and guidelines reimburse recommending an expulsion for “possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil” which reflects former section 48915, subdivision (a)(2). (Stats. 1993, ch. 1255 & ch. 1256.) The consolidated parameters and guidelines (2012-2013 and beyond) make two changes.

First, because the law now reads, “possession of any knife or other dangerous object of no reasonable use to the pupil” the parameters and guidelines were changed accordingly. (§ 48915, subd. (a)(2), Stats. 2001, ch. 116.) Second, “possession of a firearm” is now listed with “selling or furnishing a firearm,” also to reflect current law.²⁶ (§ 48915, subd. (c)(1), Stats. 2001, ch. 116.)

The other offenses in the preexisting parameters and guidelines (causing serious physical injury to another except in self defense, and robbery or extortion) remain unchanged in the consolidated parameters and guidelines (2012-2013 and beyond) because they reflect section 48915, subdivisions (a)(1) and (a)(4).

4. Expulsion Hearing Procedural Requirements (on-going activity)

Whenever the principal or superintendent recommends a pupil for expulsion, the pupil is entitled to a hearing pursuant to the procedures in section 48918.²⁷

The reimbursable hearing requirements are in the preexisting parameters and guidelines. They include specifying what goes into the notice of the hearing, allowing a pupil or pupil’s parent or guardian to inspect and obtain copies of documents that will be used at the expulsion hearing, and actual hearing costs, including preparation for the hearing, conducting the hearing, the hearing officer’s or panel’s expulsion recommendation, and a record of the hearing.

Expulsion Offenses: As new mandatory expulsions offenses were added to section 48915, subdivision (c) (as listed above under “Recommendation of Expulsion”), they trigger these reimbursable hearing procedures in the preexisting parameters and guidelines.

In addition, the statement of decision found that hearing procedures are reimbursable for the following offenses:

- Possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) (See statement of decision, pp. 47-48.)
- Committing assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052, § 2.) (See statement of decision, pp. 47-49.)

In the preexisting parameters and guidelines, the hearing procedures are reimbursable for pupils expelled for:

- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil (former § 48915, subd. (a)(2));

²⁶ Section 48915 was last amended by Statutes 2001, chapter 116.

²⁷ Sections 48915 and 48918. *San Diego Unified School Dist v. Commission on State Mandates* (2004) 33 Cal.4th 859, 870.

- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3));
- Robbery or extortion. (§ 48915, subd. (a)(4).)

The second offense above, “possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil,” reflects former section 48915, subdivision (a)(2). (Stats. 1993, ch. 1255 & ch. 1256.) For the consolidated parameters and guidelines (2012-2013 and beyond) this provision is changed to “possession of any knife or other dangerous object of no reasonable use to the pupil” to conform to existing law (§ 48915, subd. (a)(2).) Similarly, the exception for the first offense of a sale of “not more than one avoirdupois ounce of marijuana” has been removed to conform the parameters and guidelines to existing law (§ 48915, subd. (c)(3).)

Reasonable Reimbursement Methodology: For purposes of consistency, all the parameters and guidelines (from 1995-1996 and beyond) continue to include the reasonable reimbursement methodology adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for reimbursing the expulsion hearing costs, including preparing for and conducting the expulsion hearing, the hearing officer’s or panel’s expulsion recommendation to the governing board, and maintaining a record of the hearing. These activities have not changed since the preexisting parameters and guidelines were adopted, except for increasing the number of offenses to which they apply.

Notice of pupil’s opportunity to be represented by counsel or a non-attorney advisor: Only one activity was added to the hearing procedural requirements by the test claim statutes: providing notice of the opportunity for the pupil or the pupil’s parent or guardian to be represented by counsel or by a non-attorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.) This activity is reflected in the 1999 – 2001 and later parameters and guidelines, and is not covered by the RRM, which only covers the hearing costs (including preparation for the hearing, conducting the hearing, the hearing officer’s or panel’s expulsion recommendation, and a record of the hearing) but not costs for providing notice.

Even though expulsion for possession of an explosive was found to be a federal mandate in the statement of decision, it is reimbursable to notify the pupil of his or her right to a nonattorney advisor when a pupil is expelled for this offense (statement of decision, p. 64). In *Long Beach Unified School Dist. v. State of California*,²⁸ the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.²⁹ The reasoning of *Long Beach Unified School Dist.* applies to these parameters and guidelines.

²⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155.

²⁹ *Id.* at page 173.

