

**ITEM 3**  
**REVISED FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES**  
**AS MODIFIED BY STAFF**

Education Code Section 51225.3  
Statutes 1983, Chapter 498

*Graduation Requirements*  
CSM 4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05

San Diego Unified School District, Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, Sweetwater Union High School District, Mountain View-Los Altos High School District, State Controller's Office, Requestors

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**Executive Summary**

This item addresses several proposals to amend the parameters and guidelines for the *Graduation Requirements* program in Education Code section 51225.3. 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. (Gov. Code, § 17557, subd. (d); Cal. Code Regs., tit. 2, former § 1185.3.)

**Background**

Education Code section 51225.3 requires students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma. The test claim statute increased the number of science courses required for high school graduation from one science course to two science courses. The Commission approved the test claim and adopted parameters and guidelines, with an original period of reimbursement beginning July 1, 1984.

The *Graduation Requirements* program and the decisions of the Commission and the State Controller's Office regarding reimbursement for this program have a long history, including two separate lawsuits challenging the Commission's decisions on incorrect reduction claims. The first lawsuit, (*San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al.), dealt with the reimbursement of teacher salaries and concluded that:

- The Commission's finding in the test claim that school districts are eligible to receive reimbursement for the increased costs to staff the second science course mandated by Education Code section 51225.3, is final and binding on the parties.
- The plain language of the test claim statute mandates school districts to *add* a second science course without requiring school districts to replace or eliminate existing course offerings. Education Code section 51225.3 preserves the school districts' right to specify and offer other courses not required for high school graduation on an equal par with the

courses mandated by the state. In this respect, the court distinguished this case from *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, where the state legislation directed law enforcement officers to reallocate training resources in a certain manner to include domestic violence training. Unlike the statute in the *County of Los Angeles* case, the test claim statute here does not give the state-mandated courses a higher priority than courses specified by a school district and does not require school districts to redirect their resources to the mandated courses.

- The authority in Education Code section 44955 to lay off teachers when the state mandates new curriculum rests entirely in the *discretion* of a school district. The court determined that the plain language of Education Code section 44955 does not suggest legislative intent to require a school district to use section 44955 as an offset to avoid the actual increased costs for teacher salaries.
- The Controller may not deny or reduce a claim for teacher salary costs on the ground that the district has not exercised its authority under Education Code section 44955 and/or shown a reduction in non-science classes and teachers corresponding to the addition of the new mandated science class.
- The Controller may not require a showing by the school districts that the claimed teacher salary costs could not have been offset pursuant to Education Code section 44955.
- The State Controller may require a school district to submit cost data and documentation to demonstrate whether it experienced any savings to offset the teachers' salary costs as a "direct result" of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3.

Reimbursement for teacher salaries is also required if no changes in a district's instructional service is shown. The Legislature, in Government Code section 17565, has determined that "[i]f a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if a school district was requiring the completion of a second science course in order to graduate before the test claim statute was enacted, the district would still be entitled to reimbursement under article XIII B, section 6.

The proposals at issue attempt to clarify the reimbursable activities and recommend the adoption of reasonable reimbursement methodologies in lieu of actual costs claimed for several cost components, including the reimbursement of teacher salaries.

### **Requests to Amend the Parameters and Guidelines**

The issues raised by these proposals are as follows:

1. What is the period of reimbursement for the proposed amendments to the parameters and guidelines?

Staff finds, pursuant to Government Code section 17557, that the period of reimbursement for the request to amend the parameters and guidelines to add a reasonable reimbursement methodology for teacher salary costs by San Diego Unified School District, first filed on August 13, 1996, begins in fiscal year 1995-1996.

Staff further finds that the period of reimbursement for the requests to amend the parameters and guidelines made by Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District (hereafter “Castro Valley”) in the February 28, 2007 filing begins in the 1995-1996 fiscal year. This recommendation is made on the ground that (1) Castro Valley is a co-requestor to the original 1996 request to amend the parameters and guidelines; (2) Government Code section 17557 and section 1183.2 of the Commission regulations are silent with respect to the treatment of new proposals made in response to original requests to amend parameters and guidelines; (3) the Commission has, on occasion, treated subsequent proposals as comments in the past; and (4) Castro Valley’s filing is labeled “comments,” and not “proposed amendments” like the filing of other requestors.

2. Should the Commission amend the Eligible Claimants section of the parameters and guidelines to specifically identify county offices of education? In initial comments, the Department of Finance objected to this request.

Staff finds that Education Code section 51223.5 applies to all pupils that graduate from high school whether or not the science course is provided by a school district or a county office of education. Staff recommends that the Commission amend the parameters and guidelines to specifically identify county offices of education as eligible claimants.

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”? There is no dispute regarding this amendment.

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

4. Should the Commission amend the parameters and guidelines to include a proposed reasonable reimbursement methodology for claiming increased facility costs for acquiring or remodeling space? The proposal authorizes reimbursement for 50% of the actual total cost of acquisition and remodeling for grades 9-12 science instruction facilities expended during the claim year, reduced by 50% of the total amount of restricted construction funding received. The Department of Finance and the State Controller’s Office object to this proposal.

Staff recommends that the Commission deny this request because the proposed methodology does not satisfy the definition of a reasonable reimbursement methodology in Government Code section 17518.5, subdivision (c).

5. Should the Commission amend the parameters and guidelines to clarify that “acquisition” of equipment includes the activities of “planning, purchasing, and placement” of additional equipment and “furniture”? There is no dispute to this request.

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

6. Should the Commission amend the parameters and guidelines to include a proposed reasonable reimbursement methodology for claiming increased costs for acquiring

equipment and furniture? The proposed formula is similar to the formula proposed for acquiring or remodeling space; 50% of the total costs, reduced by 50% of any restricted funding received. The Department of Finance and the State Controller's Office object to this proposal.

Staff recommends that the Commission deny this request because the proposed methodology does not satisfy the definition of a reasonable reimbursement methodology in Government Code section 17518.5, subdivision (c).

7. Should the Commission amend the parameters and guidelines to include a proposed reasonable reimbursement methodology for claiming increased teacher salary costs incurred as a result of the test claim statute? The proposed formula is the "one quarter class load method." This proposal is made by the school districts and the State Controller's Office. The Department of Finance objects to this proposal, and estimates the cost to the state at \$3 billion for fiscal years 1995-1996 through 2007-2008 and \$250 million thereafter if the Commission adopts the proposed methodology.

Staff recommends that the Commission amend the parameters and guidelines to adopt the proposed one quarter class load method, as modified by staff for the *gross* teacher salary costs incurred. Staff finds the proposal satisfies the definition of a reasonable reimbursement methodology in Government Code section 17518.5. Based on the court's decision in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al., any offsetting savings taken by a school district is at the discretion of the district and may only be used to reduce a claim when the offset is taken as a "direct result" of the *Graduation Requirements* mandate. Thus, offsetting savings must be looked at on a case-by-case basis. Offsetting savings and revenue for teacher salary costs are not included in the proposed formula.

Staff further finds, in response to allegations of the Department of Finance, that:

- The adoption of a reasonable reimbursement methodology is not an unlawful retroactive application of the law.
- The proposed reasonable reimbursement methodology provides reimbursement to school districts in a cost-efficient manner.
- The proposed parameters and guidelines amendment allows the State Controller's Office to determine if a school district experiences offsetting savings in accordance with the court's ruling in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al.
- The proposed reasonable reimbursement methodology takes into account dropout rates using CBEDs data to calculate total secondary enrollment.
- Based on the history and purpose of article XIII B, section 6, the revenue limit apportionments made to school districts are the districts' "proceeds of taxes" and cannot be considered offsetting revenue under article XIII B, section 6 of the California Constitution, as argued by the Department of Finance. Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local

spending in other areas.<sup>1</sup> Thus, staff disagrees with the Department of Finance’s argument that the proposed reasonable reimbursement methodology for teacher salary costs should be denied because the methodology does not consider revenue limit apportionment funding to school districts.

8. Should the Commission amend the parameters and guidelines to add reimbursement for the salaries and benefits of “other science instruction personnel,” such as lab assistants? The Department of Finance and the State Controller’s Office object to this proposal.

Staff recommends that the Commission deny this request because there is no evidence in the record or the law to support the claim that using science instruction personnel other than teachers is reasonable necessary to comply with the mandate to provide the second science course, pursuant to section 1183.1, subdivision (a)(4), of the Commission’s regulations.

9. Should the Commission amend the parameters and guidelines to clarify the reimbursable activities with respect to science instructional materials and supplies? There is no dispute with this request.

Staff recommends that the Commission approve this request.

In addition, should the Commission amend the parameters and guidelines to include a proposed reasonable reimbursement methodology for science instruction materials and supplies? There are two separate proposals made. One proposal provides reimbursement for 50% of the total costs, reduced by 50% of any restricted funding received. The Department of Finance and the State Controller’s Office object to this proposal. The second proposal is made by the State Controller’s Office and is similar, but not the same as, the one-quarter class load method. The Department of Finance objects to this proposal.

Staff recommends that the Commission deny this request because the proposed methodology does not satisfy the definition of a reasonable reimbursement methodology in Government Code section 17518.5, subdivision (c).

10. Should the Commission amend the offset section of the parameters and guidelines to incorporate language from the court’s decision in *San Diego Unified School Dist. v. Commission on State Mandates* (Sacramento County Superior Court, Case No. 03CS01401), and to specifically identify potential offsetting revenue?

Staff recommends that the Commission approve this request.

### **Proposed Amendments to the Parameters and Guidelines**

The proposed amendments have different periods of reimbursement based on the filing dates of the requests, with the first period of reimbursement beginning in fiscal year 1995-1996. Because of the different periods of reimbursement, and the fact that the parameters and guidelines for the *Graduation Requirements* program have been amended twice in the past with different periods of reimbursement (in 1991 and 2005), three separate proposed documents reflecting these amendments would be required as follows.

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<sup>1</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284.

**Proposed Amendments Beginning in Fiscal Year 1995-1996 (See Pink Attachment)**

- A. Amend the Eligible Claimants section to specifically identify county offices of education as eligible claimants.
- B. Add the reasonable reimbursement methodology representing the “one quarter class load method” for claiming teacher salary costs. Staff proposes the following language:  
The increased teacher costs are calculated based on the number of teachers that teach the additional year of science as follows:
1. Total regular secondary enrollment for grades 9-12 on the CBEDS Information Day for the claim year is divided by four representing the additional year of science.
  2. The number of additional classes is the enrollment in (1) divided by the average science class size.
  3. The additional teachers are determined by dividing the additional classes in (2) by the classes taught by a full-time equivalent teacher (5 class periods).
  4. The increased cost is determined by multiplying the number of teachers in (3) by the average annual teacher salary and benefit cost for the school district for the claim year.
- C. Add a section to the parameters and guidelines regarding record retention. School districts must retain documentation supporting the data elements for the one quarter class load method; e.g., enrollment, average science class size, total science classes, average teacher salary and benefits, and offsetting revenue funded by restricted resources.
- D. Amend the parameters and guidelines to clarify the activity of supplying the new science classes as follows: “Increased cost to school district for ~~staffing and~~ supplying the new science classes mandated with science instructional materials (textbooks, materials, and supplies).”
- E. Amend the activity of “acquisition of additional space” and “remodeling existing space” as follows:  
Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space ... necessary for ~~conducting new science classes~~ the mandated additional year of science instruction, providing that space is lacking in existing facilities. ...  
Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.
- F. Identify the “acquisition of additional equipment” in a separate paragraph from the acquisition of additional space for purposes of clarity. Amend the language to

specify that “acquisition” includes “planning, purchasing, and placement” of additional equipment and “furniture” as follows:

Acquisition (planning, purchasing, and placement) of additional equipment and furniture necessary for ~~conducting new science classes~~ ... the mandated additional year of science instruction.

G. Amend the Offset section of the parameters and guidelines to add the following offsetting revenue:

- Funding for science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California State School Accounting Manual
- Funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5
- Funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498)
- If a school district has previously filed a reimbursement claim for costs incurred beginning July 1, 1995 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.

**Proposed Amendments Beginning in Fiscal Year 2004-2005 (See Blue and Green Attachments)**

A. For costs incurred beginning July 1, 2004, amend the Offset section of the parameters and guidelines to add offsetting savings language from the court’s decision in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al.

**Conclusion and Staff Recommendation**

Staff recommends that the Commission adopt the following attached proposed parameters and guidelines amendments:

1. (Pink Attachment) Proposed Parameters and Guidelines Amendment (CSM 4181 A, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 1995 through June 30, 2004*
2. (Blue Attachment) Proposed Parameters and Guidelines Amendment (CSM 4181A, 05-PGA-05, 06-PGA-05), Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 2004, through December 31, 2004*

3. (Green Attachment) Proposed Parameters and Guidelines Amendment (04-PGA-30, CSM 4181 A, 05-PGA-05, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *January 1, 2005*

If these documents are adopted, staff recommends that the Commission authorize staff to make necessary technical changes or corrections to these documents before they are issued.

