

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
November 6, 2008

Present: Member Fred Klass, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Cynthia Bryant
Director of the Office of Planning and Research
Member Richard Chivaro
Representative of the State Controller
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Klass called the meeting to order at 9:37 a.m.

APPROVAL OF MINUTES

Item 1 September 26, 2008

The September 26, 2008 hearing minutes were adopted by a vote of 6-0.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING ON STATEWIDE COST ESTIMATES PURSUANT TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

STATEWIDE COST ESTIMATE

Item 6 *Post Conviction: DNA Court Proceedings*, 00-TC-21, 01-TC-08
Penal Code Sections 1405 and 1417.9
Statutes 2000, Chapter 821 (SB 1342); Statutes 2001, Chapter 943 (SB 83)
County of Los Angeles, Claimant

Member Olsen made a motion to adopt item 6 on the consent calendar. With a second by Member Bryant, the motion carried by a vote of 6-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 2 Staff Report (if necessary)

There were no appeals to consider.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

PARAMENTERS AND GUIDELINES

Item 3 *Graduation Requirements*, 4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05 Education Code Section 51225.3, Statutes 1983, Chapter 498 (SB813) San Diego Unified School District, Castro Valley Unified School District, Clovis Unified School District, San Jose Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, Sweetwater Union High School District, Mountain View-Los Altos Hill High School District and State Controller' Office, Co-Claimants

Chairperson Klass suggested that because of the complexity of this item, each of the 10 components should be presented separately, starting with component 2 and the vote should be held until the end of the discussion. Member Worthley concurred.

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton explained that this item addresses several proposals to amend the *Graduation Requirements* parameters and guidelines. Pursuant to Government Code section 17557, the Commission has the authority, after public notice and a hearing, to amend, modify, or supplement parameters and guidelines. If the Commission amends the parameters and guidelines, the reimbursement period of the amendment is established by law.

These proposals attempt to clarify the reimbursable activities and propose the adoption of reasonable reimbursement methodologies (RRMs) in lieu of the actual costs claimed for the reimbursement of teacher salaries, acquiring or remodeling science classroom facilities, acquiring equipment, and for instructional materials and supplies.

Staff finds that only the proposed RRM for teacher salary costs satisfies the definition of a RRM in Government Code section 17518.5, and is consistent with the Court's ruling in the *San Diego Unified School District* case.

Ms. Shelton added that the proposals also attempt to clarify offsetting revenue and savings.

Ms. Shelton noted that the Commission also had before it a late filing received from the State Controller's Office (SCO), and a chart staff prepared with data on the reimbursement claims filed since 1995-96.

Parties were represented as follows: Art Palkowitz, San Diego Unified School District; David Scribner, Mountain View-Los Altos Hill High School District; Diana Halpenny with Kronick, Moskovitz, Tiedemann & Girard representing the Graduation Requirements Mandate Resolution Committee and Keith Petersen, representing Castro Valley Unified School District, Clovis Unified School District, San Jose Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, and Sweetwater Union High School District (referred to as the Castro Valley Schools), Lenin Del Castillo and Susan Geanacou,

Department of Finance; and Ginny Brummels, Chris Ryan, and Jim Spano, State Controller's Office.

Ms. Shelton stated that Issue 2 is: should the Commission amend the parameters and guidelines to specifically identify county offices of education as eligible claimants. Staff recommended that the Commission amend the parameters and guidelines as requested.

Keith Petersen, representing the Castro Valley schools, began with general comments, stating that this process has been going on for 13 years. The parameters and guidelines amendments have been well briefed, and therefore, he, for the most part, supports the staff recommendation.

Lenin Del Castillo, Department of Finance, stated that the amendments should not include county offices of education as eligible claimants. The programs offered by county offices tend to be temporary placements and, as such, they are not comprehensive high schools. For that reason, they should not be included as eligible claimants.

Chairperson Klass asked whether a student could take the second science course at both a county office of education and a school district.

Ms. Shelton explained that under the Education Code, the county office of education is the school district for homeless children. According to the statutes, those students must complete a regular high school program. The Legislature did not distinguish between unified school districts, high school districts, or county offices of education.

Ms. Shelton also stated that in 2005, the Legislature directed the Commission to amend the parameters and guidelines for this program to identify bond funding for construction of science facilities and specifically, in the language, included county offices of education. Therefore, the Legislature intended to apply the graduation requirement on all pupils attending either a county office of education or a unified school district.

Member Worthley added that in Tulare County, for example, the Department of Education is the teaching arm for children in custody.

Chairperson Klass asked if the methodology for determining the number of teachers based on the number of students had a double count in the formula.

Ms. Shelton explained that there is no double count. When kids are expelled, they sometimes go to a county office of education school temporarily during the period of expulsion, and then they return to the district. There are some funding statutes on how to identify the average daily attendance (ADA) and how that is handled.

Mr. Del Castillo stated that the methodology uses enrollment taken from the beginning of the year so there is indeed a chance that these kids could be double counted. They could attend a county office of education program for part of the year, and then they could return to the school district. He questioned how this methodology would take that into account.

Mr. Petersen responded that the funding is tied to the students. If a student is no longer in his home district but rather at a juvenile court school, there is no longer payment for attending at his home district.

Ms. Shelton noted that in the proposed modifications to the one-quarter class load method (issue 7), staff recommended that enrollment be determined using CBEDS data, where students are counted on one day in the year. Wherever that pupil is on that day is where they are counted.

Diana Halpenny, representing the Graduation Requirements Mandate Resolution Committee, concurred that the CBEDS "day" is what is used to avoid duplication of student counts.

Chairperson Klass stated that his questions were answered.

Ms. Shelton moved to Issue 3: should the Commission amend the parameters and guidelines to clarify that the activities of acquisition of additional space and remodeling existing space include planning, design, land, demolition, building construction, fixtures and facility rental. Staff recommended that the Commission adopt the request.

Chairperson Klass noted that there appears to be unanimity on this point.

Susan Geanacou, Department of Finance, countered that Finance did not file comments on this issue, but would be happy to file a request to amend in the future regarding the language involving the remodeling of space required for teaching the second year of science. Finance objects to the standard applied in the existing parameters and guidelines against which any remodeling is being measured "*essential to maintaining a level of instruction sufficient to meet college admission requirements.*" This "*college admission requirements*" language does not appear in the test claim statute or Education Code section 51225.3 and may impose a higher standard than what was intended by the Legislature.

Finance suggested that the language be removed, and may consider filing a request to amend in the future if action cannot be taken today. Chairperson Klass noted the meritorious point.

Ms. Shelton moved to Issue 4: should the Commission amend the parameters and guidelines to include the proposed RRM for claiming an increased facility cost for acquiring or remodeling space. Staff recommended that the Commission deny this request because it does not meet the definition of a RRM under Government Code section 17518.5.

Mr. Petersen stated that while he disagreed, he would provide no further argument at this time.

Ms. Shelton continued to Issue 5: should the Commission amend the parameters and guidelines to specify that acquisition of equipment includes the activities of planning, purchasing and placement of additional equipment and furniture. Staff recommended that the Commission adopt this request. [No testimony was provided on this item.]

Ms. Shelton moved to Issue 6: should the Commission amend the parameters and guidelines to include a proposed RRM for claiming increased costs for acquiring equipment and furniture. Staff recommended that the Commission deny this request since the proposal does not satisfy the definition of Government Code section 17518.5.

Mr. Petersen echoed his previous comments.

Ms. Shelton continued to Issue 7: should the Commission amend the parameters and guidelines to include the proposed RRM of the one-quarter class load method for claiming increased teacher salary costs. Staff found that the proposal does satisfy the definition of Government Code section 17518.5 and is consistent with the Court's decision in the *San Diego Unified School District* case. Ms. Shelton noted that this is the most disputed issue. It was proposed by San Diego Unified School District and the SCO. Staff recommended that the Commission adopt the modified proposal.

Mr. Petersen stated that he believes this is a reasonable cost accounting method and supports the staff recommendation. Ms. Halpenny and Mr. Scribner agreed with Mr. Petersen.

Mr. Palkowitz covered some historical parts of this program. From 1987 until now, there have been 2 lawsuits and 41 incorrect reduction claims. He cited a lack of uniformity throughout the state on how to claim these costs, and that the staff recommendation provides that clarity. The proposal will allow school districts to have confidence in what they claim. It also meets the intent of the legislation (AB 1222) requesting that RRMs be used when there is that opportunity.

Jim. Spano, SCO, stated the SCO supports the one-quarter class load methodology.

Ms. Geanacou reminded the members that the Commission does not have to amend the parameters and guidelines for the *Graduation Requirements* mandate.

Ms. Geanacou explained that the potential fiscal effect of rejecting the amendments would be to relieve the State of approximately \$3 billion in additional reimbursement to school districts for past years. Ms. Geanacou then addressed the substance of Issue 7 in that Article XIII B, Section 6 requires a new program or higher level of service for state reimbursement to be required. In applying Government Code section 17565, to allow reimbursement even when school districts do not hire additional teachers, illustrates that the section is not consistent with Section 6. Many school districts were offering at least two science classes well before the mandate was created. This shows that the second science course was not a new or higher level of service at the time that it was required.

Mr. Del Castillo stated that the one-quarter class load method does not meet the statutory requirements for establishing a RRM for several reasons: (1) it does not constitute sufficient evidence of actual costs because it is not a representative sample of claimants; (2) it includes county offices of education, and (3) it could provide a potential windfall for districts that re-file claims that were originally submitted based on actual cost information.

Mr. Petersen reiterated the idea that the proposed RRM is reasonable. He reminded the Commission that some of the opposition comments have to do with the test claim itself which was already decided and cannot be argued here. Mr. Petersen also questioned the alleged cost of \$3 billion being asserted by Finance.

Mr. Del Castillo explained that the \$3 billion number was calculated based on the assumption that all eligible claimants would file claims for reimbursement. Mr. Petersen requested time to refute that number if submitted as evidence.

Ms. Shelton then summarized the chart that staff created using the data from the SCO. The chart, broken down into two tables, highlights data from claims filed from 1995-96 through 2006-07. Table 1 is the amount the claimants requested and the total approved before the Court's decision in *San Diego Unified School District*. Between 1995-96 through 2003-04, 321 school districts (out of 417 high school districts and 58 county offices of education) filed claims averaging \$29 million with a 48% cost approval rate of \$14 million.

Table 2 is the data after the Court's judgment. Between 2004-05 through 2006-07, 293 school districts filed claims averaging \$91 million with a 99% cost approval rate of almost \$91 million.

Member Worthley questioned the relevance of cost here. The issue is: does this meet the mandatory requirements of being a mandate. Whether it cost billions of dollars or hundreds of dollars is not relevant. Ms. Shelton responded that the charts do not calculate total costs.

Member Worthley stated that parties appear to be arguing equity, which the Commission may not consider.

Ms. Shelton explained that the Commission may determine requests for amendment to the parameters and guidelines. If the Commission adopts the requests, the period of reimbursement is established by law. Because the claim was filed in 1996, the reimbursement period goes back to 1995-96. By law, all school districts and county offices of education would be able to file or re-file their claims with supporting documentation under penalty of perjury.

Ms. Shelton also stated that this methodology is just to determine the gross teacher salary costs. It does not include any offset calculations or audits performed by the SCO. It is based on actual numbers, actual enrollment, actual teacher salaries and actual number of teachers. It is not just a

unit cost. It does consider the variation of costs, and is cost efficient because it is using the district's actual numbers.

Mr. Palkowitz echoed Member Worthley's concern about the relevancy of the cost. He stated that failure by the Commission to decide on the RRM would result in numerous incorrect reduction claims and undoubtedly another lawsuit. Mr. Palkowitz also stated that having more than one science class was a discretionary option that school districts used to be competitive with other schools. However, it was only after the mandate was passed by legislation that it became a requirement for the schools to have and maintain two science classes.

Mr. Spano stated that, during the course of audits, he found a variety of different methodologies being used by different claimants in trying to determine what are reimbursable costs. The costs varied significantly from claimant to claimant. He believed that the proposed RRM is a reasonable methodology that schools collectively can use to determine reasonable cost.

Robert Miyashiro, representing the Education Mandated Cost Network, explained that this methodology satisfies all of the statutory criteria, and is based on districts' actual costs and CBEDS enrollment. It does not introduce any bias of high or low, but is tailored to reimburse districts for their costs. He urged the Commission to adopt this well reasoned methodology.

Member Bryant asked if the Court determined that the state would reimburse for two science classes, and that the only thing before the Commission is the requests to amend the parameters and guidelines. Ms. Shelton agreed. Member Bryant stated in that case, it would be helpful if issues were not raised that were already decided upon in the past, and are not before the Commission today.

Ms. Shelton responded that the Court decided the program was reimbursable, and whether an offset could be assumed because the school day and year had not increased. And the Court said "no." There has to be actual evidence that if the schools did reduce their school day or shift curriculum, it was the direct result of the mandate. Ms. Shelton then stated that the issue is whether or not to adopt the RRM. And what seems to be disputed is the offsetting revenue and savings. That part is not included in the RRM because the Court held that you cannot assume the schools take an offset.

Member Bryant responded that because of that, it seems like the RRM is an indirect method of reimbursing the mandate. The court is forcing the Commission to mix apples and oranges by not allowing a methodology for the offset.

Ms. Higashi explained that the law allows for the Commission to adopt a methodology but it is certainly a discretionary decision of the Commission. However, it would not be an actual cost claimed, but a methodology. The methodology is an option because it is a simpler, more cost efficient way of claiming and calculating cost which is time-saving for districts.

Member Bryant stated that she had concerns with the RRM.

Chairperson Klass stated that there was no change in the length of the day; no change in the number of teachers hired and no ultimate budget increase because, in almost every case, the school district substituted the additional science class for other classes. Therefore, he struggles with paying districts for costs that really did not occur in the first place. He finds it difficult to change the current approach to a RRM that would increase costs. He asked Ms. Shelton if, following the court decision, the number of claims increased. Ms. Shelton responded that actually, the number of claims decreased following the court decision, but the costs did increase. Chairperson Klass asked participants to respond.

Mr. Spano reiterated that without a RRM, every audit performed will be challenged by the schools and a backlog of incorrect reduction claims will occur.

Mr. Palkowitz stated that the SCO's previous theory that every time a science teacher is added there must be an offset is not what the school districts believed. The results were incorrect reductions and a court case.

Member Bryant asked for clarification that the Court did not direct the Commission to amend the parameters and guidelines. Ms. Shelton confirmed the Court did not direct the Commission to amend the parameters and guidelines. There are, however, statements in the Court's decision where the Court was frustrated with the parameters and guidelines and found them difficult to interpret.

Member Bryant asked for discussion on the issue of CBEDS versus ADA.

Mr. Palkowitz stated that CBEDS is what is considered an enrollment date. It is not a determining factor on how schools get paid. They get paid on the average daily attendance which is calculated every day, each attendance period. The ADA is a percentage of the enrollment where CBEDS is a ratio used in the hiring of teachers.

Ms. Halpenny added that CBEDS is a useful tool because it is a number that the district has to report to the State on a specified date that says what their enrollment is as of that date. It is an easily identifiable number. Districts are funded based on average daily attendance but staffed based on enrollment.

Mr. Petersen commented that the issue of money is forcing the discussion back to the test claim again. He pointed out that a vote to adopt this formula will not result in a \$3 billion demand on the Treasury. Getting paid is a problem schools have with the Legislature; not with parameters and guidelines. If this RRM is not adopted, his clients will continue to have slightly larger claims because he uses a slightly different formula. Therefore, while he does not agree with the formula 100 percent, he does support its uniformity.