Although expelling a pupil for possession of an explosive is a federal mandate, the notice of legal counsel or a nonattorney advisor is an activity, like in *Long Beach Unified School Dist.*, that goes beyond the federal requirement to expel the pupil.³⁰ Moreover, the state freely chose to impose this notice activity on school district governing boards that expel pupils for possession of an explosive, making the activity a state and not a federal mandate.³¹

By the same reasoning, staff finds that all the hearing procedures listed in the preexisting parameters and guidelines are reimbursable when a pupil is expelled for possessing an explosive.

5. Expulsions Based on Allegations of Sexual Assault or Attempted Sexual Assault or Sexual Battery (on-going activity)

Effective January 1, 1997, expulsion hearing procedures were enacted that apply only when there is an allegation of sexual assault or attempted sexual assault, or sexual battery. (§§ 48918 & 48918.5, Stats. 1996, ch. 915.) These hearing procedures for sexual assault or sexual battery are a separate activity from adopting rules and regulations governing the hearing procedures, which is a reimbursable activity discussed in section D.1. above.

Of these procedures, those that were found to be reimbursable in the statement of decision involve providing the complaining witness with the applicable disciplinary rules and notice of various rights, as specified (§48918.5), giving the complaining witness five days' notice before testifying (§48918, subd. (b)(5)), allowing the witness to have a support person or persons and admonishing the support person that the hearing is confidential (§48918, subd. (b)(5)), hearing the witness' testimony in a session closed to the public under certain circumstances, as specified (§48918, subd. (c)), following procedures in Penal Code section 868.5 if the complaining witness has one or more support persons, and one or more of the support persons is also a witness, as specified (§48918, subd. (b)(5)), providing a nonthreatening environment for a complaining witness (§48918.5 subd. (c)) providing a room that is separate from the hearing room for the complaining witness before and during breaks in testimony (§48918, subd. (c)) and immediately advising the complaining witness and accused pupils to refrain from personal or telephonic contact with each other during the pendency of the expulsion process (§48918.5, subd. (d)).

Because these procedures were operative January 1, 1997, they are in the 1996-1997 and later parameters and guidelines.

6. Post-Expulsion Hearing Procedures (on-going activity)

The preexisting parameters and guidelines include post-expulsion hearing procedures that apply when a pupil is expelled for possession of a firearm. They appear in all parameters and guidelines (1995-1996 and beyond) because they must be performed when a pupil is expelled for any offense, although they are only reimbursable for expulsions for the most serious offenses in section 48915, subdivision (c). These post-expulsion procedures include sending written notice to the pupil or the pupil's parent or guardian of the decision and the right to appeal the decision

³⁰ *Ibid.*

³¹ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594.

to the county board of education, as specified, and the obligation of the pupil, parent or guardian to notify a new school district, upon enrollment, of the pupil's expulsion. They also include maintaining a record of the expulsion, including the cause of the expulsion, recording the expulsion order and the cause in the pupil's mandatory interim record, and forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of the school. (§ 48918, subs. (j) & (k).)

To these preexisting procedures, staff adds only one: "issuing an expulsion order," which is included in all parameters and guidelines (1995-1996 and beyond). This activity is based on section 48915, subdivision (d), which states in part: "The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)."

These hearing procedures, including issuing an expulsion order, only apply when a pupil is expelled for the most serious offenses in subdivision (c) of section 48915. This is consistent with the statement of decision (pp. 49-52), which found that although other offenses (in § 48915, subd. (a)) may require an expulsion recommendation and a hearing, it is discretionary for the governing board to issue the expulsion order. Downstream activities that result from a discretionary expulsion are not reimbursable.

Even though expulsion for explosive possession is a federal mandate, these post-expulsion hearing procedures are also reimbursable for explosive possession expulsion hearings (§ 48915, subd. (c)(5)), for the reason discussed above under "expulsion hearing procedural requirements."

7. Referral of Expelled Pupil to Different Schoolsite, Rehabilitation Plan, and Educational Program (on-going activity)

The statement of decision identified a new group of activities, not in the preexisting parameters and guidelines, which only apply to pupils who have been expelled for the most serious mandatory expulsion offenses in section 48915, subdivision (c).

According to the statement of decision (pp. 80-81), the following activity (in the 1995-1996 and later parameters and guidelines) is reimbursable:

Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

The statement of decision (pp. 76-80, 81-83) also identified the following new activities as reimbursable beginning July 1, 1996:

Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. (j)., Stats. 1995, ch. 974.)

Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974.)

Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled. (§ 48916.1, Stats. 1995, ch. 974.)

These new activities regarding the notice, a rehabilitation plan, and an education program, are in the 1996-1997 and later parameters and guidelines.