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## STAFF ANALYSIS

### Chronology

- 01/22/87 Commission adopts Statement of Decision
- 03/23/88 Commission adopts parameters and guidelines on consent
- 08/24/88 Commission adopts non-substantive amendment to parameters and guidelines
- 07/27/89 Commission adopts statewide cost estimate
- 01/24/91 Commission amends parameters and guidelines to specifically require documentation to demonstrate actual need for capital improvements, as directed by Statutes 1990, chapter 459
- 01/--/91 Initial claiming instructions issued by State Controller's Office
- 08/20/93 The State Controller's Office issues letters to school districts denying reimbursement claims for teacher salary costs. Forty-one (41) incorrect reduction claims filed regarding the reimbursement of teacher salaries and remodeling and leasing additional space
- 1996-1997 Commission hearings and workshops between State Controller's Office and school districts to discuss reimbursement methodologies for teacher salary costs
- 08/13/96 San Diego Unified School District files request to amend parameters and guidelines to include a standardized method for calculating the increased costs for staffing and supplying the science course
- 09/23/96 The Commission continues the request to amend the parameters and guidelines filed by San Diego Unified School District until after incorrect reduction claims are resolved
- 2000-2002 Commission issues Statements of Decision denying incorrect reduction claims
- 09/19/03-1/09/04 Six lawsuits challenging the incorrect reduction claims for teacher salary costs, and the costs for remodeling and leasing additional space, filed by San Diego Unified School District, Castro Valley Unified School District, Sweetwater Union High School District, San Jose Unified School District, Clovis Unified School District, and Grossmont Union High School District filed in the Sacramento County Superior Court. Court consolidates cases for purposes of hearing (*San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401)
- 12/27/04 Sacramento County Superior Court issues Ruling on Submitted Matter in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No.03CS01401. Court affirms Commission's decision on classroom construction and remodeling costs, and overrules Commission's decision on teacher salary costs
- 2/09/05 Court enters Judgment and issues Peremptory Writ of Mandate in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (2005), Sacramento County Superior Court, Case No.03CS01401

- 05/26/05 Commission sets aside Statements of Decision on the incorrect reduction claims relating to teacher salary costs and directs the State Controller's Office to reevaluate claims for teacher salary costs pursuant to court's order in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (2005), Sacramento County Superior Court, Case No.03CS01401
- 10/13/05 Mountain View- Los Altos High School District files request to amend parameters and guidelines to amend the "Offsetting Savings and Reimbursement" section by adding language directly from the court ruling and judgment for teacher salary costs in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (2005), Sacramento County Superior Court, Case No. 03CS01401
- 08/24/05-  
09/27/05 Sixteen (16) school districts file lawsuits challenging the incorrect reduction claims on teacher salary costs filed in Sacramento County Superior Court. Court consolidates cases for purposes of hearing (*West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case Nos. 05CS01253, et al.)
- 12/09/05 Commission amends parameters and guidelines to require school districts to reduce a valid reimbursement claim for a new science facility by the amount of state bond funds received, as directed by Statutes 2004, chapter 895, section 17 (AB 2855)
- 05/24/06 Sacramento County Superior Court enters a judgment pursuant to the parties' stipulation in *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.* The stipulation acknowledges that the judgment and writ entered in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* is binding for other reimbursement claims pursuant to principles of collateral estoppel
- 07/28/06 Commission sets aside Statements of Decision on the incorrect reduction claims filed by the 16 school districts in *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, pursuant to court order and stipulation
- 07/28/06 &  
10/26/06 Commission fully complies with Peremptory Writ of Mandate in *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* by determining that the State Controller properly reevaluated the reimbursement claims of the six petitioner school districts, adopting decisions sustaining the Controller's reevaluation of the claims, and remanding the reevaluated claims to the Controller for payment
- 10/13/06 San Diego Unified School District requests that the following school districts be added as requesting parties to amend the parameters and guidelines: Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District

- 02/28/07 San Diego Unified School District files letter requesting that the proposed amendments to the parameters and guidelines be amended to reflect the “One Quarter Class Load Method”
- 03/02/07 Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District file separate request to amend parameters and guidelines to clarify reimbursement components and add methodologies for claiming reimbursement for “other science personnel,” acquisition and remodeling of additional space, and science instruction materials
- 03/20/07 State Controller’s Office files request to amend parameters and guidelines to include a standardized method for calculating the increased costs for staffing and supplying the science course, and requiring supporting documentation for the amount received by a school district to construct a new facility from restricted resources or state bond funds
- 03/29/07 Pre-hearing conference held on proposed amendments to the parameters and guidelines
- 04/16/07 San Diego Unified School District requests that its proposal of February 28, 2007, be withdrawn and replaced with proposed language modifying the request to amend the parameters and guidelines, without prejudice to the effective date of the 1996 request
- 06/08/07 Administrative record for the incorrect reduction claims and *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (2005), Sacramento County Superior Court, Case No. 03CS01401, provided to the Department of Finance
- 06/08/07 Notice of comment period, informational hearing, and background information issued
- 06/29/07 Department of Finance requests extension of time to file comments on requests to amend parameters and guidelines
- 07/11/07 State Controller’s Office files comments
- 07/13/07 Commission grants Department of Finance’s request for extension of time
- 07/26/07 Department of Finance requests extension of time to file comments on requests to amend parameters and guidelines
- 08/03/07 Commission grants Department of Finance’s request for extension of time
- 09/05/07 Department of Finance files comments
- 10/10/07 Request for postponement of hearing to January 31, 2008, filed by Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District

10/09/07 Commission approves request for postponement of hearing and issues notice of hearing on all the requests to amend the parameters and guidelines for January 31, 2008

01/09/08 Commission issues draft staff analysis and notice of hearing

01/25/08 Commission issues staff's Draft Proposed Parameters and Guidelines

01/30/08 Castro Valley Unified School District, et al., file comments on draft staff analysis

01/39/08 State Controller's Office files comments on draft staff analysis

01/31/08 Pre-hearing Conference

02/15/08 Department of Finance files comments on draft staff analysis

03/14/08 Final Staff Analysis issued

03/26/08 San Diego Unified School District requests postponement of hearing

03/26/08 Commission approves request for postponement of hearing on one issue only regarding the application of Education Code section 41372 and 41374 and the revenue limit apportionments made to school districts as potential offsetting revenue for teacher salary costs. The request for postponement was denied for all other issues.

03/28/08 Commission hearing; entire item continued for further briefing

04/03/08 Notice of informal conference issued

04/14/08 Notice of additional comment period and hearing date issued

04/18/08 Informal conference held

05/29/08 State Controller's Office files comments on final staff analysis issued on March 14, 2008

05/30/08 "Graduation Requirements Mandate Resolution Committee Litigation Group" files comments on final staff analysis

05/30/08 Castro Valley Unified School District, et al., files comments on final staff analysis

05/30/08 San Diego Unified School District files comments on final staff analysis

05/30/08 Department of Finance files comments on final staff analysis

06/25/08 "Graduation Requirements Mandate Resolution Committee Litigation Group" files rebuttal comments

06/27/08 Castro Valley Unified School Dist., et al., files rebuttal comments

07/01/08 Department of Finance files rebuttal comments

08/12/08 Notice of new hearing schedule issued

09/24/08 Revised Final Staff Analysis issued for comment

10/07/08 State Controller's Office files comments on Revised Final Staff Analysis

10/17/08 Department of Finance files comments on Revised Final Staff Analysis

## Background

This item addresses several proposals to amend the parameters and guidelines for the *Graduation Requirements* program. 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.

The *Graduation Requirements* program and the decisions of the Commission and the State Controller's Office regarding reimbursement for this program have a long history, including two separate lawsuits challenging the Commission's decisions on incorrect reduction claims. The proposals at issue attempt to clarify the reimbursable activities and recommend the adoption of reasonable reimbursement methodologies in lieu of actual costs claimed. The history of this claim and a summary of the proposals follow.

### Statement of Decision and Parameters and Guidelines

On January 22, 1987, the Commission adopted a Statement of Decision approving the *Graduation Requirements* test claim on Education Code section 51225.3, as added by Statutes 1983, chapter 498. The Commission determined that Education Code section 51225.3 constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma. The test claim statute increased the number of science courses required for high school graduation from one science course to two science courses. Thus, Education Code section 51225.3, subdivision (a), states the following:

- A. Commencing with the 1988-89 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 to 12, has not completed all of the following:
  - (1) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.  
[¶] ...
  - (C) Two courses in science, including biological and physical sciences.

On March 23, 1988, the Commission adopted the parameters and guidelines on the consent calendar. The following reimbursable activities are in the parameters and guidelines:

1. Acquisition of additional space and equipment necessary for conducting new science classes, providing that space is lacking in existing facilities. However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.
2. Remodeling existing space to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.

3. Increased cost to school district for staffing and supplying the new science classes mandated.

The offset paragraph of the parameters and guidelines states the following:

Any savings the Claimant experiences as a direct result of this statute must be deducted from the cost claimed, e.g., *reductions in non-science classes resulting from increase in required science classes*. In addition, reimbursement for this mandate received from any source, e.g., federal, state, block grants, etc., shall be identified and deducted from this claim. (Emphasis added.)

The parameters and guidelines were amended on August 24, 1988, and January 24, 1991. The August 24, 1988 amendment was a technical, non-substantive amendment. The January 24, 1991 amendment was based on a statute requiring the Commission to amend the parameters and guidelines to specifically require documentation to demonstrate actual need for capital improvements. Documentation requirements and the following language related to the first reimbursable activity was added: “However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.”

The parameters and guidelines were subsequently amended on December 9, 2005, pursuant to Statutes 2004, chapter 895, section 17 (AB 2855), for costs incurred beginning January 1, 2005 (the effective date of the bill). AB 2855 provided that if a school district or county office of education submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility. This language was included in Section VII, the Offsetting Savings and Reimbursements, of the parameters and guidelines. Other non-substantive and technical changes were also made.

### Statewide Cost Estimate

From August 1988 until July 1989, the Commission conducted hearings on the adoption of a statewide cost estimate for the *Graduation Requirements* program.<sup>2</sup> During the hearings, the Department of Finance reported to the Commission that the cost estimates by Commission staff (\$159,413,000) might be inaccurate based on the failure of the school districts to offset the additional science classes with corresponding staff reductions in non-science classes, and the failure of school districts to account for overall increased enrollment.<sup>3</sup> In response to a revised estimate, the Department of Finance proposed a statewide cost estimate in the amount of \$16.8 million based on the assumption that the cost of hiring science teachers would be offset by the reduction of non-science, elective courses and the termination of those teachers, pursuant to Education Code section 44955.<sup>4</sup> On July 27, 1989, the Commission

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<sup>2</sup> SDUSD-Administrative Record, pages 269-283.

<sup>3</sup> SDUSD-AR, p. 125.

<sup>4</sup> SDUSD-AR, pp. 159-162.

adopted, on consent by the parties, a statewide cost estimate in the amount of \$16.8 million for fiscal years 1984-85 through 1989-90 for all school districts.<sup>5</sup>

#### Incorrect Reduction Claims - Teacher Salary Costs

On August 20, 1993, the State Controller's Office sent school districts a letter denying reimbursement for all teacher salary costs, which stated in relevant part the following: "The addition of science classes should have resulted in offsetting savings due to a corresponding reduction of non-science classes. Your claims do not indicate a corresponding reduction." The Controller took the position that since the Legislature did not increase the minimum school day and year or the credits required for high school graduation, the districts could shift students from non-mandated classes to science classes, eliminate the non-mandated classes, use the authority under Education Code section 44955<sup>6</sup> to terminate teachers of the non-mandated classes, and thereby offset the costs of the teachers' salaries for the second science course. Thus, by reorganizing the class offerings and reallocating revenues for teacher salaries, the Controller expected that districts could avoid incurring a net increase in the cost of teacher salaries, except for any differential between the salaries of the teachers hired for the second science course and the salaries of the terminated teachers of non-mandated courses.

Forty-one (41) school districts that did not identify any offsetting savings related to the cost of teacher salaries, filed incorrect reduction claims with the Commission based on the reduction of their costs incurred during fiscal years 1984-85 through 1995-96. After several hearings and workshops between the parties, the incorrect reduction claim of San Diego Unified School District was decided first, on September 28, 2000. The Commission upheld the action of the State Controller's Office. The Commission determined that the State Controller's Office did not incorrectly reduce the claim for teacher salaries since the reductions were performed in accordance with the parameters and guidelines, the claiming instructions, and Education Code section 44955. The Commission further determined that the school district did not include any offsetting savings with respect to teacher salaries or claim salary differentials pursuant to Education Code section 44955, or provide any documentation to support its claim for teacher salaries. The other school districts that filed incorrect reduction claims incorporated by reference the arguments and record of San Diego into their claims for teacher salaries. Adopting the same conclusions and findings as the San Diego incorrect reduction claim, the Commission denied the incorrect reduction claims of the other school districts.

#### Incorrect Reduction Claims - Science Classroom Construction and Remodeling Costs

In November 1996, Grossmont Union High School District filed its initial reimbursement claim with the State Controller's Office for science classroom construction and remodeling in four of its schools for fiscal years 1994-95 through 1995-96 in the amount of \$337,113. In 1994 and 1996, Clovis filed reimbursement claims with the State Controller's Office for leasing portable science classrooms in the amount of \$72,034 for fiscal years 1994-95 through 1995-96.

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<sup>5</sup> SDUSD-AR, pp. 207 [adopted statewide cost estimate], 281 [minutes of the Commission's July 27, 1989 hearing].