Mr. Del Castillo stated that, since school districts are funded based on ADA, it would be appropriate that the methodology also be based on ADA.

Mr. Palkowitz pointed out that acquisition of instructional materials is based on CBEDS, so it would not be a unique method of funding.

Member Worthley clarified that while some may be dissatisfied, this program is already a reimbursable mandate. It would be inappropriate to deny a RRM because you disagree with the original decision. He recognized the opportunity to do good governance by making something more accurate and simpler.

Chairperson Klass rebutted by saying that if the only outcome of adopting this RRM is consistency with a high price tag, then he questions the validity of doing it.

Member Olsen stated that the issue boils down to whether school districts are going to continue to use their own formulas or uniformly use the RRM.

Ms. Shelton stated that what is driving the cost factor is the period of reimbursement, which is Issue 1 and has not been addressed yet.

Mr. Palkowitz responded that AB 1222 intended for RRMS to be developed.

Ms. Shelton added that the issue here is still the offsetting language that discusses a reduction in non-science classes resulting from an increase in science classes. The Court did address that language and held that it cannot be assumed that this occurred. And, if claimants are currently using a formula for reimbursement, it has not been adopted by the Commission.

Mr. Spano stated that if a district uses its own formula, it is incumbent on the SCO to determine whether or not the formula is reasonable. If there is disagreement, it comes back to the Commission for reevaluation. A standardized methodology would alleviate this process.

Member Olsen asked if a RRM was adopted could districts still claim actual costs. Ms. Shelton responded no, schools would have to use the RRM.

Member Olsen asked if that is why some districts would lose.

Mr. Palkowitz responded yes. But the RRM eliminates the need to keep documentation for long periods and provides uniform filing rules for all districts.

Mr. Del Castillo asked if there was authority for districts to claim reimbursement using formulas not approved by the Commission, and if so, why does the Commission need to adopt the RRM here today.

Mr. Petersen added that using a formula to claim reimbursement is a generally accepted cost-accounting principle and has been used for 25 years.

Ms. Shelton moved to Issue 8: should the Commission amend the parameters and guidelines to add reimbursement for the salaries and benefits of other science instruction personnel. Staff recommended that the Commission deny this request. [No testimony was provided on this item.]

Ms. Shelton continued to Issue 9: should the Commission amend the parameters and guidelines to clarify the reimbursable activities with respect to science instructional materials and supplies, and include a RRM for the cost of the activity. Staff recommended that the Commission adopt the proposal to clarify the language, but deny the proposed RRM.

Mr. Palkowitz pointed out that, in San Diego's example, a RRM may be hard to use. However, he would like to think there would be a way to articulate a RRM that would take care of this one instance.

Mr. Spano stated the necessity to develop a RRM to determine cost for materials and supplies. Otherwise there will be a variety of methodologies being used by school districts resulting in more challenges, audits and incorrect reduction claims coming before the Commission.

Ms. Shelton responded that formulating a RRM for materials and supplies is different than the one-quarter class load method proposed for teachers in that materials and supplies end up being included for classes that are not state-mandated.

Member Olsen asked how the proposal speaks to the various requirements of the different types of science classes offered.

Ms. Shelton explained that the law only requires that the second science class be either a physical or biological science.

Ms. Shelton moved to Issue 10: should the Commission amend the offset section of the parameters and guidelines to include restricted resources and program funding identified by the California Department of Education School Accounting Manual to offset teacher salary costs and amend that section to identify funds appropriated to school districts from the Schiff-Bustamonte Standards Based Instructional Materials Program and the State Instructional Materials Fund Program. Also included is a request by Mountain View and Los Altos Hill High School Districts, to bring in language from the Court decision. Staff recommended that the Commission adopt these requests as stated and modified. The Department of Finance had issues dealing with the revenue apportionment funding to schools. Staff recommended that the Commission deny Finance's proposed language.

Mr. Del Castillo stated that the staff analysis indicates using revenue limit apportionments as an offset for graduation requirements would violate Article XIII B, Section 6 of the Constitution on the basis that it would require use of proceeds of local property taxes on a state-mandated program. He clarified that revenue limit apportionments are not entirely comprised of local property taxes but rather a combination with state aid being a 2-to-1 ratio with local property taxes.

Ms. Halpenny stated that whole purpose of the mandate process is to reimburse districts for costs imposed on them over and above the costs that they have to incur on an ongoing basis. The revenue limit is the money to fund those ongoing, regular operational expenses of the district. It would be a complete violation of the Constitution to require the use of revenue limit funds that districts have received as offsetting revenue for newly imposed state mandates.

Ms. Shelton added that the only way for the Commission to require a school district to take offsetting revenue and deduct that from their claim, is to comply with Government Code section 17556(e), which requires additional revenue specifically intended to fund the cost of the state mandate in order to deduct it. There hasn't been any appropriation made specifically for the *Graduation Requirements* program.

Ms. Shelton moved to Issue 1, explaining that staff's findings are divided into 2 issues: (1) the period of reimbursement for the proposals of San Diego Unified School District is 1995-96; and (2) the period of reimbursement for all of Castro Valley's requests is 1995-96.

Ms. Geanacou requested that any future reimbursement for this mandate, especially for teacher salaries, be for actual net increased costs experienced by the districts. She also stated that if the Commission does adopt a RRM for reimbursing teachers' salaries, Finance agrees with the Controller's prior comments on this issue, that in April 2007, San Diego Unified School District substantially modified their 1996 proposed methodology. Should the Commission adopt an RRM with respect to those two filings, reimbursement should occur prospectively only from the eligibility date driven by the later 2007 filing.

Ms. Shelton explained that while changes were made following the court decision in *San Diego Unified School District*, the basic one-quarter class load method was the same.

At 11:17 a.m. Chairperson Klass called for a five minute break. The hearing reconvened at 11:26 a.m.

Ms. Shelton presented the previously mentioned late filing by the SCO. The SCO proposed that the following language under Offsetting Revenues and Other Reimbursements be deleted: "If a school district has previously filed a reimbursement claim for costs incurred beginning January 1, 2005, for an activity listed in the revised claiming instructions, and received reimbursement from the state for that activity, the amount already reimbursed shall be identified and deducted from the claim. Staff recommended that this language be deleted. The SCO also proposed that language be added that all reimbursement claims should use the new RRM. Staff recommended that this language not be added because similar language is already in another section of the parameters and guidelines

Member Chivaro asked if staff was okay with deleting the strike-out language. Ms. Shelton stated that staff was okay with striking it out.

Chairperson Klass explained that at this point in the hearing, the remaining time will be reserved for Commission members to discuss points of view based on fact, not on what seems fair or seems equitable. He continued with his understanding, specifically of issue 7, that changing the

current process, which appears to be in compliance with the law, is not necessarily a more accurate process. It also comes with a large price tag because of its retroactivity and is not justifiable.

Member Lujano echoed Member Worthley's comments that the amendments actually clarify reimbursement activities and supports staff recommendations to approve.

Member Olsen also concurred with Member Worthley that making government simpler is a good idea. The issue of the actual price tag is not the issue before the Commission. She supports the staff recommendation.

Member Lujano moved to adopt the staff recommendation, including striking out the language proposed by the SCO. With a second by member Worthley, the staff recommendation to partially approve the proposed amendments to the parameters and guidelines was adopted by a vote of 4-2, with Members Bryant and Klass voting no.

STAFF REPORTS

Item 12 Chief Legal Counsel's Report (info)

Ms. Shelton discussed the upcoming hearings for two court cases.

Item 13 Executive Director's Report (info)

Ms. Higashi reported that the workload report filed with the Department of Finance is available on the Commission's web site. Also, there are currently two vacant staff counsel positions. While these vacancies have some salary savings, they could also cause longer determination times.

Ms. Higashi reported that the ambitious January 2009 agenda is tentative with a lot of community college district test claims, proposed parameters and guidelines and statewide cost estimates coming forward.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

A. PENDING LITIGATION

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]

4. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
5. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Klass adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:41 p.m., Chairperson Klass reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Klass adjourned the meeting at 12:41 p.m.



PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:37 a.m.
DATE: Thursday, November 6, 2008
PLACE: State Capitol, Room 126
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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A P P E A R A N C E S

COMMISSIONERS PRESENT

FRED KLASS
(*Commission Chair*)
Representative for MICHAEL C. GENEST
Director, State Department of Finance

CYNTHIA BRYANT
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(*Item 8*)

NANCY PATTON
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(*Item 3 and Item 7*)



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3:

For San Diego Unified School District

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Manager, Office of Resource Development
San Diego City Schools Finance Division
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For Mountain View-Los Altos High School District:

DAVID E. SCRIBNER, ESQ.
President/CEO
Scribner & Smith
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Gold River, California 95670

For Castro Valley Unified School Districts:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates
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For Graduation Requirement Mandate Resolution Committee:

DIANA D. HALPENNY, ESQ.
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For Education Mandated Cost Network:

ROBERT MIYASHIRO
Education Mandated Cost Network

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For the State Controller:

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
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1 BE IT REMEMBERED that on Thursday, November 6,
2 2008, commencing at the hour of 9:37 a.m., thereof, at
3 the State Capitol, Room 126, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR KLASS: All right, the State Mandates
8 Commission will come to order.

9 Paula, will you read the roll?

10 MS. HIGASHI: We're just in the process of
11 moving some chairs down.

12 CHAIR KLASS: Okay, let's take a moment.

13 MS. HIGASHI: I think we're good.

14 Ms. Bryant?

15 COMMISSIONER BRYANT: Here.

16 MS. HIGASHI: Mr. Chivaro?

17 COMMISSIONER CHIVARO: Here.

18 MS. HIGASHI: Mr. Glaab is unable to be here
19 today.

20 Mr. Lujano?

21 COMMISSIONER LUJANO: Here.

22 MS. HIGASHI: Ms. Olsen?

23 COMMISSIONER OLSEN: Here.

24 MS. HIGASHI: Mr. Worthley?

25 COMMISSIONER WORTHLEY: Here.

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1 MS. HIGASHI: Mr. Klass?

2 COMMISSIONER KLASS: Yes.

3 MS. HIGASHI: Thank you.

4 CHAIR KLASS: I'll recognize a quorum.

5 The next issue is *Approval of Minutes*.

6 Are there any corrections or additions to
7 the minutes?

8 *(No response)*

9 CHAIR KLASS: Seeing none, can I have a motion?

10 COMMISSIONER OLSEN: So moved.

11 COMMISSIONER WORTHLEY: Second.

12 CHAIR KLASS: Okay, moved by Commissioner
13 Olsen, seconded by Commissioner Worthley.

14 All those in favor, say "aye."

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

16 CHAIR KLASS: No opposed?

17 *(No response)*

18 CHAIR KLASS: Thank you.

19 The next thing on the agenda is the --

20 MS. HIGASHI: It is the *Proposed Consent*
21 *Calendar*.

22 CHAIR KLASS: -- the *Proposed Consent Calendar*.

23 Are there any comments --

24 MS. HIGASHI: You have it before you. There's
25 one item.

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1 COMMISSIONER WORTHLEY: Item 6.

2 MS. HIGASHI: Item 6.

3 CHAIR KLASS: Are there questions?

4 COMMISSIONER BRYANT: I'll move it.

5 COMMISSIONER OLSEN: So moved.

6 COMMISSIONER BRYANT: I'll second it.

7 CHAIR KLASS: Flip a coin.

8 Moved by Commissioner Olsen, seconded by
9 Commissioner Bryant.

10 All those in favor, say "aye."

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

12 CHAIR KLASS: Opposed?

13 *(No response)*

14 CHAIR KLASS: It's unanimous.

15 Next is --

16 MS. HIGASHI: This brings us to Item 3. And
17 these are the proposed amendments to the parameters and
18 guidelines on the *Graduation Requirements* program. This
19 item will be introduced by Chief Legal Counsel Camille
20 Shelton.

21 CHAIR KLASS: Before Camille gets started, let
22 me share my thoughts on how we would proceed on this
23 item.

24 I'm new to the Commission, so maybe all of your
25 items are this complicated. But it seemed to me that

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1 this was a difficult issue to get through, with ten
2 different components to it; and some of them interacting,
3 some of them standing alone.

4 One way we could proceed is to hear all those
5 who have comments testify on all and every piece of it,
6 and then go into our discussion. But what I think I'd
7 rather do, unless the Commissioners would prefer not to,
8 is to take it piece by piece. So Camille will do sort of
9 an overview of the whole thing, and then we will go
10 through the items one at a time as the staff have listed
11 them out. And we'll hear the testimony on that item; any
12 questions, discussion; if you have, as Board members,
13 thoughts on it, I think it might be useful to share those
14 thoughts.

15 COMMISSIONER WORTHLEY: I share your approach,
16 Mr. Chairman.

17 CHAIR KLASS: Great.

18 So we won't take a vote on each item as we go
19 through. We will hold that to the end because some of
20 them interact, but we will discuss them one at a time.

21 And we will skip the first one because it does
22 interrelate and depends on the actions on the other.

23 So we'll start with Item 2 as laid out by
24 staff.

25 And with that, we will have Camille introduce

1 it.

2 MS. SHELTON: Good morning. This item
3 addresses several proposals to amend the parameters and
4 guidelines for the *Graduation Requirements* program and
5 Education Code section 51225.3.

6 Pursuant to Government Code section 17557, the
7 Commission has the authority, after public notice and a
8 hearing, to amend, modify, or supplement parameters and
9 guidelines. If the Commission amends the parameters and
10 guidelines, the reimbursement period of the amendment is
11 established by law.

12 The proposals at issue attempt to clarify the
13 reimbursable activities and propose the adoption of
14 reasonable reimbursement methodologies in lieu of the
15 actual costs claimed for the reimbursement of teacher
16 salaries, acquiring or remodeling science classroom
17 facilities, acquiring equipment, and for instructional
18 materials and supplies.

19 Staff finds that only the proposed reasonable
20 reimbursement methodology for teacher-salary costs
21 satisfies the definition of a reasonable reimbursement
22 methodology in Government Code section 17518.5, and is
23 consistent with the Court's ruling in the *San Diego*
24 *Unified School District* case.

25 The proposals also attempt to clarify

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1 offsetting revenue and savings.

2 Once the Commission takes testimony on the
3 request to amend and the issues presented in this item,
4 we can answer any question you might have regarding
5 procedural options and motions. So you can seek to
6 clarify those.

7 I will also say that we did receive a late
8 filing yesterday from the Controller's office, which
9 is in yellow, you should have in front of you.

10 Also in front of you is a chart that we
11 prepared. We requested some data from the Controller's
12 office on the reimbursement claims that have been filed
13 since 1995-96. Once you get to that point in your
14 discussion, I can certainly summarize what this chart
15 represents and answer any questions that you might have
16 on that.

17 At this point, will the parties please state
18 your names for the record, please?

19 MR. DEL CASTILLO: Lenin Del Castillo for the
20 Department of Finance.

21 MS. GEANACOU: Susan Geanacou, Department of
22 Finance.

23 MS. BRUMMELS: Ginny Brummels, State
24 Controller's office.

25 MR. RYAN: Chris Ryan, State Controller's

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1 Office.