8. Readmission Procedures (on-going activity)

The statement of decision (pp. 83-85, 90-93) recognized the following activities when a pupil is reviewed for readmission to the school district that expelled the pupil:

1. Review the pupil for readmission.
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

Because these activities are operative on July 1, 1996, they are in the 1996-1997 and later parameters and guidelines. As explained in the statement of decision (p. 93), these activities are only reimbursable when a pupil is expelled for the most serious offenses in subdivision (c) of section 48915.

The preexisting parameters and guidelines recognized two reimbursable readmission activities when a pupil was expelled for possession of a firearm:

1. Setting a date when the pupil may apply for readmission to a district school; and
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian.

These are included in the consolidated parameters and guidelines (2012-2013 and beyond).

9. Application by Expelled Pupil to Attend New District (on-going activity)

When an expelled pupil seeks to attend a school district (the “receiving school district”) that did not expel the pupil, the receiving district holds a hearing. (§ 48915.1.) The hearing and related procedures were determined to be reimbursable in the preexisting parameters and guidelines.

As discussed in the statement of decision (pp. 95-97), there is a separate hearing requirement when a pupil is expelled for the serious offenses in subdivision (a) or (c) of section 48915:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

This activity was added to the 1996-1997 and later parameters and guidelines.

As explained in the statement of decision (pp. 95-96), this determination is limited to pupils who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district. The Supreme Court has stated, “activities undertaken at the option or discretion of a local government entity . . . do not trigger a state mandate and hence do not require reimbursement of funds.”³² Since a school district that has an interdistrict transfer agreement has voluntarily undertaken to admit pupils from another district, the district has made the decision at its option or discretion. Therefore, the Commission found that if the expelling and receiving districts have an interdistrict transfer agreement, the readmission determination is not a state mandate.

Although this hearing and determination (§ 48915.2, subd. (b)) applies when a pupil is expelled for the offenses listed in subdivisions (c) and (a) of section 48915, not all of those offenses are reimbursable in the parameters and guidelines. This is because, as discussed in the statement of decision (p. 96), preexisting law required a district determination, pursuant to a hearing, that an individual expelled from another school district for certain offenses did not pose a danger to either the pupils or employees of the receiving school district. Thus, the Commission found that making this determination at the receiving district’s readmission hearing is not a new program or higher level of service for a pupil expelled for the following offenses: (1) causing serious physical injury to another person, except in self-defense; (2) possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds; (3) unlawful sale of any controlled substance . . . [as specified] except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; and (4) robbery or extortion. (Former § 48915, subd. (a), Stats. 1994, ch. 1198.)

Consequently, the Commission found that the receiving district’s hearing and determination (§ 48915.2) is reimbursable for pupils who were expelled from another district for the following offenses added to section 48915, subdivisions (a) or (c), by Statutes 1995, chapter 972, as listed in the 1995-1996 and later parameters and guidelines:

³²*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

- Unlawful possession of any controlled substance [as specified] ... except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
- Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
- Brandishing a knife at another person. (§ 48915, subd. (c)(2).)

The Commission also found that the receiving district's hearing (§ 48915.2, subd. (b)) is reimbursable when a pupil is expelled for committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.) This offense is listed in the 1996-1997 and later parameters and guidelines because it was effective January 1, 1997. The Commission further found that the receiving district's hearing is reimbursable when a pupil was expelled for possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.) This offense is listed in the 2001-2012 and later parameters and guidelines because it was effective January 1, 2002.

As reflected in the consolidated parameters and guidelines (2012-2013 and beyond) the preexisting parameters and guidelines list activities that apply when a pupil expelled for any offense seeks to attend a receiving school district. As with the offenses discussed above, the receiving district holds a hearing. (§ 48915.1.) The preexisting parameters and guidelines list reimbursable activities associated with the hearing, including specified notice procedures, allowing a pupil or the pupil's parent or guardian to inspect documents, determining whether the expelled pupil seeking admission to the new district would pose a danger to the pupils and employees of the receiving district, determining whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion, maintaining a record of each admission denial, include the cause of the denial, and notifying the pupil and the pupil's parent or guardian of the receiving district's decision.

10. Responding to Requests for Recommendations for Admission to a Receiving School District (on-going activity)

The preexisting parameters and guidelines state:

If the governing board expelled a pupil for possession of a firearm and the expelled student applies for admission to another school district (the "receiving district") then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

The new parameters and guidelines (1995-1996 and beyond) retain this activity, and expand the list of offenses that trigger it beyond "possession of a firearm."