<sup>6</sup> Education Code section 44955 provides authority to school districts to terminate the services of permanent employees when state law requires the modification of curriculum.

The State Controller's Office reduced these reimbursement claims because each school district did not provide documentation to show that the board certified that an analysis of all appropriate science facilities within the district was conducted and a determination made that the existing facilities could not reasonably accommodate the increased enrollment for the additional science class required by Education Code section 51225.3, as required by the parameters and guidelines and claiming instructions.

The school districts then filed incorrect reduction claims with the Commission. On January 24, 2002, the Commission adopted Statements of Decision denying the incorrect reduction claims for the classroom costs of Grossmont and Clovis, and upheld the action of the State Controller's Office to reduce the claims. The Commission found that there was no evidence in the record, as specifically required by the parameters and guidelines, that the governing board conducted an analysis of the science facilities within the district and made specific findings that no facilities existed to reasonably accommodate the increased enrollment in the science course required by Education Code section 51225.3.

First Lawsuit Filed by School Districts Challenging the Reductions (*San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al.)

San Diego Unified School District, San Jose Unified School District, Sweetwater Union High School District, Castro Valley Unified School District, Grossmont Union High School District, and Clovis Unified School District filed lawsuits in the Sacramento County Superior Court challenging the Commission's decisions on the incorrect reduction claims.

The Sacramento County Superior Court upheld the Commission's decisions on the classroom construction and remodeling claims of Grossmont Union High School District and Clovis Unified School District. The court held that these districts did not satisfy the certification requirement of the parameters and guidelines when they submitted their reimbursement claims and, thus, the Controller properly reduced the reimbursement claims.

The court, however, disagreed with the Commission's decisions upholding the Controller's reduction of claims for teacher salary costs on the ground that the school districts did not identify any offsetting savings due to a corresponding reduction of non-science teachers pursuant to Education Code section 44955. Thus, the court granted the petitions for peremptory writ of mandate on that issue and remanded the case to the Commission for rehearing with directions.

The court's holding on the teacher salary issue is stated on page 17 of the decision as follows:

The court concludes that the Controller's offsetting savings requirement and the Commission's IRC decision sustaining the requirement are invalid to the extent that the requirement precludes reimbursement under [article XIII B,] section 6 for the teachers' salaries incurred by SDUSD and other school districts in providing the second science course mandated by Education Code section 51225.3 without offsetting the science teachers' salaries by terminating, pursuant to Education Code section 44955, teachers of courses not mandated by the state.

In reaching its conclusion, the court made the following findings:

1. The court determined that the finding in the Statement of Decision, that school districts are eligible to receive reimbursement for the increased costs to staff the second science course mandated by Education Code section 51225.3, is final and binding on the parties.<sup>7</sup>
2. The court concluded that the plain language of the test claim statute mandates school districts to *add* a second science course without requiring school districts to replace or eliminate existing course offerings. The court found that Education Code section 51225.3 preserves the school districts' right to specify and offer other courses not required for high school graduation on an equal par with the courses mandated by the state. In this respect, the court distinguished this case from *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, where the state legislation directed law enforcement officers to reallocate training resources in a certain manner to include domestic violence training. Unlike the statute in the *County of Los Angeles* case, the test claim statute here does not give the state-mandated courses a higher priority than courses specified by a school district and does not require school districts to redirect their resources to the mandated courses.<sup>8</sup>
3. The court agreed that the authority to lay off teachers given to a district by Education Code section 44955 applies when the state modifies curriculum. But the court concluded that the authority given by section 44955 rests entirely in the *discretion* of a school district. The court determined that the plain language of Education Code section 44955 does not suggest legislative intent to require the district to use section 44955 as an offset to avoid the actual increased costs for teacher salaries.<sup>9</sup>
4. When determining the teacher salary issue, the court reviewed the legislative history of Education Code section 44955 and found only an enrolled bill report by the Department of Finance that supported the position that school district claims should have identified offsetting savings. The court held that the opinion of the Department of Finance in the enrolled bill report is not indicative of legislative intent and, thus, the court did not rely on the Department's interpretation.<sup>10</sup>

In addition, the court acknowledged the opinion of the Department of Education regarding Education Code section 44955, which was consistent with the position that school district claims should have identified offsetting savings. However, the court held that the Department's interpretation of Education Code section 44955 was not binding on the court, and was contrary to the terms and structure of Education Code sections 44955 and 51225.3.<sup>11</sup>

5. The court also relied on the Supreme Court case of *San Diego Unified School District v. Commission on State Mandates* (2004) 44 Cal.4th 859, 887-888 [*Expulsions*], where the Supreme Court stated in dicta that the underlying intent of section 6 would be

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<sup>7</sup> Exhibit R, page 13, fn. 3.

<sup>8</sup> Exhibit R, page 15.

<sup>9</sup> Exhibit R, pages 15-16.

<sup>10</sup> Exhibit R, page 16, fn. 4.

<sup>11</sup> Exhibit R, page 17, fn. 5.

contravened if reimbursement were denied for a local agency's costs of providing state-mandated protective clothing and safety equipment for its employees on the ground that the local agency had initial discretion to reduce its employees and thereby avoid incurring increased costs for the mandated clothing and equipment.<sup>12</sup>

The court remanded the case for further review by the State Controller's Office of the school districts' reimbursement claims for teacher salaries. The court held that its conclusion

...does not prevent the Controller, when auditing school district' reimbursement claims ...from requiring claimants to provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. Such a documentation requirement has a firm legal basis in subdivision (e) of Government Code section 17556 and California Code of Regulations, title 2, section 1183.1(a)(9). Further, the documentation requirement reflects a reasonable expectation that savings to offset the science teachers' salaries may be generated when students taking the second science course do not increase the number of classes that they take overall. Thus, the Controller can properly require claimants to demonstrate that the second science course has not increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided.

However, the court's conclusion regarding the invalidity of the Controller's offset savings requirement does prevent the Controller from denying school districts' claims for reimbursement of science teacher salaries on the ground that the claimants have not shown a reduction in non-science classes and teachers corresponding to the addition of science classes and teachers to comply with the mandate in subdivision (a)(1)(C) of Education Code section 51225.2. As explained in this ruling, this ground for denying reimbursement of science teachers' salaries is premised on an erroneous interpretation of Education Code sections 44955 and 51225.3 that would require school districts to divert their limited revenues from courses specified by the districts' boards pursuant to subdivision (a)(2), in violation of section 6.<sup>13</sup>

The Peremptory Writ of Mandate directed the Commission to set aside the Statements of Decision on the issue of teacher salary costs, directed the State Controller's Office to reevaluate the claims in accordance with the court's ruling, and then required the Commission to review the Controller's reevaluations and determine if the reevaluations were proper. When reevaluating the claims, the court provided the following instructions:

- The Controller may not deny or reduce a claim for teacher salary costs on the ground that the district has not exercised its authority under Education Code section 44955 and/or shown a reduction in non-science classes and teachers corresponding to the addition of the new mandated science class.

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<sup>12</sup> Exhibit R, page 17.

<sup>13</sup> Exhibit R, page 18.

- The Controller may not require a showing by the school districts that the claimed teacher salary costs could not have been offset pursuant to Education Code section 44955.

On July 28, 2006, and October 26, 2006, the Commission fully complied with the Peremptory Writ of Mandate by (1) determining that the State Controller properly reevaluated the reimbursement claims of each petitioner school district; (2) adopting decisions sustaining the Controller's reevaluation of the claims filed by each petitioner school district; and (3) remanding the reevaluated claims to the Controller for payment. The lawsuit in *San Diego Unified School District* resulted in reimbursement to the six school districts for teacher salary costs in the amount of \$32,627,355.

Second Lawsuit Filed by Sixteen School Districts Challenging the Reduction for Teacher Salaries (*West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case Nos. 05CS01253, et al.)

After the ruling in the *San Diego Unified School District* case, sixteen other school districts challenged the Commission's decisions on the *Graduation Requirements* incorrect reduction claims with respect to reimbursement for teacher salaries. These lawsuits involved reimbursement claims for teacher salary costs for fiscal years 1984-85 through 1991-92 in the amount of \$26,378,028.

To avoid further litigation, the parties stipulated that the court's judgment and peremptory writ of mandate for the *San Diego Unified School District* case was binding in these actions under collateral estoppel principles since the second lawsuit involved the same issues previously litigated; reimbursement for teacher salary costs to implement the *Graduation Requirements* mandate. On May 24, 2006, a judgment pursuant to the stipulation was entered by the court. The stipulation required the Commission to set aside its decisions on the incorrect reduction claims, and required the State Controller's Office to reevaluate the school districts' reimbursement claims in accordance with the Court's judgment and writ in *San Diego Unified School District*. The Commission was not required to hear and determine whether the Controller's reevaluations were correct, unless the school districts and the Controller did not agree on the reevaluation. The Commission set aside the Statements of Decision on the incorrect reduction claims on July 28, 2006. No further action was filed with the Commission on these incorrect reduction claims.

One Incorrect Reduction Claim is Still Pending

Six other incorrect reduction claims were filed with the Commission. Five of these claims were dismissed by the Commission in January 2008 because the school districts were paid in full. One incorrect reduction claim remains pending, which raises issues relating to teacher salary costs, material and supply costs, and science room construction costs.

**Requests to Amend the Parameters and Guidelines**

San Diego Unified School District – Filed August 13, 1996 (CSM 4181 A)  
Proposed language modified April 12, 2007

This proposal requests that the parameters and guidelines be amended to include a standardized method (the "One Quarter Class Load Method") for calculating the increased costs to school districts for staffing and supplying the science course. San Diego, in its letter dated

April 12, 2007, describes the “One Quarter Class Load Method” for reimbursement of teacher salaries as follows:

This method is based on [the] number of teachers needed to teach the additional year of science assuming a student would take the class in one of the four years of high school. Total secondary enrollment is multiplied by one quarter, and then the remainder is divided by the number of classes taught by a full-time equivalent teacher [5 classes]. The increase in teachers is then multiplied by an average salary and benefit amount to determine total costs. The total costs are then discounted by the portion of total teachers that are funded by restricted funds (categorical programs) to arrive at the net costs.

San Diego proposes the following formula for the reimbursement of teacher salary costs:

- a. The “increased pupil load” which results from the mandated additional year of science instruction shall be calculated by dividing the total grade 9-12 pupil enrollment for the claim year by the number four (4), which represents one additional year of instruction.
- b. The number of “increased science classes” for the mandated additional year of science instruction shall be calculated by dividing the “increased pupil load” by the average science class size for grades 9-12 for the claim year. If the claimant cannot determine the average class size for grades 9-12, the default average science class size is 30 students.
- c. The number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by dividing the number of “increased science classes” by the number five (5), which represents the full-time equivalent of classes by each teacher.
- d. This increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by multiplying the number of “increased science teachers” by the average annual teacher salary and benefit cost for the school district for the claim year.
- e. The increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction, after application of the relevant indirect cost rate, shall be reduced by the percent of science teacher salaries paid with restricted or specific purpose funding or reimbursement received or used for this purpose during the claim year from sources which do not require repayment by the school district.

San Diego states that a similar formula can be used for supply costs.

This request was continued by the Commission, at its September 26, 1996 hearing, until after the incorrect reduction claims were resolved. The incorrect reduction claim filed by San Diego Unified School District was resolved on October 26, 2006.

In comments dated May 30, 2008, San Diego Unified School District contends that the revenue limit apportionments made to school districts and the limitations on those funds in Education Code sections 41372 and 41373 must not be considered offsetting revenue for teacher salary costs. San Diego argues that revenue limit apportionments are intended to provide unrestricted general purpose funding to school districts for basic operations and are not intended to reimburse the expenses of any one specific program or activity.

Mountain View–Los Altos High School District – Filed October 13, 2005 (05-PGA-05)

This proposal seeks to amend the “Offsetting Savings and Reimbursement” section of the parameters and guidelines by adding language directly from the court ruling and judgment in the *San Diego Unified School District* action (Sacramento County Superior Court, Case No. 03CS01401). The proposed language states the following:

The State Controller, when auditing school district’s reimbursement claims under section VI of these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. The State Controller can require claimants to demonstrate that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. The State Controller may not deny reimbursement of costs for teachers’ salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3(a)(1) on the ground that the school district could have offset these costs by using its authority under Education Code section 44955(b) to terminate teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3(a)(2).

Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District - Filed February 28, 2007 (06-PGA-05)

These districts join in the San Diego Unified School District request to add the “one quarter class load method” for reimbursement of teacher salary costs. The districts, however, propose two changes to San Diego’s formula for claiming teacher salary costs: (1) change the default average science class size to 35 students (instead of 30 students proposed by San Diego), and (2) add the following underlined language to the last step in the formula:

- e. The increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction, after application of the relevant indirect cost rate, shall be reduced by the ~~percent of science teacher salaries paid with total amount of any~~ restricted or specific purpose funding or reimbursement received or used for this purpose grade 9-12 science instructors during the claim year from sources which do not require repayment by the school district, first divided by the total number of grade 9-12 science teachers and then multiplied by the number of “increased science teachers.”