2 MR. SPANO: Jim Spano, State Controller's
3 office.

4 MR. PALKOWITZ: Art Palkowitz, San Diego
5 Unified School District.

6 MR. SCRIBNER: David Scribner, Mountain View-
7 Los Altos.

8 MS. HALPENNY: Diana Halpenny with Kronick,
9 Moskovitz, Tiedemann & Girard, representing the
10 Graduation Requirements Mandate Resolution Committee.

11 MR. PETERSEN: Keith Petersen, representing the
12 six school districts, generally referred to as "*Castro*
13 *Valley*" in the materials.

14 CHAIR KLASS: Okay, so, Camille, do you want to
15 start us off with what is listed as Issue 2 in your
16 analysis?

17 MS. SHELTON: Yes, Issue 2 -- and I'm going off
18 of the analysis beginning on page 33 -- is: Should the
19 Commission amend the parameters and guidelines to
20 specifically identify county offices of education as
21 eligible claimants?

22 Staff recommends that the Commission amend the
23 parameters and guidelines as requested.

24 CHAIR KLASS: Who should go first?

25 MS. SHELTON: I believe the requesting party

1 was Mr. Petersen.

2 MR. PETERSEN: Good morning.

3 This general statement first. This process has
4 been going on for 13 years. I think this particular
5 last phase, the parameters-and-guidelines amendments,
6 have been well-briefed. I think we had three rounds of
7 briefing. I think the issues are fairly well-flogged.
8 So I'm going to pretty much, on behalf of my clients,
9 recommend going forward with the staff recommendation,
10 although I do have some differences.

11 I think we're at the point that this is what
12 it's going to be. So I've got nothing specific to add on
13 Issue 2.

14 MS. HALPENNY: I have nothing specific to add,
15 either.

16 CHAIR KLASS: Controller's office? Finance?

17 MR. DEL CASTILLO: We'd just like to reiterate
18 in comments that we've already submitted. We continue to
19 believe that county offices of education should not be
20 included -- or the amendments should not include county
21 offices of education as eligible claimants. We believe
22 that the programs that they offer tend to be temporary
23 placements and, as such, they're not comprehensive high
24 schools. And for that reason, they should not be
25 included as eligible claimants.

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1 CHAIR KLASS: This is a question for Camille or
2 anybody else, and I do have a question. It does seem it
3 is a bit double-funding to me. It seems a person would
4 either take this in a county office or in a regular
5 school.

6 What would be the reason that it's not
7 duplicative?

8 MS. SHELTON: I can answer part of that, and
9 I'm sure Finance can answer more.

10 Under the Education Code, the county office of
11 education is the school district for homeless children.
12 And according to the statutes, those students must
13 continue the academic work leading to the completion of a
14 regular high-school program.

15 Education Code section 51225.3, the test-claim
16 statute, is applicable to all pupils in high school in
17 order to graduate. The Legislature did not distinguish
18 between unified school districts, high-school districts,
19 or county offices of education.

20 Also, in 2005, the Legislature did direct the
21 Commission to amend the parameters and guidelines for
22 this program to identify bond-funding for construction
23 of science facilities and specifically, in the language
24 included county offices of education.

25 And so you can infer from that leg. intent,

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1 that they intended to apply that graduation requirement
2 imposed on all pupils attending either a county office of
3 ed. or a unified school district.

4 COMMISSIONER WORTHLEY: Mr. Chairman, as an
5 example in our county, I know the Department of Ed. is
6 the teaching arm for our children who are in custody.
7 So they actually conduct the schools and have the
8 classrooms that are in our juvenile facilities.

9 CHAIR KLASS: And my next question kind of
10 jumps ahead a little bit, but in the methodology for
11 determining the number of teachers based upon the number
12 of students, is there a double-count there? Or are
13 there --

14 MS. SHELTON: No, there's not a double count.
15 I think there may be some concerns -- and maybe Finance
16 could answer this -- this is certainly an education-
17 funding issue, which I don't have the expertise in.

18 When kids are suspended or expelled, or
19 expelled, particularly, they do sometimes go -- or they
20 will go to a county office of ed. school temporarily
21 during the period of expulsion, and then they go back.
22 And I believe there are some funding statutes in the
23 Ed. Code on how they identify the ADA and how that is
24 handled. I don't know how, if that becomes an issue with
25 auditing here, I don't know.

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1 CHAIR KLASS: Finance, do you want to comment?

2 MR. DEL CASTILLO: Yes, but the methodology
3 uses enrollment taken from the beginning of the year. So
4 I think there's a chance that these kids could be
5 double-counted.

6 Again, these are temporary placements. They
7 could be served at a county office of education program
8 for part of the year, and then they could go back to the
9 school district, or they could remain in the county
10 office of education program for the remainder of the
11 year. But we don't see how this methodology would take
12 that into account.

13 MR. PETERSEN: I'd like to respond to that.

14 You're speaking about funding tied to students.
15 If a student is no longer in his home district, he's at a
16 juvenile court school, there's no longer payment for
17 attending at his home district. Whether that's the issue
18 or not, the high-school education has to be provided at
19 both locations, and the cost is the instructors and not
20 the student.

21 The double-counting of enrollment. Actual
22 attendance, no, because the student is no longer at the
23 home district. If you take pictures of enrollment
24 throughout the year, the student might have been at the
25 home district in October and at the juvenile court system

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1 school in December. But as far as payment, based on that
2 average daily attendance, there is no duplication.

3 The turnover at juvenile court schools, the one
4 I am familiar with is like 500 or 600 percent per year.
5 They're in there for a temporary stretch.

6 CHAIR KLASS: Camille, did you have --

7 MS. SHELTON: When you get to Issue 7 and the
8 proposed modifications to the quarter-load method, staff
9 was recommending that you determine enrollment on the
10 CBEDS information day, which is one day in the year, I
11 believe it's October 3rd. So wherever that pupil is on
12 that day, that's where they're counted.

13 MR. PETERSEN: You can't be in two places at
14 once.

15 MS. HALPENNY: Right, and that's what avoids
16 the duplication of student counts, as you said, the CBED
17 day.

18 CHAIR KLASS: Nobody else has comments?

19 I think I've got my question answered.

20 Camille, do you want to take us to Item 3?

21 MS. SHELTON: Yes. Issue 3 asks: Should the
22 Commission amend the parameters and guidelines to clarify
23 that the activities of acquisition of additional space
24 and remodeling existing space includes planning, design,
25 land, demolition, building construction, fixtures, and

1 facility rental.

2 The proposed language is in that paragraph
3 below on page 35, the strike-out and underline. Staff
4 recommends that the Commission adopt this request.

5 CHAIR KLASS: And from the staff analysis,
6 there appears to be unanimity on this point? There's no
7 dispute?

8 MS. GEANACOU: Finance would just like to
9 offer a comment if we could. We hadn't filed comments on
10 this previously, and we do not have a pending
11 parameters-and-guidelines request on this, but we would
12 be happy to file one in the future.

13 Our comment regards the language involving the
14 remodeling of space required for teaching the second year
15 of science. Finance objects to the standard applied or
16 suggested in the existing P's & G's against which any
17 remodeling is being measured, namely, that -- and I'll
18 quote what it says -- a standard "*essential to*
19 *maintaining a level of instruction sufficient to meet*
20 *college-admission requirements.*"

21 And our observation is that this "*college-*
22 *admission requirements*" language does not appear in the
23 test-claim statute, Education Code section 51225.3, and
24 may impose a higher standard than that that was intended
25 by the Legislature.

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1 The Legislature specified in the test-claim
2 statute the courses that a student has to complete before
3 receiving a high-school diploma, with no reference to
4 meeting college-admission requirements.

5 And our suggestion would be that the language
6 should be removed as the remaining sentence would be
7 clear with no need for substituted words. And this
8 activity appears in the reimbursable-activities section
9 of all the sets of the proposed amended P's & G's as
10 Activity C. And as I said before, this is not subject to
11 a pending P's & G's amendment request. And Finance may
12 consider filing one in the future if action can't be
13 taken today.

14 CHAIR KLASS: Very good. It sounds like a
15 meritorious point, and we look forward to your
16 application in the future.

17 If there are no other comments, do you want to
18 take us to Issue 4?

19 MS. SHELTON: Issue 4, on page 36: Should the
20 Commission amend the parameters and guidelines to include
21 the proposed reimbursement methodology for claiming an
22 increased facility cost for acquiring or remodeling
23 space?

24 This request was made by Mr. Petersen, and
25 staff recommends that the Commission deny this request

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1 because it does not meet the definition of a reasonable
2 reimbursement methodology under Government Code section
3 17518.5.

4 CHAIR KLASS: Mr. Petersen, do you want to
5 respond?

6 MR. PETERSEN: Well, I think both Camille and I
7 have very strong positions; but she typically wins these
8 ties.

9 CHAIR KLASS: A diplomatic white flag, if I
10 ever saw one.

11 All right, if there are no other comments?

12 *(No response)*

13 CHAIR KLASS: And I am assuming, Commission
14 Members, that if you have questions, that you will chime
15 in, too.

16 *(No response)*

17 CHAIR KLASS: Seeing none, Camille, will you
18 take us to Number 5?

19 MS. SHELTON: Yes. On page 37: Should the
20 Commission amend the parameters and guidelines to specify
21 that acquisition of equipment includes the activities of
22 planning, purchasing, and placement of additional
23 equipment and furniture?

24 Mr. Petersen made this request, and staff
25 recommends that the Commission adopt these

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1 clarifications.

2 CHAIR KLASS: Which I assume Mr. Petersen
3 agrees with.

4 Are there any other comments?

5 *(No response)*

6 CHAIR KLASS: Seeing none, Camille, 6?

7 MS. SHELTON: Issue 6: Should the Commission
8 amend the parameters and guidelines to include a proposed
9 reasonable reimbursement methodology for claiming
10 increased costs for acquiring equipment and furniture?

11 This proposal was made by Mr. Petersen, and
12 staff recommends that the Commission deny this request
13 since the proposal does not satisfy the definition of
14 Government Code section 17518.5.

15 MR. PETERSEN: The same response as issue 4.

16 CHAIR KLASS: Okay, the white flag prevails.

17 Are there any other comments, questions,
18 concerns?

19 *(No response)*

20 CHAIR KLASS: Seeing none, Number 7, Camille?

21 MS. SHELTON: Okay, Issue 7 is the most
22 disputed item in this analysis.

23 Should the Commission amend the parameters and
24 guidelines to include the proposed reimbursement
25 methodology of the one-quarter-class-load method for

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1 claiming increased teacher-salary costs?

2 This proposal has been made by San Diego
3 Unified School District, joined by all of Mr. Petersen's
4 clients, and the State Controller's Office.

5 Staff is recommending that the Commission adopt
6 a modified proposal, which is on page -- it's described
7 on pages 54 and 55.

8 And staff finds that the proposal does satisfy
9 the definition of Government Code section 17518.5, and is
10 consistent with the Court's decision in the *San Diego*
11 *Unified School District* case.

12 CHAIR KLASS: Okay, would you like to start,
13 Mr. Petersen?

14 MR. PETERSEN: We believe this is a reasonable
15 cost-accounting method. We support the issue.

16 MS. HALPENNY: We agree.

17 MR. SCRIBNER: I agree.

18 MR. PALKOWITZ: Good morning. My name is
19 Art Palkowitz on behalf of San Diego Unified.

20 I'd just like to cover some of the historical
21 parts of this conclusion.

22 As earlier mentioned, I believe, this is a 1987
23 mandate. None of us, I don't think, were involved in
24 that at that time. Twenty years later, we've had two
25 lawsuits and 41 incorrect-reduction claims. And, really,

1 the basis of that is the Number 7 issue. There was lack
2 of uniformity throughout the state on how to claim these
3 costs. For years, they were not paid because of that
4 lack of uniformity or clarification. State agencies
5 looked at it differently than school districts. And it
6 took another lawsuit to gain some clarity.

7 I believe now the clarity is included in the
8 Commission staff's recommendation. The clarity is not
9 only to make it easier for school districts to claim
10 these costs going back and the future, it creates an
11 environment that will allow school districts to have
12 confidence in what they claim. It will create an
13 environment that will allow the State Controller to look
14 at these claims and realize they may need audit but not
15 to the level it needed before.

16 I really appreciate the effort of the State
17 Controller corroborating, coming up with this proposal.
18 Their proposal is not a winner for everyone, but it's a
19 fair and reasonable proposal. And I think it meets the
20 intent of the legislation when they passed this bill in
21 2008 requesting that reasonable-reimbursement methods be
22 used when there is that opportunity.

23 MR. PETERSEN: So you like it?

24 MR. PALKOWITZ: I think it's reasonable and
25 fair. And I really am very excited of the opportunity

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1 that this will be one of the ones that we could look back
2 at for years to come and say we came up with a method;
3 and despite attempts in the past not being successful,
4 moving forward, we can come to an agreement and come up
5 with a method that many school districts had to go back
6 to 1987 data to create claims for 21st century claims.

7 So the data that will be used going forward is
8 on the CDE Web site. It's data that districts have to
9 submit, anyway. So I really believe it's a fair method.
10 And, like I said, there are winners and losers in this,
11 depending on the district and how they do business. But
12 overall, I feel like it's a very fair method.

13 CHAIR KLASS: Thank you.

14 Controller?

15 MR. SPANO: Jim Spano, representing the State
16 Controller's Office.

17 On behalf of the State Controller's Office, we
18 support the quarter class-load methodology.

19 CHAIR KLASS: Very good.

20 Anyone else from the Controller?

21 *(No response)*

22 CHAIR KLASS: No?

23 Finance?

24 MS. GEANACOU: Susan Geanacou, Department of
25 Finance.

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1 I don't think Finance is quite so enthusiastic
2 about the method. I'll offer a little more specific
3 comments.

4 Before I got started, I want to remind the
5 members that adoption of these P's & G's amendment
6 requests that are pending today are discretionary,
7 they're not required. The Commission does not have to
8 amend the P's & G's for the *Graduation Requirements*
9 mandate.

10 The potential fiscal effect of not amending
11 the pending P's & G's as requested would be to relieve
12 the State of approximately \$3 billion in additional
13 reimbursement to school districts for past years. That
14 is beyond which they have already received or are already
15 entitled to receive for reimbursement for this mandate.

16 If the Commission denies the pending request
17 today, in whole or in part, but still wishes to clean
18 up language in the current P's & G's, a new amendment
19 request could be filed by Finance or another party for
20 future consideration by the Commission.

21 And then more specifically to the substance
22 of Issue 7, I just wanted to make a brief statement
23 before my colleague, Mr. Del Castillo speaks, that
24 Article XIIIIB, Section 6 requires a new program or higher
25 level of service for state reimbursement to be required.

1 In applying Government Code section 17565, to allow
2 reimbursement even when school districts do not hire
3 additional teachers here, illustrates that the section
4 is not consistent with Section 6. Many school districts
5 were offering at least two science classes well before
6 the mandate was created. And this shows that the second
7 science course was not a new or higher level of service
8 at the time that it was required by the Legislature in
9 the 1980s.

10 CHAIR KLASS: Mr. Castillo?

11 MR. DEL CASTILLO: Yes, I'd like to just go
12 over some of the reasons why we believe that the proposed
13 one-quarter-class-load method does not meet the statutory
14 requirements for establishing a reasonable reimbursement
15 methodology.

16 The Government Code states that an RRM has to
17 consider variation of costs, it has to be a methodology
18 to provides reimbursement in a cost-efficient manner, and
19 it also has to be based on cost information from a
20 representative sample of eligible claimants.