Because it is discretionary for a school district to expel a pupil for any offense other than those listed in subdivision (c) of section 48915, and because the expelling district is responding to the

receiving district's request for a recommendation, this activity is reimbursable for a district that expelled a pupil for the following subdivision (c) offenses (in the 1995-1996 and later parameters and guidelines):

- Possessing, selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);

The offense added in the 1996-1997 and later parameters and guidelines is:

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

And the offense added in the 2001-2012 and later parameters and guidelines is:

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, operative Jan. 1, 2002).

11. Expulsion Appeal Hearings (on-going activity)

Pupils have the right to appeal their expulsions to the county board of education, which must follow specific procedures in handling the appeals. (§ 48919.) The preexisting parameters and guidelines list separate reimbursable activities for county boards of education and for school districts in expulsion appeal hearings.

For the county boards of education, the preexisting parameters and guidelines list the following reimbursable activities when the pupil was expelled for any offense: providing notice, as specified; review of the hearing record, as specified; conducting hearings (only when the county board of education decides to grant a hearing de novo); and preserving the record of appeal. These activities are in all the parameters and guidelines (from 1995-1996 forward).

For school districts, the preexisting parameters and guidelines list the following reimbursable activities when the pupil was expelled for possessing a firearm: providing copies of the documents and records from the district's expulsion hearing to the pupil, or to the pupil's parent or guardian; participation by a school district in the county board of education's hearing on appeal if the county board grants a hearing de novo; if the county board remanded the expulsion to the district following an appeal, then conducting a hearing on remand and rendering a decision in the remand hearing are reimbursable; and expunging the school district's and pupil's record of the expulsion when ordered by the county board of education. These activities are also in all the parameters and guidelines (from 1995-1996 forward).

In the statement of decision (pp. 88-90), the Commission found that the following county board of education activity is reimbursable when a pupil was expelled for any offense:

To remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915³³ but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147.)

The Commission found that this activity applies to any expulsion because the county board of education must remand the matter regardless of the expulsion offense, and has no discretion not to act. Thus, this county board activity is in the 1999-2001 and later parameters and guidelines.

The Commission also found the following school district activities are reimbursable when a pupil is expelled for any of the most serious offenses in section 48915, subdivision (c):

When adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48923, subd. (b), Stats. 2000, ch. 147.)

Thus, these school district activities are in the 1999-2001 and later parameters and guidelines.

12. School District Data Collection

There was no required data collection or reporting in the preexisting parameters and guidelines. The statement of decision (pp. 100-106) reflects changes in data collection requirements enacted between 1996 and 2002. The following data collection and reporting activity is in the 1996-1997 parameters and guidelines:

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):

- Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of

³³ A decision to expel is based on a finding that either: "(1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct; (2) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others." (§ 48915, subds. (b) & (e).)

academic progress, of pupils participating in independent study offered by the school district.

- Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
- Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

Also reimbursable in the 1996-1997 parameters and guidelines is the following data collection and reporting requirement, reflecting a statutory change operative September 26, 1997 (§ 48916.1, Stats. 1996, ch. 937):

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):

- (A) The number of pupils recommended for expulsion.
- (B) The grounds for each recommended expulsion.
- (C) Whether the pupil was subsequently expelled.
- (D) Whether the expulsion order was suspended.
- (E) The type of referral made after the expulsion.
- (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The federal No Child Left Behind Act took effect January 8, 2002, and contains reporting requirements that overlap those in the state statute (A – C above). Thus, the Commission found those overlapping data requirements were no longer reimbursable state mandates. (Statement of decision pp. 104-106.) This resulted in the following for the 2001 -2012 and later parameters and guidelines:

Beginning January 8, 2002, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) whether the expulsion order was suspended; (2) the type of referral made after the expulsion; and (3) the disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

As discussed in the statement of decision (pp. 104-106), reporting this data is a reimbursable state mandate because it is not required by federal law, but is required by state law.

E. Reasonable Reimbursement Methodology

For purposes of consistency, the parameters and guidelines continue to include the reasonable reimbursement methodology adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs (in section D.3 of the parameters and guidelines) incurred by a school district. These activities have not changed since the preexisting parameters and guidelines were adopted, except for increasing the number of offenses to which they apply.

F. Conclusion & Recommendation

Staff recommends that the Commission adopt the six sets of attached parameters and guidelines for the following fiscal years: 1995-1997, 1996-1997, 1997-1999, 1999-2001, 2001-2012, and 2012-2013 and beyond.