On February 28, 2007, these districts proposed new amendments to the parameters and guidelines. As co-claimants to San Diego’s original request to amend the parameters and guidelines, these districts contend that the following proposed amendments are reimbursable beginning July 1, 1995:

1. Amend Section III, Eligible Claimants, to include county offices of education. The districts propose the addition of the following underlined language: “All school districts and county offices of education that incurred increased costs as a result of implementing Chapter 498, Statutes of 1983, Education Code Section 51225.3.”

2. Amend Section IV, Reimbursable Activities, as follows:

a. Increased Facility Costs –

- Clarify that the activities of “acquisition of additional space” and “remodeling existing facilities” includes “planning, design, land, demolition, building construction, fixtures, and facility rental.”
- Add the following methodology for claiming increased facility costs for acquiring or remodeling space: “In the absence of more precise cost accounting documentation, the calculated cost of acquisition and remodeling of facilities for the mandated additional year of science instruction shall be fifty-percent (50%) of the actual total cost of acquisition and remodeling of grades 9-12 science instruction facilities expended during the claim year, reduced by fifty-percent (50%) of the total amount of any restricted construction funding or reimbursement received or used for this purpose during the claim year from sources (such as state school construction bond proceeds) which do not require repayment by the school district.”<sup>14</sup>

b. Increased Equipment Costs

- Clarify that “acquisition of additional equipment” includes “planning, purchasing, and placement of additional equipment and furniture.”
- Add a standardized method of claiming increased equipment costs, similar to the method proposed for increased facility costs.

c. Add language reimbursing “other science instruction personnel,” such as lab assistants. The districts propose the following formula for claiming costs:

In the absence of more precise cost accounting documentation, the calculation of the increased cost of “other (non-classroom teacher) science instruction personnel (e.g., laboratory assistants) for grades 9-12 for each fiscal year, will be calculated according to the following formula:

- 1) The number of “increased other science instruction personnel” required for the mandated additional year of science instruction shall be calculated by dividing the number of full-time equivalents (five hours of class per day) of “other science instruction personnel” for grades 9-12 for the claim year by the number two (2).
- 2) This increased costs of the number of “increased other science instruction personnel” required for the mandated additional year of science instruction shall be calculated by multiplying the number of “increased other science instruction personnel” by the average

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<sup>14</sup> Castro Valley also requests that the Commission move the documentation requirement for acquisition of space to Section IX, Supporting Data for Claims. The Commission made that change when it amended the parameters and guidelines in 2005.

annual salary and benefit cost for the school district for “other science instruction personnel” for grades 9-12 for the claim year.

- 3) The increased cost of the number of “increased other science instruction personnel” required for the mandated additional year of science instruction, after application of the relevant indirect cost rate, shall be reduced by one-half of the total amount of any grade 9-12 restricted or specific purpose funding or reimbursement received or used for “other science instruction personnel” during the claim year from sources which do not require repayment by the school district.
- d. Science Instruction Materials – Add a standardized method for claiming costs for science instruction materials as follows:

~~Increased cost to school district for staffing and~~ supplying the new science classes mandated.

In the absence of more precise cost accounting documentation, the calculated cost of ‘increased science instruction materials (textbooks, materials and supplies)’ shall be fifty-percent (50%) of the actual total cost of science instruction materials for grades 9-12 expended during the claim year, after application of the relevant indirect cost rate. The calculated cost of “increased science instruction materials” shall be reduced by one-half of the total amount of any restricted funding or reimbursement received or used for grade 9-12 science instruction materials for the claim year from sources which do not require repayment by the school district.

3. Amend the section on “Offsetting Savings and Reimbursements” to clarify that reimbursement for the mandated program received from state, *other than state mandate reimbursement*, shall be deducted from the claim.
4. Replace the language setting the maximum reimbursable fee for contracted services with current boilerplate language for claim preparation and submission.

In comments dated May 30, 2008, and June 27, 2008, Castro Valley, et al., argues that funds appropriated pursuant to the revenue limit apportionments are not specifically intended to fund the cost of teacher salaries for the additional mandated science course. Thus revenue limit funds cannot be considered offsetting revenue. Castro Valley, et al., filed other comments on the draft and final staff analyses. These comments are summarized in the analysis below.

State Controller’s Office – Filed March 20, 2007 (06-PGA-04)

The State Controller’s Office agrees with the use of the “one quarter class load” method for teacher salary costs. The State Controller’s Office, however, proposes three modifications to the proposal of San Diego Unified School District: (1) the Controller’s proposal uses the average *science* teacher salary to determine costs, rather than the average teacher salary proposed by San Diego; (2) the Controller’s proposal requires school districts to submit supporting documentation for enrollment, average class size, total science classes, average science teacher salary and benefits, and costs funded by restricted resources; and (3) the Controller’s proposal does not add the indirect cost calculation in the last step *before* offsetting revenue from categorical funds is subtracted. With respect to the last point, the Controller’s Office argues that to add the indirect cost calculation *before* reducing the increased cost of science teacher salaries

by restricted or specific purpose funding or reimbursement received by a district would result in state reimbursement of indirect costs associated with ineligible direct costs.

The State Controller's Office also proposes the following formula for the increased material and supply costs:

The increased material and supply costs are calculated based on the number of additional classes to teach the additional year of science as follows:

1. Total science material and supply costs are divided by total science classes offered to determine an average cost per science class.
2. The increased cost is determined by multiplying the average material and supply cost per class in (1) by the increased science classes [determined in the second step of the "one quarter class load method"].
3. The reimbursable cost is determined by reducing the increased cost in (2) by the portion of all science classes' material and supply costs funded by restricted resources.

The Controller's Office uses the following assumptions to support the proposed method for claiming material and supply costs:

- The assumptions for material and supply costs are the same as the teacher costs calculation. The assumption is that the total enrollment will take the additional year of science in one of the four years of high school. The costs are based on the additional classes needed to provide the additional science course.
- The method uses the same increased classes computed in the teacher calculation to determine increased material and supply costs.
- The Schiff-Bustamante grant is a restricted resource and would be considered offsetting revenue just as restricted revenues concerning the teacher costs.
- Total science classes offered to include non mandate science classes – however the method only uses the increased classes from the teacher calculation to determine the increased material and supply costs.

The Controller further requests language in the parameters and guidelines requiring supporting documentation to back up the formulas for materials and supplies as follows: "Supporting documentation shall be required to support data elements needed to complete the calculation including enrollment, average science class size, total science classes, average science teacher salary and benefits, and costs funded by restricted resources."

### **State Agency Comments**

#### Department of Finance

On August 31, 2007, May 30, 2008, July 1, 2008, and October 17, 2008, the Department of Finance filed comments opposing many of the requests to amend the parameters and guidelines. Finance argues the following:

1. Eligible Claimants. Finance is opposed to amending the Eligible Claimant section of the parameters and guidelines to include county offices of education. Finance states the following: "Alternative programs that are administered by COEs are intended to provide

temporary educational placements for at-risk students to enable them to return to traditional school district settings. Finance is opposed to allowing COEs to submit separate reimbursement claims from those submitted by school districts, as it could double fund reimbursable costs already claimed by districts.”

2. One Quarter Class Load method for calculating teacher salary costs. Finance opposes the reimbursement methodology and states the following:

- The current definition of a reasonable reimbursement methodology enacted as part of Assembly Bill 1222 should not be applied to any parameters and guidelines amendment requests filed prior to the statutory change to the definition.
- If the Commission adopts this reasonable reimbursement methodology, Finance estimates statewide costs from fiscal year 1995-1996 through 2007-2008 in the amount of \$3 billion, and an additional annual statewide cost of \$250 million. Finance contends that the one-quarter class load method does not provide reimbursement in a cost-efficient manner. “Given the magnitude of these costs and the lack of supporting documentation on actual teacher salary costs incurred to comply with this mandate, we strongly suggest that additional data be gathered and taken into consideration before making any determination on whether the proposed method would provide reimbursement in a cost-efficient manner.”
- “It does not provide a mechanism for demonstrating that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. It is possible that students would have replaced an elective course with the additional required science course. In *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, (No. 03CS01401) the Sacramento County Superior Court recognized that there is a reasonable expectation that school districts may realize offsetting savings when students taking the second science course do not increase the number of classes they take overall. The Ps and Gs should be specific enough to enable the SCO to obtain sufficient documentation to determine the existence of offsetting savings.”
- The formula does not take into account dropout rates. The formula should not include students in grades 9 and 10 since “it is unlikely they would be enrolled in the second science course required for graduation.”
- Using a default average science class size does not reflect actual costs. The default proposals are not supported by data.
- The formula does not take into consideration increases in school district revenue limits, or general purpose funding, since the mandate went into effect. Education Code section 41372 requires that high school districts expend 50% of their current expenses of education for the payment of salaries of classroom teachers. Revenue limit apportionments consist of approximately 60% state aid, “well in excess of the fifty percent the districts must spend on teacher salaries.” While current law does not specifically earmark revenue limit apportionments for the additional course in science or any other course required for graduation, it does not preclude the funds from being used for that purpose. This funding should be identified as an offset.

- If the Commission considers the proposed reasonable reimbursement methodology, Finance suggests the following amendments:
  - (a) Calculate regular secondary enrollment for grades 9-12 with actual ADA reported for grades 9-12 for the entire fiscal year, instead of using CBEDS data.
  - (b) Require the retention of records showing the science courses offered by the school district in addition to the mandated science courses, and require that records be retained on teacher salaries and other instructional costs related to the science classes provided.
- 3. Reimbursement for science instruction personnel other than teachers (lab assistants). Finance opposes this request for reimbursement. Finance states that the “use of other personnel such as laboratory assistants or instructional aides is discretionary on the part of the school district and, therefore, is not a state-reimbursable mandated activity.
- 4. Reimbursement methodology for facility, equipment, and instructional material costs. Finance opposes the use of a standard method for reimbursement of these costs and argues that claims should be based on actual costs. Finance further states that funds appropriated in the Budget Act should be specifically identified as an offset. Specifically, Finance states that the 2007 Budget Act contains Proposition 98 funding for instructional materials for core classes, such as science:
 

The 2007 Budget Act contains \$419.8 million Proposition 98 General Fund to assist local education agencies with obtaining standards aligned instructional materials, including those for science courses, for all students in a timely manner. The state also invested \$1 billion for instructional materials under the Schiff-Bustamante Instructional Materials Program, which required the funds to be used for the core curriculum areas, including science. Further, in 1997-98, the state provided \$71.5 million for the purchase of science laboratory materials and equipment.
- 5. Clarifying the activities of acquisition of additional space and remodeling existing facilities to include “planning, design, land, demolition, building construction, fixtures, and facility rental.” Finance does not dispute this request and states that “[i]t is our understanding that these items are already considered reimbursable activities by the State Controller’s Office.”<sup>15</sup>

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<sup>15</sup> Finance also states that it opposes Castro Valley’s proposed amendment to delete the “Professional and Consultant Services” paragraph from the 1991 version of the parameters and guidelines. Finance argues that “[w]ithout this language contracted services could be charged at any rate.”

Castro Valley requests that the paragraph regarding “Professional and Consultant Services” be replaced with current boilerplate language. The Commission made that change when it amended the parameters and guidelines in 2005. With the 2005 amendment, “Professional and Consultant Services” is in Section V, Claim Preparation and Submission, and still sets the maximum reimbursable fee for contracted services at \$65 per hour, adjusted annually by the GNP Deflator.

State Controller's Office

On July 11, 2007, May 29, 2008, and October 7, 2008, the State Controller's Office filed comments on the school districts' proposals to amend the parameters and guidelines as follows:

1. Proposal of San Diego Unified School District. The State Controller's Office recommends that the Commission adopt the "one quarter class load method" for reimbursing teacher salary costs *prospectively* only, and not amend the parameters and guidelines back to fiscal year 1995-1996, the reimbursement period of San Diego's request. The Controller's Office argues that San Diego substantially modified their methodology in 2007 to conform to the method first proposed by the Controller's Office. The Controller's Office further states that amending the parameters and guidelines back to fiscal year 1995-1996 "could significantly impact State finances."
2. Proposal of Castro Valley Unified School District, et al. The Controller's Office states the following:
  - The proposal for reimbursing teacher salary costs "adds the indirect cost calculation before offsetting revenue is applied," which is "potentially confusing in that indirect costs are part of the calculation and part of a separate section in the Ps & Gs."
  - There may not be a mandate for reimbursement for "other science instruction personnel." Also, the method proposed for reimbursing these employees is arbitrary.
  - The method proposed for reimbursing materials, supplies, and facilities (50% of the total costs reduced by 50% of total related revenues), is arbitrary.

**Position of Other Interested Parties**

On May 30, 2008, and June 25, 2008, the Commission received comments from the "Graduation Requirements Mandate Resolution Committee Litigation Group" regarding the treatment of school district revenue limit apportionments expended on teacher salaries under Education Code section 41372 and 41374 as potential offsetting revenue to the teacher salary costs. The Litigation Group is composed of the following eight school districts: San Jose Unified School District, Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, Norwalk-La Mirada Unified School District, Poway Unified School District, and Sweetwater Union High School District. Although some of these districts request specific amendments to the *Graduation Requirements* parameters and guidelines, they are also being represented as part of the Litigation Group by Kronick, Moskovitz, Tiedemann, and Girard, a Law Corporation on this item.

The Litigation Group argues that the revenue limit apportionment provided to school districts is prohibited by article XIII B, section 6 of the California Constitution from being considered offsetting revenue for purposes of mandate reimbursement.