21 The staff's analysis acknowledges that not all
22 districts have submitted claims. It goes on to state
23 that it relies on actual cost information from the
24 relatively small sample of districts. Twenty-two, I
25 believe. And that represents just over 2 percent of

1 districts statewide. We don't think this constitutes
2 sufficient evidence of actual costs because it's not a
3 representative sample of claimants.

4 Also, it doesn't consider a variation of costs
5 among districts and county offices of education. As I
6 mentioned earlier, we think it's unreasonable to include
7 them because, again, these are only temporary placements
8 and the drop-out rates are significantly high for
9 students that are placed in these county office of
10 education settings.

11 Secondly, I'd like to note, since not all
12 districts have submitted claims, so in the absence of a
13 prior test claim being submitted, we believe that this
14 could have resulted from a district's determination that
15 did not incur additional teacher costs to provide the
16 second science course. We believe that in these types
17 of situations, any reimbursement from the application of
18 the proposed one-quarter-class-load method would confirm
19 that it's not accurate or it's not cost-efficient.
20 Again -- and these are two of the statutory criteria that
21 must be satisfied for establishing an RRM.

22 Lastly, we believe that the adoption of the
23 proposed RRM could provide a potential windfall for
24 districts. There's districts that have come in,
25 submitted actual claims based on actual cost information.

1 So if the Commission were to adopt this one-quarter-
2 class-load method, these districts could come back in and
3 perform the calculation and see how much reimbursement
4 this method would provide them. And if it results in a
5 higher level of reimbursement than what they received
6 based on the actual cost data that they submitted, they
7 would be entitled to those additional reimbursements.

8 So this is another reason for why we think it
9 should not be adopted, because it wouldn't provide a
10 reimbursement in a cost-efficient manner.

11 And then I think I'll reserve our revenue-limit
12 comments for Issue 10. I think that would be the more
13 appropriate place.

14 CHAIR KLASS: Mr. Petersen?

15 MR. PETERSEN: Speaking on behalf of the six
16 districts, I think the only -- Finance points out that
17 it's at your discretion to adopt these parameters and
18 guidelines. I think the only people that want this to
19 go on for another 13 years is the Department of Finance.
20 I think everybody else has gotten behind a reasonable
21 calculation.

22 All the issues raised about the formula have
23 been refuted by Commission staff. Some of the arguments
24 have to do with the test claim which was decided in 1987
25 or 1986, and can't be argued here.

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1 And my major objection of the last five
2 minutes, at least, is Finance continuing to enter a
3 number, \$3 billion, without foundation or evidence.

4 Where did that number come from?

5 CHAIR KLASS: Finance, do you care to respond
6 to that?

7 MR. PETERSEN: How did you calculate that?
8 Does it assume everybody files?

9 MR. CASTILLO: Yes, we ran a -- we took average
10 teacher salaries over the past -- or going back to
11 1994-95, looked at what statewide ADA was for the
12 high-school districts that would be eligible, and we
13 assumed that all eligible claimants would file claims for
14 reimbursement.

15 MR. PETERSEN: Well, Mr. Klass, if that becomes
16 evidence here, we'd certainly like some time to refute
17 it. It's never been offered to anybody for review. As
18 far as I know, it's just something they generated.

19 And based on his short explanation, I can find
20 two or three problems with it already.

21 CHAIR KLASS: Has the information been
22 requested before and not provided? Or it's just never
23 been in the --

24 MR. PETERSEN: Well, no, but it's being offered
25 as evidence.

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1 MS. SHELTON: Now might be a good time to
2 discuss just this chart.

3 It doesn't go directly to the \$3 billion figure
4 that Finance is suggesting. It's just on this white
5 chart.

6 If you need one, I have another copy.

7 You know, there's a lot of numbers that have
8 been floated around, and nobody has identified how they
9 are coming up with their numbers.

10 We did request the State Controller's Office to
11 give us a breakdown of the claims that were filed from
12 1995-96 through 2006-07. And Ginny was nice enough to
13 send us the data about this thick about all the claimants
14 that have filed and the amounts requested and the amounts
15 that have been approved.

16 I broke it down into two tables. Table 1 is
17 the number of claimants -- or the amount that they
18 requested and the total amount approved before the Court
19 issued its decision and writ in *San Diego Unified School*
20 *District*.

21 So what this shows is that -- and I calculated
22 the averages at the bottom. So approximately 321 school
23 districts filed claims during that time period, from
24 1995-96 through 2003-04. They claimed, on average,
25 \$29 million; and \$14 million was approved on average, at

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1 a 48 percent approval rate at that point. There are a
2 total of 417 high school districts and unified school
3 districts in California, and 58 county offices of ed.

4 Table 2 shows the data after the Court issued
5 its judgment and writ. On average, 293 claimants filed
6 from the time period between 2004-05 through 2006-07.
7 They claimed almost \$91 million; and they received almost
8 \$91 million for a 99 percent approval rating.

9 MR. PETERSEN: Question?

10 CHAIR KLASS: Yes.

11 MR. PETERSEN: Does this include facility costs
12 or is it just teachers?

13 MS. SHELTON: This is the whole claim. I did
14 not -- it was not broken down by activity.

15 MR. PETERSEN: Facility costs can run hundreds
16 of thousands of dollars per claim.

17 COMMISSIONER WORTHLEY: Mr. Chairman, I guess
18 I'm questioning, what is the relevance of this whole
19 matter? While we've never before talked about whether
20 the cost was big or small, the question was, does this
21 meet the mandatory requirements of being a reimbursable
22 mandate? And whether it costs billions or it costs
23 hundreds of dollars, it really is not relevant.

24 MS. SHELTON: You're raising a good point.

25 The issues have been circulating between the

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1 Department of Finance, the Legislative Analyst's Office,
2 and certain claimant communities. And different numbers
3 are being thrown about. That's why we requested the
4 actual data in case the Commission wanted to discuss
5 those issues and see the trends.

6 This document certainly does not calculate a
7 number. We have never attempted to do that. And I have
8 no idea how much it would cost.

9 COMMISSIONER WORTHLEY: It sounds like an
10 equitable argument which we are forbidden from
11 considering.

12 MS. SHELTON: You know, you can absolutely
13 consider this. It is within the discretion for the
14 Commission to adopt an RRM and amend the parameters and
15 guidelines.

16 If it's adopted, as I have stated earlier, your
17 period of reimbursement is established by law, and that
18 is a disputed issue that we will get to. But by law,
19 this request was initially filed in 1996. So it would
20 have a period of reimbursement going back to 1995-96.

21 And, by law, all school districts and county
22 offices of education, if that's adopted by the
23 Commission, would be able to refile or file their claims.

24 This proposal does require that eligible
25 claimants retain documentation to support the proposed

1 one-quarter-class-load method. They can't just file
2 their claims absent documentation. Those claims are
3 signed under penalty of perjury.

4 This proposed quarter-load method is just to
5 determine the gross teacher salary costs. The method
6 does not include any offset calculations or audits
7 performed by the State Controller's Office. And it is
8 based on actual numbers: Actual enrollment, actual
9 teacher salaries, actual number of teachers. So it's
10 not just a unit cost. And it does consider the variation
11 of costs, and is cost-efficient because it is using the
12 district's actual numbers.

13 CHAIR KLASS: Yes?

14 MR. PALKOWITZ: Yes, thank you.

15 Based on Table 2, which shows -- and I agree
16 with the member's comment that the cost is an issue; but,
17 unfortunately, I think we need to understand what has
18 been said and the validity to those costs.

19 Table 2 is indicating the amount of
20 \$90 million. The Department of Finance, in their
21 papers, mentioned \$250 million. And so --

22 MR. PETERSEN: The Leg. Analyst says
23 \$160 million a year.

24 MR. PALKOWITZ: Well, I think the point is,
25 there is no opportunity for us to examine the costs.

1 And I really believe, I'm not sure what's the relevancy
2 of the cost.

3 We know school districts are required to have
4 two science classes. We know that's happening. So
5 there's no dispute that this activity is not taking
6 place.

7 Regarding the contention that there need not
8 be a decision by the Commission on the method, failure
9 to do that would result in numerous amounts of
10 incorrect-reduction claims being filed again once the
11 audits start. And, no doubtedly, there will be another
12 dispute that will result in a lawsuit.

13 Furthermore, the contention that the second
14 science class -- some schools already were doing that
15 when this mandate passed. For example, San Diego has
16 three science classes. That may be necessary for a
17 school district to compete with other schools. The fact
18 is, a school district has that discretion, how many
19 science classes they want to have; and they could change
20 that tomorrow.

21 However, once this mandate was passed, they
22 were required to have two and could not make changes.
23 So, therefore, that contention that a school district
24 might have been having or performing this mandate before
25 it actually was passed by legislation does not mean that

1 school districts would have to continue providing that
2 service.

3 Thank you.

4 MR. SPANO: On behalf of the State Controller's
5 Office, the Division of Audits, we perform a few audits
6 of *Grad Requirements* and we also were asked to respond to
7 the claim subject to the litigation regarding the *Grad*
8 *Requirements*. And this methodology being proposed is --
9 well, what we found out during the course of our audits
10 is that there was a variety of different methodologies
11 being used by different claimants in trying to determine
12 what's reimbursable costs, and the costs vary
13 significantly from claimant to claimant. And we believe
14 that the methodology is the reasonable methodology that
15 schools collectively can use to determine reasonable
16 cost.

17 CHAIR KLASS: Mr. Petersen?

18 MR. PETERSEN: I believe you were here in July
19 of 1989, when we first started discussing the cost.

20 CHAIR KLASS: Unfortunately, I don't remember
21 it.

22 MR. PETERSEN: And I hope we don't go ten or
23 11 years and we do this again.

24 But it was expensive then. It's not going to
25 get any cheaper. And there are important reasons for

1 predictability for the audits, predictability for the
2 districts. It's the reasonable method. And this process
3 solves the problems presented by the claims and the
4 direction presented by the Court. We have to do
5 something.

6 CHAIR KLASS: Mr. Miyashiro?

7 MR. MIYASHIRO: Yes, for the record, Robert
8 Miyashiro representing the Education Mandated Cost
9 Network.

10 And I'd like to specifically address the
11 Department of Finance's concern with regard to their
12 critique of this methodology. And I think kind of
13 fundamentally, the Department of Finance is
14 misinterpreting or confusing the difference between a
15 reimbursement rate and a reimbursement methodology.

16 This proposal is a methodology that satisfies
17 all of the statutory criteria. It is, in fact, based on
18 the district's actual costs. It is going to be, in fact,
19 based on the district's actual CBEDS enrollment. And as
20 such, the amount of money that is reimbursed to the
21 district is specific to each district. And so it does
22 not introduce any bias of high or low in the methodology
23 itself. In fact, the methodology specifically is
24 tailored to reimburse districts for their costs. The
25 salary is not based on the statewide average salary.

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1 The salary reimbursement is based on the district's
2 salary.

3 And so for the Department of Finance to
4 criticize or take issue with this proposal, I think they
5 completely misunderstand the reimbursement rate, which
6 could introduce bias, depending on how that rate was
7 calculated. But it does not establish a rate to be
8 applied to all districts; it allows the rate to be
9 specific to the district.

10 And for that reason, I think this methodology
11 satisfies every criteria. And I think that the
12 Department of Finance, in some sense, I think
13 Mr. Petersen is correct, their objection to stall this,
14 based on these, has no foundation. And I would urge that
15 the Commission adopt this methodology. It's been
16 well-reasoned.

17 CHAIR KLASS: Commissioner Bryant, do you have
18 a question?

19 COMMISSIONER BRYANT: I just want to
20 double-check something.

21 What's in front of us, correct, is just
22 amending the P's & G's. So Finance made the comment in
23 her remarks about whether or not -- I think -- well,
24 I think that the Court decision, if I understand it
25 correctly, clearly says that it doesn't matter if the

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1 school is already teaching two science classes, we're
2 reimbursing for the two science classes.

3 Is that correct?

4 MS. SHELTON: Yes, it found that there was a
5 reimbursable state-mandated program, and it was an
6 addition of an extra class that the existing law gives
7 the school districts discretion. So whatever they did
8 before, they can continue to do. But because the state
9 has mandated a new additional course, that is a
10 reimbursable state-mandated program.

11 COMMISSIONER BRYANT: Okay, so it just would be
12 helpful if -- so that was decided whenever Fred was here
13 20 years ago. So it would be helpful if issues were not
14 raised at the table that we already have decided on in
15 the past.

16 So the question in front of us is, are we going
17 to amend the P's & G's now?

18 Nothing in the Court decision requires us to do
19 that.

20 MS. SHELTON: No. I was going to say, the
21 Court decision, what it does have is a collateral
22 estoppel effect on the Controller's office when they're
23 auditing claims. The Court decision never, ever got
24 into exactly how a district was claiming their gross
25 teacher-salary costs. It never got to that point. It

1 was just whether or not it was reimbursable or not, or
2 whether or not you could assume an offset, because the
3 school day and the school year had not increased.

4 And the Court said, "No, you cannot assume
5 that. You can't deny without assumption. You have to
6 have actual evidence in that record that if they did
7 reduce their school day or shift their curriculum around,
8 that it has to be a direct result of this mandate." But
9 the Legislature never intended, based on the plain
10 language of the statute, for the district to rearrange
11 their curriculum.

12 COMMISSIONER BRYANT: So the next question in
13 front of me is whether or not it's appropriate to adopt
14 this methodology that has been proposed by staff. And
15 I guess -- this is so confusing. I had this straight in
16 my head last night, but today it seems confusing again.

17 So the question of whether or not we're going
18 to adopt the methodology, that's really what's in front
19 of us.

20 If we say -- if the Commission voted, "We're
21 not going to adopt this type of reimbursement
22 methodology," there's nothing left in the record that
23 we could adopt today, if I read everything correctly,
24 because it's so interrelated. There aren't distinct
25 pieces that we could adopt from this decision that would

1 help the Controller reimburse school districts for this
2 mandate.

3 Am I correct about that?

4 MS. SHELTON: I think so.

5 Let me just say that the proposed methodology,
6 again, is just for the gross teacher-salary amount.

7 What seems to be disputed among everybody, are
8 the offsetting revenue and savings. That part is not
9 included in the proposed methodology; and it can't be
10 under the *Conley* decision because the Court said you
11 can't assume on anybody that they take an offset. It has
12 to actually be shown in evidence in the record when
13 they're filing their claim.

14 Originally, there were some potential
15 offsetting revenues included in the proposal; and it
16 just, you know, didn't make sense. So it's outside of
17 the proposed methodology, in its normal place under the
18 parameters and guidelines under issue -- it's in
19 Issue 10 -- but under the offsetting savings and revenue
20 sections.

21 COMMISSIONER BRYANT: Right.

22 MS. SHELTON: Does that answer that?

23 COMMISSIONER BRYANT: Yes, you did. And, in
24 fact, you kind of got to my next point.

25 Because if what we're trying to decide -- if

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1 Finance -- it seems to me that Finance's big objection
2 here is this question of offsetting revenue; and they
3 provided information in one of their letters about the
4 amount of money that's come to them along the way.

5 MS. SHELTON: Right.

6 COMMISSIONER BRYANT: But it seems to me that
7 that gets to the question of whether it directly offsets
8 this thing, this mandate. And if it does not -- so that
9 seems like an indirect offset, if I'm reading it
10 correctly. So to me, in a way, the methodology itself
11 seems like an indirect way to decide the costs. And if
12 the Court is directing the Controller to only offset
13 direct costs, then why are we going to set up a
14 methodology that has somewhat of an indirect -- it gets
15 to the question of, is this a reasonable reimbursement
16 methodology,

17 I just don't know how we are ever -- it seems
18 to me - gosh, I'm sorry that I'm so confusing. I
19 can't -- it's clear in my head.

20 If we can only offset with direct costs, why
21 are we establishing a methodology that is more of kind
22 of a scientific guesstimate, that we're going to then
23 offset with only direct costs? If we can only offset
24 with direct costs, then why aren't we just going to look
25 at the direct costs? Does that --

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1 MS. SHELTON: I'm not sure that I follow.

2 COMMISSIONER BRYANT: Okay.

3 MS. SHELTON: Because under the proposed
4 methodology, they are using their direct costs. So
5 they're using their actual costs. We're not making up
6 any number with this formula. It is just telling you
7 what number to plug in, and then you come up with a
8 calculation in the end. But it doesn't identify their
9 enrollment, their teacher salaries and benefits, or their
10 class size for the science class. That is based on their
11 own actual record.

12 COMMISSIONER BRYANT: But it is taking the
13 average salary in the district -- which, what if the
14 teachers on average make \$70,000, but the science
15 teachers are only paid \$50,000?

16 MS. SHELTON: It's usually the other way
17 around.

18 COMMISSIONER BRYANT: I understand that. I
19 know that. I get that.

20 Okay, we'll do it backwards. But I'm just
21 talking about -- to me, the methodology gets us at kind
22 of a -- it's a substitute for actually having to sit down
23 and say, "Okay, Mrs. Jones, a science teacher, she gets
24 paid \$46,000. You know, Mr. Smith is a science teacher,
25 he's getting \$72,000." That's the direct costs.

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1 So then you can offset with direct costs that
2 Mrs. Jones -- I don't know how it works exactly.

3 MS. SHELTON: You know, the Commission --

4 COMMISSIONER BRYANT: To me, the Court is
5 forcing us -- and I might be wrong about this, but I
6 don't think that I am -- that the Court is forcing us to
7 kind of mix apples and oranges a little bit by not
8 allowing some sort of methodology for offset, which
9 Finance is getting at, I think, by talking about all this
10 money that's been going to schools over the years, that
11 there be some kind of -- if we can't take that into
12 consideration as an offset, then it just seems to me that
13 I just think we're in a place where it doesn't make sense
14 to me that we're going to have a formula and then we
15 can't offset it.

16 COMMISSIONER WORTHLEY: I just feel like we're
17 dealing with a separate issue right now.

18 I mean, right now, we're talking about this
19 methodology, and the offset is another issue which we're
20 going to address soon. So I don't know -- I think it's
21 confusing to bring -- I think that was the purpose of the
22 chairman of trying to deal with one issue at a time; and
23 I feel like you're bringing up something which is a
24 separate issue, which will be addressed in a while.

25 Am I missing something? Is that correct?

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1 MS. SHELTON: Yes, I think Paula wanted to
2 mention something.

3 MS. HIGASHI: From listening to Ms. Bryant,
4 what it sounds like, as I understand your statement, is
5 basically you're questioning why should the Commission
6 adopt a methodology instead of continuing actual cost
7 claims. And the law allows for the Commission to adopt a
8 methodology. It allowed it back when it was originally
9 proposed. And now, we have a much more specific
10 definition with which to apply. But as Ms. Geanacou
11 pointed out earlier, certainly it's a discretionary
12 decision of the Commission as to what it does or does not
13 do.

14 And so as I understand it, your position as
15 you articulated it, is that you're troubled by the fact
16 it would not be an actual cost claimed, but it's a
17 methodology. And the methodology is an option the
18 Commission has because it's a simpler, more
19 cost-efficient way of claiming costs and calculating
20 costs; so a district does not have to spend the tedious
21 time keeping all of those records of every single name,
22 whatever -- I mean, all the detail, like you were
23 enumerating.

24 And so I think in the position that you stated
25 is one where it sounds like you're opposed to the concept

1 of a methodology.

2 COMMISSIONER BRYANT: Yes, I have a problem
3 with the methodology. And I actually think I would move
4 that we don't even do this at all today. And I know it
5 gives everybody a heart attack. I understand all the
6 work everyone's done. But it just -- it seems to me that
7 we're -- with the Court decision, unless I'm reading it
8 wrong, I think the Court decision kind of leaves us in a
9 place where we have pretty specific rules. And I'd
10 rather just tweak what the judge said in the case about
11 how you do it as opposed to coming up with a new
12 methodology of reimbursing on it.

13 CHAIR KLASS: I'm going to express some
14 thoughts that I think are consistent with Commissioner
15 Bryant's thoughts, and so I'd ask you to hold your
16 comments, because I have a feeling you'd want to comment
17 on both of them.

18 I'll share my personal view of why I struggle
19 with this. And I know some of this is already decided in
20 the Court case, so bear with me as I spin out my logic
21 here.

22 As far as I know -- and I haven't been
23 following this for 20 years, so you can correct me if I
24 have the history wrong in my head -- there was no change
25 in the length of day because of this mandate. There was

1 no change in the number of teachers that were hired.
2 There was no ultimate forced increase in the budget,
3 other than, I would grant it, if you need to build a new
4 facility. But in terms of workload on teachers, it seems
5 to me that districts did, by definition in almost every
6 case, if not every case, substitute something else for
7 this class, or substitute this class for something else.

8 So I think when the voters passed the mandate
9 statute, what they wanted to make sure was that local
10 governments and districts were not forced to incur a cost
11 that they otherwise wouldn't have had to incur. And it
12 would seem the districts didn't incur that cost.

13 Now, I know, to some large extent, the Court
14 said, "Well, that's irrelevant to us because the
15 Legislature didn't do what they did in another piece of
16 law that was similar. They must have meant something
17 different, and so we have to pay for this." But it gets
18 to this question of whether or not \$3 billion is
19 irrelevant. Because I struggle with whether or not there
20 was really a cost, whether or not there was really damage
21 that needed to be resolved. I struggle with, well, if I
22 can't really see a lot of damage and where costs were
23 forced, then I don't want to overpay for damage that
24 didn't occur in the first place. So to me, the dollar
25 amount is very significant.

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1 As you know, at this moment, the Governor is
2 talking about the budget crisis that we're in. Our
3 revenues are going down; our expenses are going up. And
4 so to me, the amount of money and why we should adopt a
5 methodology that almost certainly will lead us to an
6 increased cost is an important issue for me. And I
7 struggle with why we would change the methodology or the
8 approach that we're taking now to go to a new methodology
9 that would increase costs.

10 Let me make one final statement and then I'll
11 invite your responses.

12 So, Camille, correct me if I'm wrong on this
13 table, can I infer from this table that prior to the
14 Court decision, a lot of districts didn't think this was
15 that big a deal, and didn't submit claims; and the claims
16 they did submit, were smaller. After the Court said,
17 "No, you do have to pay for it," and cleared away that
18 issue, a lot more districts come in with a lot higher
19 cost?

20 MS. SHELTON: Actually, the number of districts
21 after the decision has decreased.

22 CHAIR KLASS: But the costs increased?

23 MS. SHELTON: The costs did increase. I wasn't
24 trying to infer anything --

25 CHAIR KLASS: No, I know you weren't.

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1 MS. SHELTON: -- other than the percent
2 approved after the Court decision was increased. That's
3 all that I was trying to infer. And to show that the
4 number of school districts that have actually filed
5 reimbursement claims, and then how many are eligible --
6 and there are 417 high school and unified school
7 districts and then 58 county offices of education. So
8 the numbers have not really even come close to those
9 potential numbers.

10 MR. PETERSEN: 403 out of 417 filed.

11 MS. SHELTON: Oh, yes, you're talking about
12 2000 and 2001. 403 districts did file in that year.

13 MR. PETERSEN: Out of 417.

14 MS. HIGASHI: Also, Mr. Klass, we got this data
15 just recently, and so we did not have time to overlay
16 into this data the actual enrollment data. So we could
17 not tell you from this what percentage of the total
18 high-school enrollment is represented by this number of
19 claimants.

20 And typically, what we find, though, is the
21 larger districts tend to claim; so that by the time you
22 do that percentage, the proportions, you do --

23 CHAIR KLASS: I will withdraw my inferment of
24 the piece of that. I would look only at the fiscal part.

25 So before the Court said, "You have to pay no

1 matter what," and cleared away the need to spend time and
2 energy making the argument, the amount of money the
3 districts were asking for from the State was smaller than
4 the amount of money they asked for after the decision.
5 And that, to me, infers that the smaller number was
6 probably the more accurate. But that's my opinion, and
7 I would like to invite responses.

8 MS. SHELTON: I do need to clarify. I'm sorry,
9 I do need to clarify that these numbers are their total
10 amount that they claimed, which would include all
11 activities and not just the teacher activity. So,
12 obviously, some of those do include the facility.

13 MR. PETERSEN: Millions of dollars of
14 facilities money.

15 CHAIR KLASS: Okay, why don't we go
16 counterclockwise around the table?

17 First, who wants to speak?

18 MR. SPANO: Yes, you know, it's been our
19 experience in Audits right now that districts aren't able
20 to identify the direct costs incurred relating to the
21 increased science-class requirement, because the mandate
22 basically states that high-school students are required
23 to take one additional science class. It doesn't state
24 which science class they must take right now. So the
25 methodology is being used to determine how many science

1 classes are required to be taught and how many teachers
2 are necessary in order to teach those classes, so it
3 provides a general methodology.

4 I mean, without a methodology being adopted by
5 the Commission, then, you know, every audit that we go
6 out and do right now is going to be challenged by the
7 districts, and it's going to be backlogged at the
8 Commission on IRCs right now.

9 The issue regarding the -- your position
10 regarding the increase -- or when you add a science
11 class, it seems reasonable that you're going to drop a
12 non-science class. That was our argument initially
13 during the court arguments -- you know, during the
14 lawsuit. And I guess the Commission's interpretation of
15 the lawsuit was that, you know, because it makes sense
16 that if you don't increase the instructional minutes and
17 instructional days and you add a science class, then
18 you're going to reduce a non-science class.

19 But I think that the Commission interpretation
20 of the lawsuit was, unless you can prove that there's a
21 direct relationship that you add a science class, you
22 dropped a non-science class, then we cannot consider that
23 as an offsetting savings factor in our audit right now.
24 And, unfortunately, right now it's very difficult to
25 provide support for a direct relationship in offsetting

1 savings.

2 So, I mean, from just an audit perspective, you
3 know, this issue has been going on since 1995-96, and
4 there's mass confusion and there's mass -- there's
5 varying and different methodology being used to determine
6 reasonable costs. So unless we come up with a
7 methodology here, we're going to be no better off now
8 than we were in the last 15 years.

9 CHAIR KLASS: Thank you.

10 MR. PALKOWITZ: I think where some knowledge
11 of the history helps try to explain the challenges you
12 have in reviewing this -- because it's been going on a
13 long time. For many years, the Controller has denied
14 everyone's claim because it was their theory that every
15 claim should have an offset. That every time you have an
16 additional science teacher, there must be an offset.
17 Well, that was not what the school districts believed,
18 and that's why we had incorrect reduction and we had a
19 court case.

20 We are all bound to legislation and we're all
21 bound to what the courts say. The Court said, "Look,
22 there might be a offset, there might be a change, but you
23 can't routinely deny that without looking into it."

24 And the Controller would basically get the
25 claim and say, "Deny." There were no field audits, there

1 wasn't work done. And they were relying on what they
2 thought the interpretation was.

3 So we went to the Court; and the Court said,
4 "Look, unless it's directly related, if you lay off a
5 teacher and you say, "I'm laying that teacher off because
6 the State has required me to have a science teacher,"
7 then that would be a layoff and that would be an offset.

8 Any other type of layoff or offset that is not
9 directly related to that additional science teacher is
10 not an offset. And that's what we went to the Court to
11 clarify. And the Court said, "Let's look at it. You
12 can't just routinely deny it."

13 We're back here today because since that time,
14 the legislation has encouraged us to come up with methods
15 to be used by all the claimants throughout the state.

16 The challenge is, if we don't have a method,
17 we're going to have a lot of "unclarity" in how the
18 Controller is going to review these new claims that are
19 coming in that may go back several years. And the
20 problem is that we still don't know how to claim those
21 teachers. Because we have to figure out how many
22 teachers we had back in 1987, when we were required to
23 have one science teacher; and we have to use that base
24 year to use what we have now.

25 So we're back here because, A, the Court said,

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1 "We need to amend the P's and G's to make sure that it
2 is not routinely denied because there may or may not be
3 an offset," and when we have the opportunity to come back
4 here, we wanted to follow the legislation's guidance to
5 come up with a method that could be used by a state
6 agency to help clarify and move along these claims.

7 COMMISSIONER BRYANT: Can I ask you a question?
8 I think just to clarify. The Court didn't tell us we
9 have to amend the P's & G's. They told the Controller
10 that he could no longer -- he or she could no longer --

11 MR. PALKOWITZ: Well, I think it was sent back
12 to the Commission with direction to look at it.

13 MS. SHELTON: Oh, no.

14 MR. PETERSEN: That's incorrect.

15 MS. SHELTON: No. The litigation was only on
16 the individual incorrect-reduction claims, and that was
17 the only action taken and that was the only direction in
18 the writ.

19 These are individual requests to amend by
20 parties. So, no, the Court has never addressed anything
21 to do with the parameters and guidelines, although there
22 are statements in the decision where the Court was very
23 frustrated with the parameters and guidelines and found
24 them to be difficult to interpret.

25 COMMISSIONER BRYANT: If I decide to vote "no,"

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1 I don't want to be in contempt of court.

2 MS. SHELTON: You're not. You wouldn't be.

3 CHAIR KLASS: Do you have a statement?

4 MR. SCRIBNER: Going to the pre- and post-
5 variation in costs claim, I think that there's another
6 alternate explanation, and that is from the very
7 beginning, the Controller has always included language
8 that required there to be a salary-differential
9 calculation made on the claims; and that you're taking
10 into account the differential between the science
11 teacher -- the new science teacher -- and a prior teacher
12 that you may have laid off. And as I think it's pretty
13 clear, science teachers are expensive in this state, and
14 they always have been; and that many districts may not
15 have seen costs in a salary-differential calculation
16 that's required.

17 It's actually interesting that the most recent
18 annual update issued by the Controller's office still
19 includes that salary differential language even though
20 the Court said that that's not a proper way to offset
21 this claim. But they're still telling districts, "You
22 must have some salary differential due to laying off
23 prior teachers -- other teachers for non-required
24 courses."

25 And so when you look at these numbers, I think

1 that what it shows is that claimants made every effort
2 to meet the claiming instructions as required by the
3 state before the Court case; and then after the Court
4 case, they realized we don't have to offset because the
5 Court said that just a blanket offset of a salary
6 differential for a science teacher is not required. And
7 that's why you see that jump.

8 MS. SHELTON: Yes, the only rule from the court
9 case is that you just can't assume an offset, you can't
10 put an assumed offset in that formula. You can't do
11 that.

12 CHAIR KLASS: Do you have another comment?

13 COMMISSIONER BRYANT: I just have a question,
14 since we're just focused on the methodology for a minute.
15 Can we discuss this issue of CBEDs versus ADA?

16 MR. PALKOWITZ: Sure.

17 COMMISSIONER BRYANT: If I could hear from
18 Finance, I think they're asking, if we're going to do
19 this, to consider ADA, what the -- you guys -- both sides
20 can comment on that.