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## STAFF ANALYSIS

The proposals are analyzed in the order the issue is presented in the parameters and guidelines.

### **Issue 1: What is the period of reimbursement for the proposed amendments to the 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. (Gov. Code, § 17557, subd. (d); Cal. Code Regs., tit. 2, former § 1185.3.)

The parties have raised two issues with respect to the period of reimbursement.

#### Period of Reimbursement for the San Diego Unified School District's Request

The original period of reimbursement for the *Graduation Requirements* program began July 1, 1984. On August 13, 1996, San Diego Unified School District first requested that the parameters and guidelines be amended to include a reimbursement methodology for teacher salary costs using the one-quarter class load method. San Diego modified the proposed methodology on April 12, 2007. The State Controller's Office recommends that the Commission adopt the one quarter class load method for reimbursing teacher salary costs *prospectively* only, and not amend the parameters and guidelines back to fiscal year 1995-1996, the period of reimbursement of the original 1996 filing based on Government Code section 17557.

The Controller's Office contends that San Diego substantially modified its 1996 proposed methodology on April 12, 2007, to conform to the method proposed by the Controller's Office on March 20, 2007, when it filed a request to amend the parameters and guidelines after the Commission hearings on remand of the case, *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al. (hereafter "*San Diego case.*") The Controller's Office explains that the 1996 proposal used the quarter load method to determine teacher salary costs, and also included a class size differential to determine offsetting savings. Once total costs were determined using the quarter load method, the average science class size was compared to the average class size. If the average science class size was smaller than the average class size, then the incremental difference between the two ratios was applied to determine the allowable portion for reimbursement. For example, a decrease in science class size of 6% relative to average class size resulted in only 6% of the increased costs which is reimbursable. If the average class size was greater or equal to the average class size, there was no increased cost.

The 1996 request to amend the parameters and guidelines was continued by the Commission, at its September 26, 1996 hearing, until after the incorrect reduction claims were resolved in the *San Diego case*. The incorrect reduction claim filed by San Diego Unified School District was resolved on October 26, 2006. The administrative record for these requests to amend the parameters and guidelines closed in September 2007.

On March 20, 2007, the Controller's Office filed a request to amend the parameters and guidelines to include the quarter load method for claiming teacher salary costs, but deleted the class size differential as an offset, and added potential offsetting revenue for the percentage of science teachers funded by restricted resources. The Controller acknowledges that assuming a school district experienced an offset using a class size differential is not consistent with the court's judgment in the *San Diego case*. The Controller correctly states that "[a]ny consideration

of offsetting savings based on the impact of the additional year of science on non-science classes must show a direct relationship between the reduction in non-science classes and the increase in the mandated science class.” Page 2, paragraph 1 (lines 5-13) of the court’s Judgment in the *San Diego* case prohibits the Controller from reducing a claim on the ground that the school district *could* have offsetting savings. The court states the following:

Respondents [The State Controller’s Office and the Commission] *may not deny* reimbursement of costs for teachers’ salaries incurred by a school district providing a second science course pursuant to [the test claim statute] ... *on the ground that the school district could have offset these costs by using its authority* under subdivision (b) of Education Code section 44955 to terminate teachers of other courses provided by the district, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3 [the courses required by the school district for graduation]. Emphasis added.<sup>16</sup>

Rather, the Court’s writ states that

The State Controller may require the petitioner to submit cost data and documentation to demonstrate *whether it experienced any savings to offset the teachers’ salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3 ...*<sup>17</sup>

On April 12, 2007, San Diego changed the proposed reasonable reimbursement methodology for teacher salary costs by deleting the class size differential and adding potential offsetting revenue for teacher salaries paid with restricted funds, consistent with the Controller’s proposal. The quarter load method to determine the gross amount of teacher salary costs incurred as a result of the test claim statute remains the same as the 1996 proposal; i.e., dividing the total number of pupils in grades 9-12 by the number four, which represents one additional year of instruction.

Although San Diego modified its original proposal, staff finds that if the Commission amends the parameters and guidelines by adopting the one-quarter class load method for teacher salary costs, the reimbursement period would begin for costs incurred in fiscal year 1995-1996. This conclusion is based on the requirements of Government Code section 17557, subdivision (d), the Commission’s regulations that existed when San Diego filed the request to amend the parameters and guidelines (Cal. Code Regs., tit. 2, former § 1185.3 (Register 87, No. 49)), case law interpreting the filing date of amended pleadings, and on the past practices of the Commission when handling requests to amend parameters and guidelines.

At the time San Diego filed its request to amend the parameters and guidelines in 1996, the Commission had the authority to include an allocation formula or uniform allowance in the parameters and guidelines. (Gov. Code, § 17557, subd. (b); Stats. 1995, ch. 945.) In addition, former section 1185.3 of the Commission’s regulations stated that “a parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before November 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. Today, Government Code section 17557, subdivision (d), similarly states that “[a] parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims,

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<sup>16</sup> Exhibit R.

<sup>17</sup> Exhibit R.

as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, *shall establish* reimbursement eligibility for that fiscal year.” (Emphasis added.) Although the Commission has the authority to adopt amendments to the parameters and guidelines, once an amendment is adopted, the period of reimbursement is established by law in former section 1185.3 of the Commission’s regulations and Government Code section 17557. The Commission does not have discretion with respect to the period of reimbursement.

Government Code section 17557 and section 1183.2 of the Commission’s regulations allow a party to request a parameters and guidelines amendment, establish a period of reimbursement for the request, and allow parties and interested parties an opportunity to file comments on the request. These provisions of law, however, are silent with respect to the effect of a subsequent amendment to an original request to amend parameters and guidelines.

Generally, the law allows a party to amend their pleadings.<sup>18</sup> If the subsequent amendment relies on the same set of facts as the original pleading, the subsequent amendment will be deemed filed as of the date of the original amendment.<sup>19</sup> The purpose of the law allowing amendments is to permit correction of errors and omissions, to clarify ambiguities, or to explain mistaken statements made in the original pleadings.<sup>20</sup> The courts have also allowed amendments to relate back to the filing date of the original claim when the amendment does not change the obligation sought to be enforced, but merely changes the form of remedy sought.<sup>21</sup>

In this case, the 2007 amended proposal is based on the same set of facts as the original pleading since both proposals use the quarter load method for claiming gross teacher salary costs. The 2007 proposal clarifies and corrects any errors in potential offsetting costs that were addressed by the court in the *San Diego* case. Thus, staff disagrees with the Controller’s Office that the 2007 proposal is “entirely different.”

Moreover, as more fully described in the next issue below, the Commission has treated subsequent proposals to an original request to amend parameters and guidelines as comments and based the period of reimbursement on the filing date of the original request to amend the parameters and guidelines.

Therefore, if the Commission adopts the one-quarter class load method of claiming costs for teacher salaries, the period of reimbursement is established by law, and begins in fiscal year 1995-1996.

#### Period of Reimbursement for Castro Valley’s Request

On October 13, 2006, San Diego Unified School District requested that Castro Valley Unified School District, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, San Jose Unified School District, and Sweetwater Joint Union High School District (hereafter “Castro Valley”) be joined as co-requestors to San

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<sup>18</sup> Code of Civil Procedure sections 472 and 473.

<sup>19</sup> *Wiener v. Superior Court* (1976) 58 Cal.App.3d 525; *San Diego Gas & Elec. Co. v. Superior Court* (2007) 146 Cal.App.4th 1545.

<sup>20</sup> California Jurisprudence 3d, Volume 43, Limitation of Actions, section 145.

<sup>21</sup> *Ibid.*

Diego's request to amend the parameters and guidelines to add the "one quarter class load method" for reimbursing teacher salary costs.

On February 28, 2007, Castro Valley filed a separate document requesting that the Commission further amend the parameters and guidelines in other respects as follows:

- Amend the "Eligible Claimant" section to include county offices of education.
- Clarify the activities of acquiring additional space, remodeling existing facilities, acquisition of additional equipment, and acquisition of materials and supplies.
- Add language reimbursing "other science instruction personnel."
- Establish reasonable reimbursement methodologies for these activities. (See Exhibit H.)

When the February 28, 2007 document was filed with the Commission, it was treated by Commission staff as a new request to amend the parameters and guidelines, and given a separate file number, based on the fact that the proposals of Castro Valley were new and did not involve the reimbursement of teacher salaries.

Throughout these proceedings, however, Castro Valley has contended that its February 28, 2007 filing is not a separate request to amend the parameters and guidelines, but simply comments filed in response to a request for comments on the 1996 San Diego request to amend and the 2005 Mountain View-Los Altos request to amend the parameters and guidelines. Castro Valley argues that the period of reimbursement for the requested amendments identified in its February 28, 2007 letter should go back to the period of reimbursement of San Diego's request that begins in fiscal year 1995-1996.

Thus, the issue is whether Castro Valley's proposed amendments, first requested in 2007, relate back to the original period of reimbursement of San Diego's request (a request joined by Castro Valley), or establishes a new period of reimbursement based on the 2007 filing.

As indicated above, Government Code section 17557 and section 1183.2 of the Commission's regulations are silent with respect to the effect of a subsequent amendment to an original request to amend parameters and guidelines. In the staff analysis issued for the March 2008 Commission hearing, staff interpreted Government Code section 17557 based on general principles of civil procedure; that if the proposed amendment does not rely on the same set of facts as the original pleading, the amendment will be deemed filed as of the date of the subsequent amendment.<sup>22</sup> Staff concluded Castro Valley's February 28, 2007 filing was deemed filed on February 28, 2007, and did not relate back to the August 1996 original request to amend, thus establishing a period of reimbursement beginning in 2006-2007.<sup>23</sup>

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<sup>22</sup> *Wiener v. Superior Court* (1976) 58 Cal.App.3d 525; *San Diego Gas & Elec. Co. v. Superior Court* (2007) 146 Cal.App.4th 1545.

<sup>23</sup> This finding did not apply to Castro Valley's request to clarify that county offices of education are eligible claimants since that issue raised a question of law regarding what the Legislature originally intended to mandate when it amended the test claim statute. The finding stated the following:

The legal interpretation of a statute by a court, even when the statute is interpreted after the effective and operative date of the statute, is retroactive to the date the statute

On May 30, 2008, Castro Valley filed further comments contending that the Commission's past practice has been to accept subsequent filings as comments and approve parameters and guidelines amendments on issues beyond the scope of the original request to amend, making the subsequent proposals applicable to the period of reimbursement of the original request. Castro Valley is correct in these statements. However, the interpretation of subsequent proposals in past practice has not been consistent. Staff recommends, therefore, that the Commission amend its regulations to clearly define these issues.

For purposes of this case, however, staff recommends that the Commission find that Castro Valley's filing of February 28, 2007, be considered comments to the original request, with a period of reimbursement beginning in fiscal year 1995-1996. This recommendation is made on the ground that (1) Castro Valley is a co-requestor to the original 1996 request to amend the parameters and guidelines; (2) Government Code section 17557 and section 1183.2 of the Commission regulations are silent with respect to the treatment of new proposals made in response to original requests to amend parameters and guidelines; (3) the Commission has, on occasion, treated subsequent proposals as comments; and (4) Castro Valley's filing is labeled "comments," and not "proposed amendments" like the filing of Mountain View-Los Altos High School District (Exhibit E), with the following language contained in the document:

On January 31, 2007, the Commission distributed copies of requests by the two above referenced districts to amend the parameters and guidelines for Graduation

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became operative. (*Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 36-37. Unlike the court, however, the Commission is a quasi-judicial agency with limited jurisdiction. The Commission does not have the jurisdiction to clarify the interpretation of a test claim statute and make that interpretation retroactive to the original period of reimbursement after the Statement of Decision becomes final. Once a Statement of Decision is issued, it becomes final unless a party seeks reconsideration within a limited period of time, or challenges the decision in court. The Commission does, however, have jurisdiction to amend the parameters and guidelines under such circumstances when requested by a party pursuant to Government Code section 17557, subdivision (d). The period of reimbursement for any changes to the parameters and guidelines adopted by the Commission based on its legal interpretation of the test claim statute is established by Government Code section 17557, subdivision (d), and is based on the filing date of the request to amend the parameters and guidelines.

As indicated above, San Diego filed the initial request to amend the parameters and guidelines in August 1996 to add a method for reimbursing teacher salary costs and Castro Valley is a co-requestor to that proposed amendment. The request has a potential period of reimbursement beginning in fiscal year 1995-1996. If the Commission finds that county offices of education are mandated by the state to comply with the test claim statute and are eligible claimants, county offices of education would be eligible to receive reimbursement for teacher salary costs. Since the courts have allowed amendments that clarify a pleading to relate back to the filing of the original request, staff finds that the potential period of reimbursement for the request to amend the eligible claimant section of the parameters and guidelines goes back to fiscal year 1995-1996.

Requirements and invited comment. This letter transmit the response of the following six districts which I represent ...”

On August 13, 1996, the San Diego Unified School District submitted a request to amend the parameters and guidelines for Graduation Requirements. The language proposed here by the six districts is intended to modify the language proposed in 1996 by San Diego. To avoid confusion, the proposed language modifies the last amended parameters and guidelines dated January 24, 1991, rather than attempt to simultaneously amend both the 1996 San Diego proposed language and 1991 language. With the permission of San Diego, the six districts would in essence modify the 1996 proposed language by substituting the language proposed here without prejudice to the effective date of the 1996 request by San Diego.