21 MR. PALKOWITZ: Well, I'll just comment on my
22 perspective.

23 CBEDS, as was mentioned, it's either the fourth
24 Friday or a date selected, and that is what's considered
25 an enrollment date. That is not a determining factor on

1 how schools get paid. They get paid on the average daily
2 attendance, which is calculated every day, each
3 attendance period. If you're at a high school or an
4 elementary school, it's once a day.

5 Usually, the ADA is a percentage of the
6 enrollment, because there could be -- and, for an
7 instance, in our district, we have 95 percent attendance
8 of enrollment. So we would get an ADA based on
9 95 percent of our enrollment.

10 What the key to enrollment is, when a district
11 plans to have teachers or other classes, they use the
12 CBEDS to establish the ratios, because the average daily
13 attendance is going on throughout the whole year, but
14 they have to establish what the ratios of the hiring of
15 teachers will be. So when it's asked to establish CBEDS
16 versus ADA, we won't know the ADA number until a year
17 later.

18 So, for example, in 2008-09, we're going to use
19 CBEDS to help us determine what will be the class ratios
20 and the hiring of teachers entering into contracts.

21 So to me, to use the CBEDS is not what is going
22 to be used to determine the amount of teachers that you
23 will hire. So -- I'm sorry, to use the ADA would not be
24 the accurate number.

25 MS. HALPENNY: I think you have to staff in a

1 school district, you have to staff for the kids who are
2 actually enrolled, whether they show up every day or
3 whether they don't. The CBEDS is a useful tool because
4 it's a number that the district has to report to the
5 State on a specified date that says, "This is what our
6 enrollment is as of this date." So it might be slightly
7 higher at one point in the year or lower at one point in
8 the year; but this a point in time at which it is a
9 number that districts are required to submit to the
10 State. It's an easily identifiable number. It has the
11 ease of being able to track and go back and figure out
12 what that number was. But districts have to staff, based
13 on enrollment, not on average daily attendance. They're
14 funded on average daily attendance, but they have to
15 staff based on the kids who are there.

16 CHAIR KLASS: Mr. Petersen?

17 MR. PETERSEN: Well, it appears the issue of
18 money is forcing us back into discussing the test claim
19 again.

20 You shouldn't think that if you vote and adopt
21 this formula, there will be a \$3 billion demand on the
22 Treasury.

23 Right now, the State owes local agencies,
24 schools and colleges, \$2 billion for other mandates.
25 And they go in the hole at the rate of about \$80 million

1 or \$90 million a year. And there's 61 test claims
2 pending. That's going to make the same demand on the
3 budget. That doesn't actually turn into cash. Getting
4 paid is a problem we have with the Legislature, not with
5 parameters and guidelines.

6 Another short take on costs: This formula
7 creates the predictable calculation of increased
8 science-teacher costs. If this formula is not adopted,
9 my client's claims will continue to be slightly larger
10 because I use a slightly different formula that complies
11 with the court-case guidelines. So there will be
12 consultants in districts out there using their own
13 formula that fits the court case. And the Controller
14 will have to have that argument with every claimant:
15 Does your formula fit the court case?

16 The reason I support this formula, although
17 I don't agree with it a hundred percent, is it takes
18 that argument away from everybody, and it's a reasonable
19 solution. It fits the court case, and it fits what most
20 people are doing.

21 It's not going to increase the costs to the
22 State prospectively because -- and retroactivity is a
23 totally different issue -- it's not going to
24 significantly increase the costs to the State because
25 people -- I'm claiming more than this formula generates

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1 for my clients because I have a basis, as I said,
2 that meets the Court decision. It will just regulate the
3 dollar amount. It's not going to change it
4 significantly.

5 CHAIR KLASS: Are there any other questions?

6 COMMISSIONER BRYANT: Can we hear from Finance
7 on this issue?

8 MR. DEL CASTILLO: With respect to ADA versus
9 enrollment?

10 COMMISSIONER BRYANT: Yes.

11 MR. DEL CASTILLO: Okay, yes, we think that
12 ADA is the more appropriate measure because most state
13 funding, revenue-limit funding, and most of the
14 categorical funding provided to districts is actually
15 based on average daily attendance, not based on
16 enrollment figures that are based on estimates towards
17 the beginning of the school year. So for that reason,
18 since most of the state funding is provided on an ADA
19 basis, we thought that, in this case, if the methodology
20 were to be adopted, again, ADA would be the appropriate
21 measure, not enrollment.

22 MR. PALKOWITZ: Someone just whispered in my
23 ear that instructional materials is based on CBEDS.
24 So it would not be a unique way to evaluate it.

25 COMMISSIONER BRYANT: If it brings you any

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1 comfort, you guys win with me on the CBEDS argument.

2 CHAIR KLASS: Commissioners, do you have any
3 other thoughts or questions, comments?

4 COMMISSIONER WORTHLEY: Well, Mr. Chairman,
5 I sense somewhat from some of the comments that perhaps
6 you've made -- I mean, there will probably be some
7 ultimate comments at the end -- that there may be some
8 dissatisfaction with the decision that this is, in fact,
9 a reimbursable mandate. And I think that decision has
10 already been made.

11 And I think it would be inappropriate for us
12 to sort of back-door this in a sense and say, "I don't
13 really agree with the fact that there's a mandate here
14 that costs and, therefore, I'm going to try to subterfuge
15 it somehow by not agreeing to a reasonable methodology."

16 I appreciate the fact that this is the, quotes
17 here: "Balancing accuracy with simplicity." I think we
18 have the opportunity here today to do good governance,
19 that is, to make something which is reasonably accurate
20 and is more simple. And, therefore, I think that ought
21 to always be the goal of government, and I think we have
22 the opportunity here today to do that.

23 And I would find it inappropriate, personally,
24 to think that because I don't really like the outcome,
25 that I'm going to do something which will make the

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1 outcome more difficult to be achievable, which I think,
2 in part, is the Controller's position, because if they
3 can keep it like this, they can avoid a lot of payment.
4 And I appreciate that may be their role. I don't think
5 that's our role as a Commission.

6 MR. SPANO: That's the Department of Finance's
7 role and not the Controller's role.

8 COMMISSIONER WORTHLEY: I'm sorry.

9 MR. SPANO: Position, yes.

10 CHAIR KLASS: I wouldn't characterize my view
11 as subterfuge. It think it was pointed out, the Court
12 did not indicate at all to the Commission how to proceed
13 in determining this, and that issue of how to reimburse
14 is strictly a Commission decision at this point. And my
15 point, as it would be regardless of the decision, was
16 that we shouldn't be paying any more than we really have
17 to, to reimburse local governments or school districts
18 for the costs that they actually incurred. And so I tend
19 to focus on let's identify what those actual real costs
20 are. And that's where I'm sitting right now.

21 MR. PALKOWITZ: So what is the basis, sir, that
22 you feel that, under this method, there would be more
23 costs paid than actual costs?

24 CHAIR KLASS: Well, I'm not sure I've
25 identified, other than some administrative distress, what

1 is wrong with districts having to actually identify their
2 real costs. I mean, your districts -- the ones you
3 represent -- are doing that.

4 MR. PETERSEN: That's not true. We have a
5 formula, sir.

6 CHAIR KLASS: And if this is consistent, then
7 why do we need a new formula?

8 I mean, I haven't really heard other than it
9 sort of puts everybody on the same page. And if the
10 price tag for putting everybody on the same page is huge,
11 I'm trying to understand what's valid about doing that.

12 MS. HALPENNY: The price tag is going to be
13 huge whether everybody's on the same page or not. I
14 think that's Keith's point.

15 MR. PETERSEN: We all have our own formula.

16 CHAIR KLASS: Well, then I guess I would go
17 back to Finance. And I don't know that others have
18 disputed it, as you've alluded to -- I don't want to put
19 words in your mouth -- but everybody has indicated an
20 increased cost of moving to a new methodology. The
21 question is, how big.

22 So maybe it's the sort of thing that we need to
23 have all the fiscal experts get to sit down and figure
24 out whether or not \$3 billion is the right number or it's
25 some other number.

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1 Sarah?

2 COMMISSIONER OLSEN: Isn't the gist of how many
3 arguments the Controller's office is going to have with
4 how many school districts? I mean, it seems to me that
5 that's really all this is about today. There's lots of
6 complexity to it, but it boils down to: Is every school
7 district going to have to argue their formula, or are a
8 significant number of school districts going to get
9 behind a P and G that says one way, and so it's going to
10 be a unified argument with the Controller's office. And
11 then there will, I assume, still be outlier school
12 districts that might try a different methodology and
13 would still be having their separate arguments with the
14 Controller's office.

15 So that's really the gist of this today; right?

16 MS. SHELTON: Can I just mention what really
17 seems to be the problem -- and we haven't gotten to the
18 first issue, but that's what's driving the cost factor --
19 Government Code section 17557 does not allow the
20 Commission to adopt an RRM prospectively only. It
21 requires that when you adopt an amendment, the period of
22 reimbursement is based on the date that they file their
23 request to amend.

24 So the cost factor that you're talking about
25 is because of the language in 17557 setting the period

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1 of reimbursement at the filing date. That is something
2 beyond the control, at this point, of the Commission.

3 You know, certainly that would make it easier
4 for the Commission to be able to maybe establish a future
5 period of reimbursement. Those decisions would be
6 easier. But there's not any other legislation pending,
7 that I'm aware of, that would make that change. But
8 what's really driving the cost factor is the period of
9 reimbursement.

10 CHAIR KLASS: So let me ask you then, if we
11 don't change anything, is there a reimbursement period, a
12 retroactive reimbursement period?

13 MS. SHELTON: No.

14 MR. SPANO: I just want to say that, to our
15 knowledge in Audits right now, I'm not aware of any
16 district that can actually identify their actual direct
17 costs. I think most districts that we have seen so far
18 have used some different -- some formula to determine
19 their reimbursable cost. And so I think what we have
20 right now is a variety of different reimbursable
21 methodology. So the objective is to see if we can
22 standardize that methodology.

23 MS. BRUMMELS: Ginny Brummels.

24 I would just like to do a clarification based
25 upon Scribner's comment regarding the annual claiming

1 instructions.

2 Those annual claiming instructions that spoke
3 to the salary differential are based upon the last
4 adopted P's & G's by the Commission. And those P's & G's
5 or those claiming instructions will not change until
6 there is a change within the parameters and guidelines.

7 CHAIR KLASS: Yes?

8 MR. PALKOWITZ: Yes, your comment is that the
9 actual costs may be more reflective of the method. I
10 don't want to misquote you, or if that was the line of
11 thinking. And if that is --

12 CHAIR KLASS: Well, I haven't identified that
13 there is a problem with the process that goes on now.
14 I don't understand it in detail, grant you. But we're
15 doing a process now, districts are being reimbursed now;
16 and the proposal is to go to a standard methodology that
17 may or may not be truly reflective of individual
18 districts' costs. And since the Court didn't say, "You
19 need to do it one way or another, you just need to pay,"
20 I'm wondering, is the price tag for simplicity, worth the
21 value of the simplicity? I mean, I think it comes down
22 to that for me. It's a big price tag. Is it that
23 valuable?

24 MR. PALKOWITZ: I mean, AB 1222 does request,
25 when appropriate, that the parties come up with a

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1 reasonable reimbursement method. So there is some
2 authority for the direction of coming up with a method.

3 I can appreciate your concern that there may --
4 and as I mentioned earlier, there's winners and losers.
5 San Diego is a loser under their method. We have claims
6 that are a less amount.

7 COMMISSIONER BRYANT: Can I ask one quick
8 question, Camille?

9 Where's this -- the notion I don't think I
10 really have missed somehow. In spite of the fact -- can
11 I just -- I was going to save this until the end, but I
12 just feel like I've got to get this off my chest.

13 Mind you, I was somewhat -- when you see
14 \$3 billion, and you're managing a small department where
15 you can't even give your employees a raise, the notion
16 that I might be creating a \$3 billion problem definitely
17 got me to focus on this more. But I clearly understand
18 that that's not -- while it can influence me to spend
19 more time on going through the entire record, it's not
20 driving me to make a decision here. I am trying to look
21 at the record and look at the case. And I kind of just
22 want to make it clear. And I resent anyone thinking that
23 I'm trying to get some sort of \$3 billion potential
24 liability off the books. That's not motivating me.

25 But where in the record does it talk about the

1 claiming instructions now, people are using a formula?
2 Because that's actually kind of -- and even in the
3 Controller's papers, it does sort of provide ease of
4 claiming, which is kind of a really good argument I
5 haven't heard yet.

6 MS. SHELTON: There has never been a formula
7 adopted.

8 COMMISSIONER BRYANT: So the Controller can --
9 the districts can propose a -- can just claim using a
10 formula, describe the formula, and the Controller can
11 see if it's reasonable, and then decide to pay? Is that
12 what's happening here?

13 MS. SHELTON: I think you might need to ask
14 Mr. Spano about that. But there is -- I think what's
15 existing -- and correct me if I'm wrong because there's
16 so many existing parameters and guidelines -- what is
17 existing is language probably in the offsetting savings
18 and reimbursement section -- is that what you're
19 referring to -- that still discusses the reduction in
20 non-science classes resulting from the increase in
21 science classes. That language is still there and is
22 subject to a proposal that we haven't yet talked about.
23 But that's language that the Court really did address,
24 that you can't assume that. But the proposal on the
25 differential, I'm not aware that it's in the language,

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1 unless Mr. Spano or Ms. Brummels wants to --

2 COMMISSIONER BRYANT: I think Commissioner
3 Olsen's point a few minutes ago is very well taken; and
4 I'm sort of interested in exploring that a little, if
5 anyone has any notion.

6 Never mind. I'll just listen to Sarah.

7 MS. SHELTON: A formula has never been adopted
8 by the Commission. Whether the claimant community is
9 claiming their teacher-salary costs based on a formula
10 that they're using, that's what the testimony appears to
11 be. I don't know.

12 MR. SPANO: Yes, I think it doesn't identify a
13 formula. It's been so long, but I don't think it
14 identifies a formula. But if a district uses a formula,
15 then it's incumbent on us to determine whether the
16 formula is reasonable. And then there's going to be a
17 different position as far as "yes" or "no." And if we
18 disagree, it comes back to the Commission. That's the
19 whole reason why, if we standardize the methodology, then
20 we won't bring it back to the table -- or bring it back
21 to the Commission to reevaluate.

22 COMMISSIONER OLSEN: This is an overly
23 simplified question, but if we adopt this new reasonable
24 methodology today, as the P and G, can a school district
25 still come in with actual costs?

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1 MS. SHELTON: No.

2 COMMISSIONER OLSEN: So they have to use this
3 instead?

4 MS. SHELTON: Yes.

5 COMMISSIONER OLSEN: And that's why
6 Mr. Palkowitz says one of his districts would be a
7 loser -- or his district would be a loser because, I
8 assume, actual costs is what you've been doing, and that
9 has been providing you with what you calculate to be a
10 higher reimbursement than what this would do; is
11 that right?

12 MR. PALKOWITZ: Yes, as I mentioned earlier,
13 there wasn't a uniform way that claimants were filing
14 these claims, I believe. There was a lot of different
15 formulas out there.

16 Once we reviewed the claims after the Court's
17 decision, we started a dialogue of how we could maybe
18 make this easier to analyze. I believe the school
19 districts and the Controller's office both were looking
20 for guidance on how we're going to calculate this number.

21 When we came up with this method -- now, part
22 of this method was talked about ten years ago. So we
23 looked at this method and when we looked at the years
24 that we claimed, some years were more and some years were
25 less.

1 What it allowed us, was to eliminate the
2 requirement of going back to 1987, which was used as a
3 base year, to help calculate the claim. And we would
4 have to maintain records and things like that to show
5 them to prove up the claim.

6 So this method is an attempt to eliminate the
7 need to keep documentation for that long of a period.
8 It's an attempt for school districts to use a uniform way
9 of filing. It's an attempt to have the Controller having
10 guidance on how they could evaluate the claims.

11 So without the method, that was part of the
12 reason why we had 41 incorrect-reduction claims. And
13 it's really a way to move forward to come up with a
14 reasonable method. Whether it is exact or as accurate
15 as actual, I don't know the answer to that. But it seems
16 to be fair on how school districts could make this claim;
17 and it provides an objective way for the Controller to
18 come back and say "yea" or "nay."

19 CHAIR KLASS: Finance, did you want to make --

20 MR. DEL CASTILLO: Yes, just some questions
21 that we're discussing.

22 First, is there clear authority for the
23 methodologies that districts are using now? And if there
24 is authority, then why -- you know, we question why this
25 one-quarter-class-load method is even necessary?

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1 MS. SHELTON: There has never been a
2 methodology adopted by the Commission. The only thing
3 that we know for sure is that teacher salaries are
4 reimbursable. How they're doing it has never been
5 brought before the Commission until this item.

6 Now, for history -- just for purposes of
7 history, back in 1996, I think, that's when the
8 Commission originally took up the San Diego Unified
9 request to amend the P's & G's to come up with a formula.
10 And there were six formulas on the table. And the
11 Commission -- Keith was there. I've read the transcript.
12 But the Commission members just wanted to wait until the
13 incorrect-reduction claims were resolved before they
14 dealt with the P's & G's amendment. And it took, what,
15 12, 15 years for the incorrect-reduction claims to
16 resolve.

17 Now, we're back to the same discussion that the
18 Commission was having in 1996. But this time, there's
19 one proposed methodology instead of six. So we are
20 making progress.

21 MR. PALKOWITZ: But importantly, we have
22 legislation now directing us to come up with methods.

23 MS. SHELTON: Well, they're encouraging.
24 They're encouraging. And the Commission certainly had
25 the authority back in 1996 to adopt a formula.

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1 CHAIR KLASS: I'm letting this go on because it
2 seems like every time someone speaks, we pick up new
3 information about the issue. It's not just -- so I think
4 this is beneficial.

5 Mr. Petersen, and then Finance.

6 MR. PETERSEN: Actually, most of the stuff has
7 been discussed several times over the past 13 years.
8 But as far as authority to use formulas, it's generally
9 accepted cost-accounting principles, we do cost
10 accounting as far as mandates go, we've been using
11 formulas for 25 years. The simple version is, if you
12 send out 35 letters to parents, you multiply it by 6¢,
13 instead of counting the sheets of paper and asking how
14 long it took the lady to run it through the ditto
15 machine, okay. Formulas are used in cost accounting
16 pervasively.

17 In the absence of information in the claiming
18 instructions until -- excuse me, in the parameters and
19 guidelines -- until the court decisions, we had no
20 guidance at all. Based on the court decision, we know
21 what the court wants us to do. And my company -- and I
22 assume most other consultants -- are using formulas that
23 they believe, in our fevered brow, meet the court
24 definitions of reasonable costs and offsetting savings,
25 if any. This solves that problem for everyone.

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1 CHAIR KLASS: Finance, did you want to make
2 another comment?

3 MR. DEL CASTILLO: No.

4 CHAIR KLASS: I'll save my view for the
5 summary, I think.

6 I think if we've exhausted this, we could move
7 on to -- where are we, Number 8, I believe?

8 MS. HIGASHI: Issue 8.

9 Do you want to take a five-minute break?

10 CHAIR KLASS: Commissioners, how do you feel?
11 Do you want to keep going or take a five-minute break?

12 Let's go. Let's go forward.

13 MS. SHELTON: Issue 8 starts on page 57.

14 Should the Commission amend the parameters and
15 guidelines to add reimbursement for the salaries and
16 benefits of other science instruction personnel, this
17 request was made by Mr. Petersen. And staff recommends
18 that the Commission deny this request.

19 MR. PETERSEN: She won this tie, too.

20 CHAIR KLASS: Number 9, an easy one.

21 MS. SHELTON: Number 9, beginning on page 58.

22 Should the Commission amend the parameters and guidelines
23 to clarify the reimbursable activities with respect to
24 science instructional materials and supplies, and include
25 a reimbursement methodology for the cost of the activity.

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1 Staff recommends that the Commission adopt the
2 proposal to clarify the language, but recommends that the
3 Commission deny the proposed reasonable reimbursement
4 methodologies. The methodologies were proposed by
5 Mr. Petersen and the State Controller's Office.

6 CHAIR KLASS: And according to the staff
7 comments, everyone is now in agreement on this, or at
8 least not opposing it?

9 MR. PETERSEN: I'm not opposing, no.

10 CHAIR KLASS: Okay.

11 MR. PALKOWITZ: Yeah, I mean, staff is denying
12 this request.

13 CHAIR KLASS: In part.

14 MR. PALKOWITZ: Yes. And without getting to
15 the method part of it, I think one of the arguments was
16 that -- once again, San Diego is an example -- we have
17 three science classes required. Only two are required by
18 the State. And if we came up with a method, that method
19 may be hard to use in San Diego's example.

20 To me, as we move forward with methods, I would
21 think there would be a way to articulate a method that
22 would take care of this one instance. I don't want to
23 think that the fact that San Diego -- one school district
24 can throw off the possibility of having a method.

25 Now, there might be other reasons why there is

1 no method or something not appropriate under this issue.
2 But if that is one of the issues, I would like to think
3 that we could get beyond that.

4 CHAIR KLASS: Anybody else, comments?

5 Yes?

6 MR. SPANO: From the Controller's office, we
7 believe that in our proposal -- or our comments to the
8 final staff analysis, we believe that we can develop a
9 reasonable methodology for material and supplies.

10 When you look at salaries and benefits, it
11 takes the enrollment, divided by the average class size,
12 to come up with a number of classes -- science classes.
13 And all we recommended was take the average class's time,
14 the average costs of a science class, to come up with --
15 the average material and supply costs of a science class
16 to come up with material and supply cost. And I think
17 it's a reasonable methodology that can be used.

18 I think, once again, if we don't develop a
19 methodology for materials and supplies, we're going to
20 have a variety of different methodologies being used by
21 school districts, and we're going to have a lot more
22 challenges, a lot more audit findings, and a lot more
23 IRCs come before the Commission.

24 So our recommendation is consider the adoption
25 of using methodology for salaries and benefits to come up

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1 with the average class size -- or the number -- I'm
2 sorry, the number of science classes times the average
3 costs of a science class to determine the material and
4 supply -- reimbursable material and supply costs.

5 CHAIR KLASS: Anything else?

6 *(No response)*

7 CHAIR KLASS: Which brings us to Item 10.

8 MS. SHELTON: Did you want me to comment on
9 Mr. Spano?

10 CHAIR KLASS: Sure. I'm sorry, go ahead.

11 MS. SHELTON: The proposal from the State
12 Controller's Office is on page 59. It starts with the
13 first part of the methodology to determine what the total
14 science material and supply costs are for total science
15 classes.

16 The argument has been made that this is very
17 much like the quarter-load method for teachers. But the
18 quarter load method for teachers starts with total
19 enrollment, which makes sense because every pupil in the
20 state of California has to take that second science
21 course. But when you start with total materials and
22 supplies, we just used San Diego as an example, but
23 school districts have their own requirements for their
24 pupils. Some are college-bound high schools and require
25 three science classes; others have four; others just have

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1 the two. But when you start with materials and supplies,
2 you're including materials and supplies for classes that
3 are not state-mandated. So in our view, it was different
4 than the quarter-load method proposed for teachers.

5 CHAIR KLASS: Any other comments?

6 MR. SPANO: Yes, I just -- we just believe that
7 it's hard -- you're not going to be able to identify
8 specifically which classes are going to meet the
9 increased science-class requirement of the mandate. And
10 so using the methodology for salaries and benefits, you
11 would come up with a number of science classes required
12 because of the mandate. And so we're just asking to take
13 an average cost of a science class, multiplied by the
14 number of science classes -- the increased science
15 classes to come up with a methodology. So we believe
16 it's a reasonable approach versus each individual
17 district coming up with their own methodology and having
18 us challenge their thought process.

19 CHAIR KLASS: Okay, Commissioner Olsen, did you
20 have a question?

21 COMMISSIONER OLSEN: Well, I'm speaking just
22 for my experience now as a mother of a child in high
23 school; and it seems to me that there's a wide variation
24 in what are called "science classes."

25 There are lab-based science classes that are

1 very expensive, both in terms of their -- sort of the
2 capital outlay you have to have for them, as well as the
3 supplies you have; and then there are white-board science
4 classes that are taught very much in the same way that
5 a history or English class would be taught: Lecture and
6 discussion, some notes on the board, perhaps a
7 demonstration in front of the class, and a textbook.

8 So how does your proposal speak to those
9 varied -- it seems to me that this requirement only
10 speaks to that white-board science class. There's
11 nothing, as I understand it, in the law that says that
12 you have to do lab sciences as that second science class.

13 MS. SHELTON: The only requirement in law is
14 that the second science class has to be either a physical
15 or biological science.

16 One thing I will say, though: When we were
17 looking -- San Diego and Grossmont, we just looked at
18 both of those and looked at their curriculum -- and I
19 don't remember if I got it from their own Web sites or
20 the Department of Education's Web site -- it is in the
21 record -- but when you looked at the curriculum, it put a
22 star by the courses that the district determined
23 satisfied the state-mandated section 51225.3 course. So
24 it's reflected in the district's records what would
25 satisfy that requirement. So it's not -- I mean, you can

1 tell.

2 But there are classes, like I think
3 oceanography might satisfy that class, but that is
4 different than maybe what a white-board science-class
5 school would offer.

6 MR. PALKOWITZ: If I may comment, Member
7 Bryant, when you mentioned about your budget. Look at
8 the resources we are putting to this. Look at the
9 resources that every school district will have to use to
10 calculate these claims every year, to maybe contest State
11 Controller's audits. Is that the best way to use these
12 resources? Can these resources be used for educating the
13 children?

14 CHAIR KLASS: No more comments?

15 *(No response)*

16 CHAIR KLASS: Can we move on to -- let me
17 state, first, what my intention is here -- and, again,
18 I welcome Commissioners if you have a different point --
19 what I'd like to do is run through the remaining items
20 and then take a break. I think it would be inappropriate
21 during the break for anybody to use it to lobby, or the
22 commissioners to talk to each other. I mean, my
23 intention is, this is a comfort break and opportunity
24 for people to collect their thoughts, and then we would
25 reconvene and do final motions and final commission

1 discussion on the items.

2 MS. SHELTON: So Issue 10 -- let me just -- I'm
3 going to expand my comment here just so I can clarify
4 what the proposal is.

5 Issue 10 begins on page 63, and it asks whether
6 the Commission should amend the offset section of the
7 parameters and guidelines.

8 In that first paragraph, under the issue
9 statement, staff is recommending that the Commission
10 amend the offset paragraphs to include restricted
11 resources and program funding identified by the
12 California Department of Education School Accounting
13 Manual to offset teacher salary costs.

14 Staff is also recommending that the Commission
15 amend that section to identify funds appropriated to
16 school districts from the Schiff-Bustamonte
17 Standards-Based Instructional Materials Program and the
18 State Instructional Materials Fund Program. Those, we do
19 recommend that the Commission amend to clarify those
20 offsetting sources of revenue.

21 The other issues in this Issue 10 would include
22 a request by Mr. Scribner on behalf of Mountain View and
23 Los Altos Unified School Districts or High School
24 Districts, bringing in language from the Court decision.
25 And staff recommends that the Commission adopt that

1 request as modified.

2 And then the Department of Finance has issues
3 dealing with the revenue apportionment funding to
4 schools, which the Commission recommends that -- or, I
5 mean, the staff recommends that the Commission deny
6 adding language to reflect that.

7 CHAIR KLASS: Do you want to comment, Finance,
8 on that?

9 MR. CASTILLO: Yes, the staff analysis
10 indicates that using revenue-limit apportionments as an
11 offset for graduation requirements would violate Article
12 XIIIIB, Section 6 in the Constitution, on the basis that
13 they would be required to use their proceeds of local
14 property taxes on a state-mandated program. We would
15 just like to note that revenue-limit apportionments are
16 not entirely comprised of local property taxes. It is a
17 combination of both local property taxes and state aid.

18 Traditionally -- or I shouldn't say
19 traditionally -- but for the past ten years, the split
20 has been roughly 2-to-1, state aid versus local property
21 taxes. So that we dispute their argument on that basis,
22 that they would be required to use local property taxes.
23 But revenue limits are comprised of both state aid and
24 local property taxes.

25 We'd also like to note that the Education Code

1 has imposed restrictions on the use of revenue-limit
2 apportionments. The staff analysis cites the Education
3 Code reference that requires districts to use 50 or
4 55 percent of their revenue-limit apportionments for
5 teacher salaries. So we draw that connection to revenue
6 limits being used as an offset for the teacher salary
7 costs associated with the *Graduation Requirements*
8 program.

9 CHAIR KLASS: Yes?

10 MS. HALPENNY: Yes. We thoroughly briefed this
11 issue in our submittal on May 27th, which is available to
12 you. But the revenue limit, the base revenue limit, the
13 whole purpose of the mandate process is to reimburse
14 districts for costs imposed on them over and above the
15 costs that they have to incur on an ongoing basis. And
16 the revenue limit is the money to fund those ongoing,
17 regular operational expenses of the district.

18 It would be a complete violation of the
19 Constitution to require the use of revenue-limit funds
20 that districts have received as offsetting revenue for
21 newly imposed state mandates. It's just a complete
22 violation of the whole process and the Constitution.

23 CHAIR KLASS: Camille?

24 MS. SHELTON: I just need to add one more
25 thing.

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1 The only way for the Commission to require a
2 school district to take offsetting revenue and deduct
3 that from their claim, you'd have to comply with
4 Government Code section 17556(e), which requires that
5 there has been additional revenue that was specifically
6 intended to fund the cost of the state mandate in order
7 to deduct that, and there hasn't been any appropriation
8 made specifically for the *Graduation Requirements*
9 program.

10 CHAIR KLASS: Yes?

11 MR. PALKOWITZ: If school districts were to
12 use revenue-limit money which is unrestricted for
13 science, that would create it to be used as restricted
14 money. And that's not, I don't believe -- only
15 legislation could do that.

16 CHAIR KLASS: Okay.

17 Commissioner Worthley, did you have something?

18 COMMISSIONER WORTHLEY: No.

19 CHAIR KLASS: I'm sorry, I saw you move
20 forward.

21 Okay, if there's nothing else on this item,
22 will you take us back to 1, and explain to us how, if
23 there are varying decisions on the other items, how that
24 interacts with 1 and what it is you need us to talk about
25 on 1? Because, frankly, I'm quite confused.

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1 MS. SHELTON: Issue 1 is broken up into two,
2 really, subissues. So do you want me to take that
3 separately?

4 CHAIR KLASS: Yes.

5 MS. SHELTON: Because they really are
6 different.

7 The first issue is, what is the period of
8 reimbursement for the proposals of San Diego Unified
9 School District? And this is for the quarter-load method
10 for the teachers salary costs.