Accordingly, if the Commission approves any of Castro Valley’s requests to amend the parameters and guidelines, those amendments would be effective on July 1, 1995. As more fully described in the analysis, staff recommends that the Commission approve only the first two requests of Castro Valley by amending the “Eligible Claimant” section to include county offices of education, and clarifying the activities of acquiring additional space, remodeling existing facilities, acquisition of additional equipment, and acquisition of materials and supplies. The parties do not dispute the second request to clarify the activities of acquiring additional space, remodeling existing facilities, acquisition of additional equipment, and acquisition of materials and supplies.

**Issue 2: Should the Commission amend the parameters and guidelines to specifically identify county offices of education as eligible claimants?**

Castro Valley requests that Section III, Eligible Claimants, be amended to include county offices of education. The districts propose the addition of the following underlined language: “All school districts and county offices of education that incurred increased costs as a result of implementing Chapter 498, Statutes of 1983, Education Code Section 51225.3.”

The Department of Finance opposes this request and states the following:

Alternative programs that are administered by COEs are intended to provide temporary educational placements for at-risk students to enable them to return to traditional school district settings. Finance is opposed to allowing COEs to submit separate reimbursement claims from those submitted by school districts, as it could double fund reimbursable costs already claimed by districts.

Staff recommends that the Commission amend Section III to specifically include county offices of education as eligible claimants.

The plain language of the test claim statute, Education Code section 51225.3, applies to all pupils receiving a diploma of graduation in high school. That section states in relevant part the following:

- (a) Commencing with the 1988-89 school year, *no pupil shall receive a diploma of graduation from high school* who, while in grades 9 to 12, has not completed all of the following:
  - (1) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.

¶ ...

(C) Two courses in science, including biological and physical sciences.  
(Emphasis added.)

Section 51223.5 is included in the chapter of the Education Code that prescribes the course of study for all of grades 7 through 12, and does not distinguish between courses of study provided by school districts and county offices of education.<sup>24</sup>

County offices of education do provide alternative programs for students attending county community schools, as contended by the Department of Finance.<sup>25</sup> Pupils enrolled in county community schools, which are administered by the county superintendent of schools, include pupils that are expelled from a school district, pupils referred as a condition of probation, and homeless children.<sup>26</sup> The county superintendent of schools is the executive officer of the county office of education.<sup>27</sup> County community schools receive revenue from the State School Fund based on the average daily attendance of pupils.<sup>28</sup>

In some cases, the education provided by the county is temporary; i.e., when an expelled pupil is readmitted to his or her district of residence.<sup>29</sup> However, the county superintendent of schools providing educational services to homeless children “shall be deemed to be the district of residence of those children.”<sup>30</sup> Furthermore, “[t]he course of study of a county community school shall be adopted by the county board of education and *shall* enable each pupil to continue academic work leading to the *completion of a regular high school program.*” (Emphasis added.)<sup>31</sup>

Thus, there is nothing in the plain language of the test claim statute, or the statutes governing county offices of education that suggests county offices of education are not required to provide the high school science course required by Education Code section 51223.5 when the county is the school district. Moreover, Government Code section 17518 defines a school district eligible to claim reimbursement under article XIII B, section 6 to include the county superintendent of schools.

Finally, when the Legislature enacted Statutes 2004, chapter 895 (AB 2855) to direct the Commission to amend the parameters and guidelines for this program to identify amounts received from state bond funds to construct new science facilities as an offset, the Legislature specifically referred to funds received “by the school district or county office.” Section 17 of AB 2855 states the following:

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<sup>24</sup> Education Code, division 4, part 28, chapter 2, article, 3, sections 51220, et seq.

<sup>25</sup> Education Code section 1983.

<sup>26</sup> Education Code sections 1981, 1982, subdivision (a).

<sup>27</sup> Education Code section 1010.

<sup>28</sup> Education Code section 1982, subdivision (a).

<sup>29</sup> Education Code sections 48915.1, 48915.2, 48916.

<sup>30</sup> Education Code section 1982, subdivision (c).

<sup>31</sup> Education Code section 1983, subdivision (d).

Notwithstanding any other law, for purposes of calculating the amount of the state reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for the state-mandated local program imposed by increasing the science course requirement for graduation from one science course to two science courses (Sec. 94, Ch. 498, Stats. 1983), if the school district or *county office* submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or *county office* to construct the new science facility. (Emphasis added.)

The courts have held that subsequent expressions of intent by the Legislature of an earlier act, while not binding, may be considered along with other factors to determine the legislative intent of the earlier-enacted statute.<sup>32</sup> Thus, AB 2855 may be properly considered by the Commission, together with other factors described in the analysis above, to determine that the Legislature intended Education Code section 51223.5 to apply to county offices of education.

Staff finds that Education Code section 51223.5 applies to all pupils that graduate from high school whether or not the science course is provided by a school district or a county office of education. Staff recommends that the Commission amend the parameters and guidelines to specifically identify county offices of education as eligible claimants. Pursuant to Government Code section 17557, subdivision (d), and the analysis regarding amendment of pleadings in Issue 1, this proposed amendment is for costs incurred beginning in fiscal year 1995-1996.

**Issue 3: Should the Commission amend the parameters and guidelines to clarify that the activities of “acquisition of additional space” and “remodeling existing space” includes “planning, design, land, demolition, building construction, fixtures, and facility rental”?**

Castro Valley requests that the Commission add the following underlined language to the activities of “acquisition of additional space” and “remodeling existing space” as a result of the requirement to provide the second year of science:

Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space ... necessary for ~~conducting new science classes~~ the mandated additional year of science instruction, providing that space is lacking in existing facilities. ...

Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction to accommodate the new science class and lab including costs of design, renovation, and special lab equipment and outlets essential to maintaining a level of instruction sufficient to meet college admission requirements.

The parameters and guidelines provide that the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in

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<sup>32</sup> *Fong Eu v. Chacon* (1976) 16 Cal.3d 465, 470.

high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.

No party has objected to these requested amendments. The Department of Finance filed comments stating that they believed the activities of planning, design, demolition, building construction, fixtures, and facility rental were reimbursable activities.

Staff finds that the proposed activities of planning, design, land, demolition, building construction, fixtures, and facility rental are activities that are necessary to carry out the mandated program.<sup>33</sup> In addition, amending the parameters and guidelines to include facility rental is consistent with prior Commission decisions on incorrect reduction claims for this program. In an incorrect reduction claim filed by Clovis Unified School District (CSM 4435-I-06/38), the Commission determined that acquisition of additional space includes leasing portable classrooms.<sup>34</sup>

Thus, staff recommends that the Commission amend the parameters and guidelines, beginning fiscal year 1995-1996, to include the underlined language proposed by Castro Valley Unified School District with respect to acquisition of additional space and remodeling existing space.

**Issue 4: Should the Commission amend the parameters and guidelines to include the proposed reimbursement methodology for claiming increased facility costs for acquiring or remodeling space?**

Castro Valley Unified School District, et al requests that the Commission amend the parameters and guidelines to include a reimbursement methodology for claiming increased costs for acquiring or remodeling space. The proposed methodology is as follows:

In the absence of more precise cost accounting documentation, the calculated cost of acquisition and remodeling of facilities for the mandated additional year of science instruction shall be fifty-percent (50%) of the actual total cost of acquisition and remodeling of grades 9-12 science instruction facilities expended during the claim year, reduced by fifty-percent (50%) of the total amount of any restricted construction funding or reimbursement received or used for this purpose during the claim year from sources (such as state school construction bond proceeds) which do not require repayment by the school district.

The Department of Finance opposes the use of a standard method for reimbursement of these costs and argues that claims should be based on actual costs. The State Controller's Office also opposes this request on the ground that it is arbitrary.

For the reasons below, staff finds that the proposed formula does not satisfy the requirements of a "reasonable reimbursement methodology" and, thus, recommends that the Commission not adopt the proposed language.

Government Code section 17557, subdivision (b), states that the Commission may adopt a reasonable reimbursement methodology when adopting parameters and guidelines. Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines a "reasonable reimbursement methodology" to "mean a formula for reimbursing local agencies

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<sup>33</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

<sup>34</sup> Administrative Record – Clovis, page 307.

and school districts for costs mandated by the state ...” It requires that two elements be shown: (1) that the methodology considers the variation of costs among local agencies and school districts to implement the mandate, and (2) that the methodology reimburses local agencies or school districts for implementing the mandate in a “cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).) The Commission’s regulations, section 1183.13, subdivision (d), states that proposed reasonable reimbursement methodologies “shall include any documentation or assumption relied upon to develop the methodology.”

The requestors have not filed any documentation or assumptions with the Commission to indicate how the methodology was developed. Thus, there is no evidence in the record that the proposed methodology considers the variation of costs among school districts for acquiring or remodeling space for the second science course, and there is no evidence in the record that the methodology would provide reimbursement in a cost-efficient manner.

In response to the draft staff analysis, Castro Valley argues that the proposed methodology is not a reasonable reimbursement methodology and, thus, the reasons stated above to deny the request are without foundation. Castro Valley argues that the proposal to reimburse 50% of the total costs for acquiring or remodeling space is based on actual costs.

Staff disagrees with Castro Valley’s argument. Government Code section 17518.5, subdivision (a), defines “reasonable reimbursement methodology” as a “formula” for reimbursing local agencies and school districts. Webster’s Dictionary defines “formula” to mean “[a] mathematical statement, esp. an equation, of a rule, principle, answer, or other logical relation.”<sup>35</sup> The New Oxford American Dictionary defines “formula” as “a mathematical relationship or rule expressed in symbols” and “a method, statement, or procedure for achieving something.”<sup>36</sup> Staff finds that the proposed mathematical method for reimbursing school districts for acquiring and remodeling space at 50% of the total cost is a formula and, thus, a proposed reasonable reimbursement methodology. Therefore, Government Code section 17518.5 is applicable and binding with respect to this proposal.

Accordingly, staff recommends that the Commission deny the request to add a reimbursement methodology for acquiring or remodeling of space because the proposed formula does not satisfy the requirements of a “reasonable reimbursement methodology.”

**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”?**

The parameters and guidelines authorize reimbursement for the acquisition of equipment necessary for conducting the new science class. The language identifying acquisition of equipment as a reimbursable activity is included in the same paragraph as the activity of acquiring additional space.

Castro Valley requests that the Commission identify the acquisition of equipment in a separate paragraph for purposes of clarity. The requestors further propose that the Commission add language specifying that “acquisition” of equipment includes “planning, purchasing, and

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<sup>35</sup> Webster’s II New College Dictionary (1999), page 440.

<sup>36</sup> The New Oxford American Dictionary (2001), page 666.

placement” of additional equipment and “furniture.” The requestors propose the following amendments, reflected in underline and strikeout:

Acquisition (planning, purchasing, and placement) of additional equipment and furniture necessary for ~~conducting new science classes~~ ... the mandated additional year of science instruction.

No party has objected to these requested amendments. The Department of Finance filed comments stating that they believed these activities were already being reimbursed by the State Controller’s Office.

Staff agrees with the requestors’ proposal, and finds that the activities of “planning, purchasing, and placement” of equipment are activities that are necessary to carry out the mandated program.<sup>37</sup> In addition, staff agrees that “equipment” includes “furniture.” Staff further agrees that a separate paragraph for the acquisition of equipment and furniture helps to clarify the reimbursable activities.

Thus, staff recommends that the Commission amend the parameters and guidelines, beginning fiscal year 1995-1996, to include the language proposed by Castro Valley with respect to acquisition of equipment and furniture.

**Issue 6: Should the Commission amend the parameters and guidelines to include the proposed reimbursement methodology for claiming increased costs for acquiring equipment and furniture?**

Castro Valley requests that the Commission amend the parameters and guidelines to include a reimbursement methodology for claiming increased costs for acquiring equipment and furniture. The proposed methodology is as follows:

In the absence of more precise cost accounting documentation, the calculated cost of increased equipment and furniture for the mandated additional year of science instruction shall be fifty-percent (50%) of the actual total cost of science instruction equipment and furniture for grades 9-12 expended for this purpose during the claim year, reduced by fifty-percent (50%) of the total amount of any restricted funding or reimbursement for this purpose received or used during the claim year by the school district from sources which do not require repayment by the school district.

The Department of Finance opposes the use of a standard method for reimbursement of these costs and argues that claims should be based on actual costs. The State Controller’s Office also opposes this request on the ground that it is arbitrary.

For the reasons below, staff finds that the proposed formula does not satisfy the requirements of a “reasonable reimbursement methodology” and, thus, recommends that the Commission not adopt the proposed language.

Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines a “reasonable reimbursement methodology” to “mean a formula for reimbursing local agencies and school districts for costs mandated by the state ...” It requires that two elements be shown: (1) that the methodology considers the variation of costs among

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<sup>37</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

local agencies and school districts to implement the mandate, and (2) that the methodology reimburses local agencies or school districts for implementing the mandate in a “cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).) The Commission’s regulations, section 1183.13, subdivision (d), states that proposed reasonable reimbursement methodologies “shall include any documentation or assumption relied upon to develop the methodology.”