11 In this case, staff finds that pursuant to
12 Government Code section 17557 and based on the request
13 that was filed in 1996, that the period of reimbursement
14 begins in fiscal year 1995-96.

15 CHAIR KLASS: Let me ask at this point,
16 though -- you're not done -- is there any dispute -- I
17 mean, separate and apart from how decisions on other
18 items would interact -- is there anything about these
19 dates that anybody at the table disagrees with the staff
20 interpretation or recommendation on?

21 MS. GEANACOU: Yes, Finance would like to make
22 a comment.

23 CHAIR KLASS: Well, in that case, let Camille
24 finish and then we'll move to that.

25 MS. SHELTON: The second issue begins on

1 page 30, and it's the period of reimbursement for all of
2 Castro Valley's requests.

3 Castro Valley initially became a co-claimant
4 to the San Diego Unified School District request, and
5 then subsequently filed a document proposing other
6 modifications to the parameters and guidelines.

7 Initially, staff took the position that those
8 were new proposals, new requests to amend. Mr. Petersen
9 has disputed that allegation throughout these
10 proceedings; and he has shown that, in the past, the
11 Commission has taken subsequent comments filed under a
12 proposal as an actual comment and not a new request. And
13 when I went to look back at his filings, they are labeled
14 "comments," they're not labeled a new proposal.

15 Because of the fact that Mr. Petersen's clients
16 are co-claimants with San Diego Unified School District's
17 request filed back in 1996, we are finding that the
18 period of reimbursement for the proposals of Mr. Petersen
19 begin in 1995-96. So that would include all of the
20 clarification to the activity language that we've talked
21 about; and if you were to adopt any of the proposed
22 reasonable reimbursement methodologies that they are
23 proposing, for materials and supplies, space and
24 remodeling, and equipment.

25 MS. HIGASHI: And assistance.

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1 MS. SHELTON: And teaching assistance, that's
2 right.

3 CHAIR KLASS: With that, Finance, did you want
4 to comment on one or both of those?

5 MS. GEANACOU: The first of the two, yes.
6 Susan Geanacou, Department of Finance.

7 We would reiterate that we respectfully request
8 that any future reimbursement for this mandate,
9 especially for teacher salaries, be for actual net
10 increased costs experienced by the districts. We
11 understand that actual costs has been the method by which
12 districts have been reimbursed to date.

13 And then more specifically to item 1, issue 1.

14 If the Commission does adopt a reasonable reimbursement
15 methodology today for reimbursing teachers' salaries, we
16 agree with the Controller's prior comments on this issue,
17 that in April of 2007, San Diego Unified School District
18 substantially modified their 1996 proposed methodology
19 with the effect that if the Commission adopts an RRM
20 today with respect to those two filings, reimbursement
21 should occur prospectively only from the eligibility date
22 driven by the later 2007 filing.

23 CHAIR KLASS: More comment or discussion?

24 MS. SHELTON: This is a little bit of a
25 difficult issue, we struggled with this issue, because

1 the Commission's regulations are not entirely clear on
2 how to treat subsequent comments to original requests.
3 And that does need to be clarified in regulation. But
4 the majority of the quarter-load method was proposed in
5 1996. And, yes, changes were made following the court
6 decision in *San Diego Unified School District*, but the
7 basic quarter-load method was the same.

8 So the Court -- if you were to take this case
9 and treat it like any civil litigation, any defendant
10 would be able to modify and amend their pleadings as long
11 as the facts are substantially the same. And here, the
12 facts have not changed. So we're treating it the same as
13 a court would treat a pleading.

14 CHAIR KLASS: Mr. Petersen?

15 MR. PETERSEN: If you're looking for another
16 nexus, I filed that document when I worked for San Diego
17 City Schools. I was an employee of the District. So we
18 have another connection.

19 CHAIR KLASS: Before we take our break, I have
20 one -- just a hypothetical question, I'm just curious.
21 If there was a situation in which there was a claim
22 before the Commission and it had been around for a number
23 of years and, therefore, if the Commission decided to go
24 with whatever the claim was -- it was a retroactive
25 period -- if that claim were withdrawn and disposed of

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1 but then resubmitted and a decision was made very soon
2 after the resubmission, would there then not be a
3 retroactive period?

4 MS. SHELTON: That would be correct. If it was
5 withdrawn and the Commission does have regulations for a
6 withdrawal and it's done properly, then it's gone. And
7 you take a new request, and that takes a new filing date.

8 CHAIR KLASS: Okay, we will take a break.

9 MS. SHELTON: I should clarify that.

10 Under the Commission's withdrawal procedures
11 and its regulations, you have to notify -- these are
12 class-action-type filings -- you have to notify all the
13 school districts. Another school district could
14 substitute in is the claimant. And if that didn't happen
15 and it was actually withdrawn, then it would be gone.

16 CHAIR KLASS: Very good.

17 Five-minute break, and we will reconvene.

18 *(Recess taken at 11:17 a.m.)*

19 *(Back on record at 11:26 a.m.)*

20 CHAIR KLASS: While everyone is getting back to
21 their seats, let me mention a couple of things.

22 First, there is an additional item that we
23 forgot to bring up. The Controller had made a request
24 for some additional amendments, which we will get to in
25 a second.

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1 I think I want to -- well, let's do that first.
2 Let's do that first.

3 So, Camille, do you want to take over and
4 present this?

5 MS. SHELTON: This is a late filing by the
6 Controller's office that we have had a chance to review
7 and discuss, and have reviewed it also with -- at least
8 with Mr. Petersen.

9 The Commission staff agrees with all the
10 crossed-out language propose and the second sentence
11 added. But the sentence that says, "*All reimbursement*
12 *claims filed for the period of January 1*" -- this one
13 is for the 2005 -- through June 30, 2005, period, and the
14 2005 and 2006 period -- "*and future fiscal years should*
15 *include costs for each*" -- sorry -- "*for each activity*
16 *using the new reasonable methodology.*" That sentence
17 doesn't need to be there because the discussion of the
18 reasonable reimbursement methodology is in another
19 portion of the parameters and guidelines; and it can also
20 be seen as vague and ambiguous because I don't, at this
21 point, even know what or if you're going to be adopting
22 any RRM.

23 So I do recommend that the second sentence be
24 added, "*The State Controller's Office will adjust the*
25 *claims for any prior reimbursements received for the*

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1 *Graduation Requirements program for claims submitted for*
2 *that period."*

3 COMMISSIONER CHIVARO: And you're okay with the
4 strike-type language then?

5 MS. SHELTON: Yes, okay with the strike-out
6 language.

7 CHAIR KLASS: Okay, does anybody on the panel
8 here have comments or concerns? Have you all had an
9 opportunity to review it sufficiently?

10 MS. BRUMMELS: Yes, Ginny Brummels.

11 And I would like to clarify that the total cost
12 of the new claims should be filed -- the Controller's
13 office will make all of the adjustments for prior
14 payments. Because if this goes back to 1995-96, no one
15 at the district level will have that information. And to
16 simplify the process, for whichever set of parameters and
17 guidelines are being -- if any -- are adopted today, that
18 we will go ahead and make those adjustments; but that the
19 total claim needs to be presented, and prior-payment
20 adjustments will be completed by the Controller's office.

21 CHAIR KLASS: Very good.

22 Is that it?

23 *(No response)*

24 CHAIR KLASS: Okay, let me explain what I'd
25 like to do now. There might be nobody on the panel that

1 wants to pontificate on this besides me, but I would like
2 to reserve the remaining time here for any discussion
3 that the Commission members might want to have.

4 I would like to make sure that if a
5 Commissioner expresses a point of view that seems to be
6 based on a point of fact that you think is factually
7 incorrect, that anybody feel free to speak up. But I
8 would like to not go back into what's fair, what's
9 equitable, what's right; and let the Commissioners be the
10 only one that discuss that. And then we will entertain
11 motions.

12 My own view of it is, what I articulated
13 earlier, just to summarize, it's my understanding that
14 what we are dealing with here, particularly with regard
15 to Number 7, is not a question of law. It's not -- I
16 haven't heard anybody dispute that the current process
17 is inconsistent with what either the statutes say or
18 what the Court has decided. And so as I understand it,
19 what we're talking about here is whether or not we change
20 the process that we're using. And the arguments for
21 changing it is that it is simpler, it is more expedient,
22 it is more efficient.

23 My concern is that it's not obvious to me that
24 this results in necessarily a more accurate result. It
25 is an easier process but not necessarily more accurate.

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1 And it comes with a large price tag because of its
2 retroactivity.

3 And given the status of our budget, even if
4 it were a healthy budget, I personally have a hard time
5 justifying spending \$3 billion -- maybe it's a smaller
6 number, but it's a big number -- for the sake of ease.

7 Since the current process, though it may be
8 cumbersome, seems to work and seems to be in compliance
9 with the law, I'm more inclined to stick with the current
10 process myself.

11 The other items, to the extent that you can
12 pull them out of separate issues, I am in agreement with
13 the staff's recommendation; but I do have a problem with
14 Number 7.

15 Do any other Commissioners want to make a
16 statement? Have a comment?

17 COMMISSIONER LUJANO: Mr. Chair, I'd like to
18 echo Commissioner Worthley's comments. And pretty much,
19 I think these amendments to the P's & G's actually
20 clarify reimbursement activities, and part of that is the
21 RRM's. And I think they are cost-effective; and I pretty
22 much support the Commission staff's recommendation to
23 approve.

24 COMMISSIONER OLSEN: I would also say that,
25 again, what Mr. Worthley said, which is that making

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1 government simpler is always a good idea if it doesn't
2 have a huge downside.

3 And I don't think the issue of the actual price
4 tag is an issue that is before the Commission. That's
5 not our issue. And so I also support the staff's
6 recommendation here.

7 CHAIR KLASS: Then I would entertain a motion.

8 COMMISSIONER LUJANO: I'd like to make a motion
9 to approve the Commission staff's recommendation to
10 approve the amended P's & G's.

11 COMMISSIONER WORTHLEY: Would that include the
12 changes that were requested by staff?

13 COMMISSIONER LUJANO: Yes, I'm sorry, it would
14 include the additional language.

15 COMMISSIONER WORTHLEY: I'll second the motion.

16 CHAIR KLASS: Okay, moved by Commissioner
17 Lujano, seconded by Commissioner Worthley.

18 Please call the roll.

19 MS. HIGASHI: Ms. Bryant?

20 COMMISSIONER BRYANT: No.

21 MS. HIGASHI: Mr. Chivaro?

22 COMMISSIONER CHIVARO: Yes.

23 MS. HIGASHI: Mr. Lujano?

24 COMMISSIONER LUJANO: Yes.

25 MS. HIGASHI: Ms. Olsen?

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1 COMMISSIONER OLSEN: Yes.

2 MS. HIGASHI: Mr. Worthley?

3 COMMISSIONER WORTHLEY: Yes.

4 MS. HIGASHI: Mr. Klass?

5 COMMISSIONER KLASS: No.

6 MS. HIGASHI: The motion is carried.

7 CHAIR KLASS: Very good.

8 Thank you, all.

9 MR. PETERSEN: Thank you very much. It's been
10 an interesting 13 years.

11 CHAIR KLASS: What are you going to do now?

12 MR. PETERSEN: Eighth-grade algebra is next.

13 CHAIR KLASS: Staff should correct me if I'm
14 wrong, but I believe we are at the point of *Public*
15 *Comment*.

16 Is there any public comment on issues not
17 before the Commission today?

18 MS. HIGASHI: We're on Item 7.

19 CHAIR KLASS: Which is?

20 MS. HIGASHI: Which is Chief Legal Counsel's
21 public report.

22 CHAIR KLASS: Oh, I'm sorry, I cut you off the
23 process. I've heard so much from you today already.

24 MS. SHELTON: That's okay. I do have a couple
25 of things to discuss.

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1 One, that the Third District Court of Appeal
2 has set the hearing date in the *CSBA v. State of*
3 *California* case for December 15th at 9:30, here in the
4 Third District Court of Appeal.

5 The case that's listed in Item 7, the
6 *Department of Finance v. Commission on State Mandates*,
7 dealing with the *Behavioral Intervention Plans*, I
8 understand that that hearing date, the real parties in
9 interest are trying to move to March.

10 CHAIR KLASS: Okay.

11 MS. SHELTON: And that's all I have.

12 CHAIR KLASS: Very good.

13 So are we at *Public Comment* now?

14 MS. HIGASHI: Item 8, workload budget and
15 tentative agenda items in the future.

16 Our workload is slowly dropping down. And I
17 just wanted to note that.

18 Since we have filed a report with the
19 Department of Finance that gives you much more detail, if
20 anyone here wants to look at that report, it's available
21 on our Web site.

22 Since the last meeting, the budget was adopted.

23 And also, I just wanted to note that we have a
24 vacant staff counsel III position currently -- actually,
25 two. The second position was vacated yesterday. And so

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1 I just wanted to make note of that.

2 So although we do have some salary savings,
3 which is helpful in these times, it doesn't bode well for
4 us in terms of tackling the workload. And so I wanted to
5 put everybody on notice in terms of those vacancies, we
6 will have some longer determination times.

7 The tentative agenda for January 2009 is a very
8 ambitious agenda. What it appears is that on most of the
9 items, you will have Mr. Petersen sitting at the table.
10 So as we actually get these drafts out and the final
11 drafts out, there might be some adjustments in terms of
12 whether we can actually get all of these. But it is a
13 lot of community-college-district test claims that will
14 be coming forward from here on out.

15 We also have proposed parameters and guidelines
16 and statewide cost estimates coming forward. And we're
17 in the period for the January hearing where the drafts
18 will be issued -- have to be issued by December. So
19 everyone will be on notice as the drafts are issued as
20 to which items really make it to the January hearing.

21 Are there any questions?

22 CHAIR KLASS: Commissioners?

23 *(No response)*

24 CHAIR KLASS: No?

25 Okay, now, is there any public comment?

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1 (No response)

2 CHAIR KLASS: Seeing none, we are going to go
3 into closed executive session.

4 And I need to read this to be sure I get it
5 right.

6 The Commission will meet in closed-session
7 pursuant to Government Code section 11126, subdivision
8 (e), to confer with and receive advice from legal counsel
9 for consideration and action, as necessary and
10 appropriate, upon pending legal litigation listed on the
11 published noticed agenda, and to confer with and receive
12 advice from legal counsel regarding potential litigation.
13 The Commission will also confer on personnel matters
14 listed on the published notice and agenda.

15 We will reconvene in open session in
16 approximately 15 minutes.

17 *(The Commission met in executive closed*
18 *session from 11:37 a.m. to 12:41 p.m.)*

19 CHAIR KLASS: The Commission is now back in
20 open session. The Commission met in closed session to
21 confer with and receive advice from legal counsel for
22 consideration and action, as necessary and appropriate,
23 upon the pending litigation listed on the published
24 notice and agenda, and section 11126(a), and
25 section 17526, to confer on personnel matters listed on

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1 the published notice and agenda.

2 The Commission will reconvene in open session.

3 I believe we are done with our business.

4 Is there a motion to adjourn?

5 COMMISSIONER OLSEN: So moved.

6 COMMISSIONER LUJANO: Second.

7 CHAIR KLASS: All in favor, say "aye."

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

9 CHAIR KLASS: We stand adjourned.

10 *(The meeting concluded at 12:41 p.m.)*

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

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

In witness whereof, I have hereunto set my hand on November 24, 2008.



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