The requestors have not filed any documentation or assumptions with the Commission to indicate how the methodology was developed. Thus, there is no evidence in the record that the proposed methodology considers the variation of costs among school districts for acquiring equipment and furniture for the second science course, and there is no evidence in the record that the methodology would provide reimbursement in a cost-efficient manner. The proposed formula begins by using the actual total costs for science instruction equipment and furniture. Although the state mandates schools to provide two science courses in grades 9 to 12 (with the test claim statute increasing the state requirement of one science course to two science courses) - state law, in Education Code section 51225.3, subdivision (a)(2), also allows school districts to offer, at their discretion, “other coursework as the governing board of the school district may by rule specify.” Therefore, the actual total costs for science equipment and furniture for a claim year may include costs for more than the minimum two science courses. In this respect, the 50% method proposed by Castro Valley (50% of the actual total cost of science instruction equipment and furniture for grades 9-12 expended during the claim year) could result in reimbursement for furniture and equipment for courses that are not mandated by the state. For example, San Diego Unified School District, for the 2007-2008 school year, requires three years of science instruction for graduation, rather than two, and offers 14 science courses to satisfy the graduation requirement.<sup>38</sup> In addition, Grossmont offers several science courses that do not meet the two required science courses mandated by the state in biological and physical sciences, including Introduction to Forensic Science, Introduction to Health Careers, Healthcare Essentials, and Astronomy.<sup>39</sup>

In response to the draft staff analysis, Castro Valley argues that the proposed methodology is not a reasonable reimbursement methodology and, thus, the reasons stated above to deny the request are without foundation. Castro Valley argues that the proposal to reimburse 50% of the total costs for acquiring equipment or furniture is based on actual costs.

Staff disagrees with Castro Valley’s argument. Government Code section 17518.5, subdivision (a), defines “reasonable reimbursement methodology” as a “formula” for reimbursing local agencies and school districts. Webster’s Dictionary defines “formula” to mean “[a] mathematical statement, esp. an equation, of a rule, principle, answer, or other logical relation.”<sup>40</sup> The New Oxford American Dictionary defines “formula” as “a mathematical relationship or rule expressed in symbols” and “a method, statement, or procedure for achieving something.”<sup>41</sup> Staff finds that a proposed mathematical method of reimbursing school districts

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<sup>38</sup> See, <http://studata.sandi.net/cos> (San Diego Unified School District, Course of Study K-12: 2007-08, page SCI-8). (See Ex. M.)

<sup>39</sup> See, Master Course Catalog for Grossmont Union High School District, July 2007, pages R1-R3. (See Ex. M.)

<sup>40</sup> Webster’s II New College Dictionary (1999), page 440.

<sup>41</sup> The New Oxford American Dictionary (2001), page 666.

for acquiring equipment or furniture at 50% of the total cost is a formula and, thus, a proposed reasonable reimbursement methodology. Therefore, Government Code section 17518.5 applies and is binding with respect to this proposal.

Accordingly, staff recommends that the Commission deny the request to add a reimbursement methodology for the acquisition of equipment and furniture because the proposed formula does not satisfy the requirements of a “reasonable reimbursement methodology.”

**Issue 7: Should the Commission amend the parameters and guidelines to include the proposed reimbursement methodology of the “one quarter class load method” for claiming increased teacher salary costs?**

**A. Proposals**

San Diego Unified School District, Castro Valley Unified School District, et al., and the State Controller’s Office request that the Commission amend the parameters and guidelines to include the “one quarter class load method” for claiming increased teacher salary costs. The language and methodology proposed by San Diego Unified School District is as follows:

- a. The “increased pupil load” which results from the mandated additional year of science instruction shall be calculated by dividing the total grade 9-12 pupil enrollment for the claim year by the number four (4), which represents one additional year of instruction.
- b. The number of “increased science classes” for the mandated additional year of science instruction shall be calculated by dividing the “increased pupil load” by the average science class size for grades 9-12 for the claim year. If the claimant cannot determine the average class size for grades 9-12, the default average science class size is 30 students.
- c. The number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by dividing the number of “increased science classes” by the number five (5), which represents the full-time equivalent of classes by each teacher.
- d. This increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by multiplying the number of “increased science teachers” by the average annual teacher salary and benefit cost for the school district for the claim year.
- e. The increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction, after application of the relevant indirect cost rate, shall be reduced by the percent of science teacher salaries paid with restricted or specific purpose funding or reimbursement received or used for this purpose during the claim year from sources which do not require repayment by the school district.

Castro Valley proposes a similar methodology as follows (language that is different than San Diego’s proposal is noted in underline and strikeout):

In the absence of more precise cost accounting documentation, the calculation of the increased cost of science teachers for each fiscal year, will be calculated according to the following formula:

- a. The “increased pupil load” which results from the mandated additional year of science instruction shall be calculated by dividing the total grade 9-12 pupil enrollment for the claim year by the number four (4), which represents one additional year of instruction.
- b. The number of “increased science classes” for the mandated additional year of science instruction shall be calculated by dividing the “increased pupil load” by the average science class size for grades 9-12 for the claim year. If the claimant cannot determine the average class size for grades 9-12, the default average science class size is ~~30~~ 35 students.
- c. The number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by dividing the number of “increased science classes” by the number five (5), which represents the full-time equivalent of classes by each teacher.
- d. This increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction shall be calculated by multiplying the number of “increased science teachers” by the average annual teacher salary and benefit cost for the school district for the claim year.
- e. The increased cost of the number of “increased science teachers” required for the mandated additional year of science instruction, after application of the relevant indirect cost rate, shall be reduced by the ~~percent of science teacher salaries paid with total amount of any~~ restricted or specific purpose funding or reimbursement received or used for this purpose grade 9-12 science instructors during the claim year from sources which do not require repayment by the school district, first divided by the total number of grade 9-12 science teachers and then multiplied by the number of “increased science teachers.”

The State Controller’s Office proposes three modifications to the proposal of San Diego Unified School District: (1) use the average *science* teacher salary to determine costs, rather than the average teacher salary proposed by San Diego; (2) require districts to retain supporting documentation for enrollment, average class size, total science classes, average science teacher salary and benefits, and costs funded by restricted resources to support the reimbursement claim; and (3) do not add the indirect cost calculation in last step of the calculation *before* offsetting revenue from categorical funds is subtracted. With respect to the last point, the Controller’s Office argues that to add the indirect cost calculation *before* reducing the increased cost of science teacher salaries by restricted or specific purpose funding or reimbursement received by a district would result in state reimbursement of indirect costs associated with ineligible direct costs. Thus, the Controller’s last step in the formula simply states the following: “The reimbursable cost is determined by reducing the increased cost in [step] 4 by the portion of all science teachers funded by restricted resources.” References to the indirect cost calculation remains in the boilerplate section of the parameters and guidelines and would be applied after the increased teacher salary is fully calculated using the “one quarter class load method.” The language proposed by the State Controller’s Office is as follows:

The increased teacher costs are calculated based on the number of teachers to teach the additional year of science as follows:

1. Total regular secondary enrollment (grades 9-12) is divided by four representing the additional year of science.

2. The number of additional classes is the enrollment in (1) divided by the average science class size.
3. The additional teachers are determined by dividing the additional classes in (2) by the classes taught by a full-time equivalent teacher (the de facto standard teacher day consists of 5 class periods)
4. The increased cost is determined by multiplying the number of teachers in (3) by the average salary and benefit cost of a science teacher.
5. The reimbursable cost is determined by reducing the increased cost in (4) by the portion of all science teachers funded by restricted resources.

San Diego Unified School District and the State Controller’s Office include the following “sample calculation” in their proposals:

Sample Calculation

|   |             |
|---|-------------|
| A. Secondary Enrollment   | 28,000      |
| B. One Quarter Class Load (Line A x 1/4)                        | 7,000       |
| C. Average Science Class Size                                   | 28          |
| D. Increased Classes (Line B/Line C)                            | 250         |
| E. Number of Classes Per Teacher                                | 5           |
| F. Increased Science Teachers (Line D/Line E)                   | 50          |
| G. Average Teacher (or Science Teacher)                         |             |
| Salary and Benefits   | \$ 60,000   |
| H. Total Costs (Line F x Line G)                                | \$3,000,000 |
| I. Science Teachers Not Funded by<br>Categorical Programs (90%) | 90%         |
| J. Net Science Teacher Costs<br>(Line H x Line I)               | \$2,700,000 |

The Department of Finance opposes the adoption of a reimbursement methodology for teacher salary costs, and states the following:

- The current definition of a reasonable reimbursement methodology enacted as part of Assembly Bill 1222 should not be applied to any parameters and guidelines amendment requests filed prior to the statutory change to the definition.
- If the Commission adopts this reasonable reimbursement methodology, Finance estimates statewide costs from fiscal year 1995-1996 through 2008-2008 in the amount of \$3 billion, and an additional annual statewide cost of \$250 million. Finance contends that the one-quarter class load method does not provide reimbursement in a cost-efficient manner. “Given the magnitude of these costs and the lack of supporting documentation on actual teacher salary costs incurred to comply with this mandate, we strongly suggest that additional data be gathered and taken into consideration before making any determination on whether the proposed method would provide reimbursement in a cost-efficient manner.”
- “It does not provide a mechanism for demonstrating that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. It is possible that students would

have replaced an elective course with the additional required science course. In *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, (No. 03CS01401) the Sacramento County Superior Court recognized that there is a reasonable expectation that school districts may realize offsetting savings when students taking the second science course do not increase the number of classes they take overall. The Ps and Gs should be specific enough to enable the SCO to obtain sufficient documentation to determine the existence of offsetting savings.”

- The formula does not take into account dropout rates. The formula should not include students in grades 9 and 10 since “it is unlikely they would be enrolled in the second science course required for graduation.”
- Using a default average science class size does not reflect actual costs. The default proposals are not supported by data.
- The formula does not take into consideration increases in school district revenue limits, or general purpose funding, since the mandate went into effect. This funding should be identified as an offset.

If the Commission considers the proposed reasonable reimbursement methodology, Finance suggests the following amendments:

- Calculate regular secondary enrollment for grades 9-12 with actual ADA reported for grades 9-12 for the entire fiscal year, instead of using CBEDS data (a proposal made in the draft staff analysis).
- Require the retention of records showing the science courses offered by the school district in addition to the mandated science courses, and require that records be retained on teacher salaries and other instructional costs related to the science classes provided.
- Require claimants to submit with their claims the same documentation the trial court stated the State Controller could require in an audit; “cost data and documentation to demonstrate whether [the district] experienced any savings to offset the teachers’ salary costs as a direct result of providing the second science course pursuant to subdivision (a)(1) of Education Code section 51225.3.”

**B. The “one quarter class load method” for teacher salary costs satisfies the definition of a reasonable reimbursement methodology**

Staff finds the “one quarter class load method” for *gross* teacher salary costs satisfies the definition of a reasonable reimbursement methodology, but recommends modifications to the proposal as described below under sub-issue D.

Government Code section 17557, subdivisions (b) and (f), authorize the inclusion of a reasonable reimbursement methodology in the parameters and guidelines “that balances accuracy with simplicity.” Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines a “reasonable reimbursement methodology” to “mean a formula for reimbursing local agencies and school districts for costs mandated by the state ...,” in lieu of filing detailed documentation of actual costs. Government Code section 17518.5 requires that two elements be shown: (1) that the methodology considers the variation of costs among local agencies and school districts to implement the mandate, and (2) that the methodology reimburses

local agencies or school districts for implementing the mandate in a “cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).)

As more fully explained below, staff recommends that any offsetting savings and revenue for teacher salary costs not be included in the reasonable reimbursement methodology. The court in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al., held that any offsetting savings taken by a school district is at the discretion of the district and may only be used to reduce a claim when the offset is taken as a “direct result” of the *Graduation Requirements* mandate. Thus, offsetting savings must be looked at on a case-by-case basis. Offsetting savings and revenue for teacher salary costs are not included in the proposed formula.

Staff finds that, except for the proposed default class sizes in the formula, the “one-quarter class load method” for *gross* teacher salary costs considers the variation of teacher salary costs among school districts to implement the *Graduation Requirements* mandate. The formulas proposed are calculated using each school district’s actual numbers for enrollment, average science class size, and average teacher salary.

The two proposals from San Diego and Castro Valley use a default class size when the district cannot calculate the average science class size for grades 9-12 for the claim year. As indicated above, San Diego proposes a default science class size of 30, while Castro Valley proposes a default class size of 35. Castro Valley argues that the proposed default class size acknowledges that obtaining district data back to fiscal year 1995-1996 may be impossible since most retention requirements for documents prepared in the normal course of business lapse in three to five years. Castro Valley further states that average class size is reported to the state, but average science class size may not be uniformly available. Castro Valley proposes that the Commission adopt the default class size for the amended claims for costs incurred before fiscal year 2006-2007. Beginning in fiscal year 2006-2007, claimants would be on notice to keep track of the actual average science class size and could reasonably be required to provide that information. Thus, Castro Valley proposes that the default average class size be removed from the formula beginning in fiscal year 2006-2007.

Staff finds, however, that the default class sizes do not comply with the requirements of Government Code section 17518.5. Although Castro Valley’s proposal may be considered equitable, there is no evidence in the record that the default class sizes proposed by San Diego and Castro Valley are based on or consider a variation of actual class sizes among different school districts in the state pursuant to Government Code section 17518.5. Moreover, the difference of five students between the default numbers proposed by San Diego (30) and Castro Valley (35) could be significant statewide. Assuming total secondary enrollment is 1000 and the average annual teacher salary and benefit cost is \$60,000<sup>42</sup>, the annual cost to a district using an average science class size of 30 would result in a \$100,000 reimbursement. A default science class size of 35 would result in an annual reimbursement of \$14,000 less to a district. Without knowing what the proposed default numbers are based on, staff does not recommend that the Commission adopt a default science class size in the methodology.

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<sup>42</sup> This number is for illustrative purposes and is not intended to reflect the current average annual salary and benefit cost for a teacher.

Staff further finds that the “one quarter class load method” for *gross* teacher salary costs reimburses school districts for implementing the mandate in a cost-efficient manner. Education Code section 51225.3, subdivision (a), states the following:

Commencing with the 1988-89 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 to 12, has not completed all of the following:

(2) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.

[(¶)] ...

(C) Two courses in science, including biological and physical sciences.

The Commission and the court in the *San Diego* case found that the test claim statute increases the number of science courses required for high school graduation from one science course to two science courses. The court, when ruling on the incorrect reduction claims for teacher salary costs, held that the second science class mandated by the test claim statute requires the district to *add* the course to the existing courses offered by the school district.<sup>43</sup> Since the course has to be taken in one of the four years from grades 9-12, and it constitutes an additional class required to be provided by the school district, the methodology positively identifies the additional course by dividing total enrollment in grades 9-12 for the claim year by four (4). The methodology also uses actual enrollment and salary data from the school district to calculate the cost.

### **C. Staff disagrees with the arguments raised by Finance in opposition to the proposed reasonable reimbursement methodology for teacher salary costs**

#### **The adoption of a reimbursement formula is not an unlawful retroactive application of the law**

The Department of Finance argues that the current definition of a reasonable reimbursement methodology should not be applied retroactively to these requests to amend parameters and guidelines. Finance states the following:

The current definition of a Reasonable Reimbursement Methodology (RRM) (Chapter 329, Statutes of 2007 (AB 1222)) should not be applied to any Ps&Gs amendment request filed prior to the statutory change to the definition of an RRM. A statute should not be applied retroactively unless it is very clear from extrinsic sources that the Legislature intended a retroactive application. (*Bates v. Franchise Tax Board* (2004) 124 Cal.App.4th 367.)

The Department of Finance’s argument is misleading and wrong. The Commission had the authority to adopt an allocation formula or uniform allowance for reimbursement at the time San Diego filed its request to amend the parameters and guidelines in 1996. Government Code section 17557, subdivision (b) (as amended by Stats. 1995, ch. 945) stated the following:

In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

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<sup>43</sup> Exhibit R, page 15.

This authority was broad and contained no limitation on the Commission’s adoption of an allocation formula or uniform allowance. Thus, the argument, that the adoption of a formula for reimbursement of state-mandated costs incurred before 2007 is an unlawful retroactive application of the law, is wrong.

Today, the Commission’s authority to adopt a formula for reimbursement is *limited* by Government Code section 17518.5, which requires the Commission to find the following two elements in order to ensure that the formula is cost-efficient and representative of costs statewide: (1) the methodology must consider the variation of costs among local agencies and school districts to implement the mandate, and (2) the methodology must reimburse local agencies or school districts for implementing the mandate in a “cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).) Those elements are being analyzed and considered here.

**The proposed formula provides reimbursement in a cost-efficient manner**

Finance contends that the one-quarter class load method does not provide reimbursement in a cost-efficient manner based on its estimate of statewide costs from fiscal year 1995-1996 through 2007-2008 in the amount of \$3 billion, and an additional annual statewide cost of \$250 million if the Commission adopted the proposed reasonable reimbursement methodology. Finance argues that: “Given the magnitude of these costs and the lack of supporting documentation on actual teacher salary costs incurred to comply with this mandate, we strongly suggest that additional data be gathered and taken into consideration before making any determination on whether the proposed method would provide reimbursement in a cost-efficient manner.”

There is evidence of actual teacher salary costs incurred as a result of this program. As a result of the two lawsuits on *Graduation Requirements* that are summarized in the Background section of this analysis, reimbursement for actual teacher salary costs for 22 school districts for fiscal years 1984-1985 through fiscal year 1995-1996 totaled \$59,005,383. This number represents the original amount claimed by these school districts for teacher salary costs as a result of the mandated program. The Controller’s revised audits complied with the court’s writ and showed that there was no evidence of offsetting savings or revenues specifically intended to fund the cost of the *Graduation Requirements* program that would reduce the amounts claimed. After these lawsuits were resolved, another six incorrect reduction claims were filed, covering fiscal years 1999-2000 through 2001-2002. Five of these claims were dismissed at the Commission’s January 2008 hearing because the districts received full payment for teacher salary costs in the amount of \$14,991,452. Thus, there is sufficient evidence of actual teacher salary costs incurred as a result of the *Graduation Requirements* program.

In addition, the court held that the state is required to reimburse school districts for increased teacher salary costs incurred for the new mandated science class pursuant to article XIII B, section 6. The court’s judgment is final and binding on the state. Reimbursement is also required if no changes in a district’s instructional service is shown as a result of the mandate. The Legislature, in Government Code section 17565, has determined that “[i]f a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.” Thus, even if a school district was requiring the completion of a second science course in order to graduate before the test claim statute was enacted in 1983, the district would still be entitled to reimbursement under article XIII B, section 6.

It is true that not all school districts in the state have filed reimbursement claims for this program. If the Commission adopts the proposed methodology, these school districts would now be able to file reimbursement claims, signed under penalty of perjury, for teacher salary costs going back to fiscal year 1995-1996. If a district exercised its authority under Education Code section 44955 by terminating teachers of courses not mandated by the state as a “direct result” of the second science course mandated by the test claim statute, resulting in cost savings to the district, reimbursement would not be required for teacher salary costs. As described in the next section below, under the court’s ruling the Controller’s Office has broad authority to seek documentation when evaluating these claims. The court held that its conclusion does not prevent the Controller, when auditing and reevaluating the claims “from requiring the districts to provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course.” (Emphasis added.)<sup>44</sup> The proposed “one quarter class load method” does not prevent the Controller from auditing the claims in this manner.

Although there may be a cost to the state if the parameters and guidelines are amended to add a formula for reimbursing teacher salaries, the proposed methodology uses *actual* enrollment and salary data from the school district to calculate the cost. Staff is also recommending that the Commission adopt the proposal of the State Controller’s Office requiring school districts to retain documentation supporting the data used in the calculation for teacher salary costs.

**The proposed parameters and guidelines allow the State Controller’s Office to determine if a school district experiences offsetting savings under Education Code section 44955**

Finance argues that the proposed methodology does not provide a mechanism for demonstrating that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. Finance states the following:

It does not provide a mechanism for demonstrating that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. It is possible that students would have replaced an elective course with the additional required science course. In *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, (No. 03CS01401) the Sacramento County Superior Court recognized that there is a reasonable expectation that school districts may realize offsetting savings when students taking the second science course do not increase the number of classes they take overall. The Ps and Gs should be specific enough to enable the SCO to obtain sufficient documentation to determine the existence of offsetting savings.

The court acknowledged the possibility that the second science class would not result in an increase in the number of classes provided and teachers required for those classes during the school day and year *if* a school district exercised its discretion under Education Code

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<sup>44</sup> Exhibit M, Ruling, pages 17-18.

section 44955 by terminating the services of permanent employees of courses offered by a school district when the state modified the mandated curriculum.<sup>45</sup>

The use of the authority under Education Code section 44955 is discretionary, however. The court held that “there is no suggestion ... of legislative intent to supply the district with an offset mechanism to reallocate teaching staff resources and avoid actual increased costs for teachers’ salaries otherwise reimbursable under section 6 whenever the district adds a newly state-mandated course to its curriculum.”<sup>46</sup> The court further held that such an intent would directly conflict with subdivision (a) of the test claim statute, recognizing the district’s right to specify and provide courses for graduation in addition to the state-mandated courses, and would defeat the purpose of article XIII B, section 6. Education Code section 51225.3 mandates school districts to add a second science course without requiring school districts to replace or eliminate its existing course offerings.<sup>47</sup> In this respect, the court distinguished this case from *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, where the state legislation directed law enforcement officers to reallocate training resources in a certain manner to include domestic violence training. Unlike the statute in the *County of Los Angeles* case, the test claim statute here does not give the state-mandated courses a higher priority than courses specified by a school district and does not require school districts to redirect their resources to the mandated courses.<sup>48</sup>

Although, under the court’s ruling, the Controller cannot require a school district to show an offset pursuant to Education Code section 44955 in order to receive reimbursement, the Controller “can properly require claimants to demonstrate that the second science course has not increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided.”<sup>49</sup> The court’s judgment and writ further stated that “the State Controller may require the petitioner to submit cost data and documentation to demonstrate whether it experienced any savings to offset the teachers’ salary costs as a *direct result* of providing the second science course pursuant to subdivision (a)(1) of Education Code section 51225.3.” (Emphasis added.) This finding is binding on the State Controller’s Office when auditing other reimbursement claims for teacher salary costs for this program under principles of collateral estoppel. In this respect, when the *San Diego* cases came back to the Commission on remand, the Commission determined that the State Controller’s Office may properly request the following documentation when auditing the claim for teacher salaries:

- Documentation supporting cost savings by reducing course offerings.
- Documentation showing the year the district began to implement the additional science course to satisfy the mandate.
- Documentation that the second science course increased the number of classes provided during the school day and year.

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<sup>45</sup> Exhibit M, Ruling, pages 16-18.

<sup>46</sup> *Id.* at page 16.

<sup>47</sup> *Id.* at pages 15-16.

<sup>48</sup> *Id.* at page 15.

<sup>49</sup> *Id.* at page 18.

- Documentation showing the number of teachers required for the classes provided.
- Documentation showing whether the second science course resulted in an overall increase in the number of classes taken by students.
- Documentation justifying the lack of offsetting savings.

As described below under Issue 10, staff recommends that the language from the court’s ruling, judgment, and writ be added to the offset language of the parameters and guidelines beginning fiscal year 2004-2005. The proposed language states the following:

Pursuant to the court’s ruling and judgment in *San Diego Unified School District* action (Sacramento County Superior Court, Case No. 03CS01401), the State Controller, when auditing reimbursement claims under these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. The State Controller may not deny reimbursement of costs for teachers’ salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3, subdivision (a)(1), on the ground that the school district could have offset these costs by using its authority under Education Code section 44955, subdivision (b), to terminate teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3, subdivision (a)(2).

Thus, if a district exercises its authority under Education Code section 44955 as a “direct result” of the second science course mandated by the test claim statute that resulted in cost savings, reimbursement is not required for teacher salary costs.<sup>50</sup> The proposed “one quarter class load method” does not prevent the Controller from requiring the claimants to show that they have not experienced any cost savings.

Furthermore, the claimants are not required to show that the number of classes provided during the school day and year along with the number of teachers required for the classes provided has increased in order to receive reimbursement for teacher salary costs, as suggested by the Department of Finance. Reimbursement is also required if no changes in a district’s instructional service is shown. The Legislature, in Government Code section 17565, has determined that “[i]f a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.” Thus, even if a school district was requiring the completion of a second science course in order to graduate before the test claim statute was enacted, the district would still be entitled to reimbursement under article XIII B, section 6.

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<sup>50</sup> There is no evidence in the record on the *Graduation Requirements* incorrect reduction claims that any of the school districts used their authority under Education Code section 44955 for cost savings.

**The proposed formula takes into account dropout rates using CBEDS data to calculate total secondary enrollment**

Finance further argues that the formula does not take into account dropout rates. The formula, however, does require districts to report total secondary enrollment for the claim year. Each year, school districts report total enrollment, which, by definition does not include students that have dropped out of school, to the Department of Education for the California Basic Educational Data System (or CBEDS) on “Information Day.”<sup>51</sup> CBEDS Information Day has historically been a date in October when the CBEDS coordinator for each school district submits the requested data to the Department of Education. School enrollment, which is determined by an unduplicated count by grade, gender, and racial/ethnic designation of students enrolled on Information Day, is reported to the state. The CBEDS Manual defines a dropout as a student “*not* enrolled and attending school as of Information Day ...”<sup>52</sup> Thus, in order to capture total enrollment that does not include students that drop out, staff recommends that the proposed formula identify total secondary enrollment by using the number reported to the state on the CBEDS Information Day for the claim year. Moreover, the CBEDS manual states that CBEDS data is used by school districts to determine certificated employee ratios, curriculum offerings, course enrollments, and identification of areas of teacher needs – information a school district uses to determine the number of teachers required to teach mandated courses.<sup>53</sup>

In this respect, Finance argues that if the Commission adopts the proposed methodology, that it should use the average daily attendance (ADA) of pupils rather than CBEDS data to calculate total secondary enrollment, since ADA is primarily used for funding purposes. ADA is used for purposes of school funding under Proposition 98 pursuant to Education Code sections 41000, et seq. The ADA number, however, does not include student absences.<sup>54</sup> Thus, even though a student may be enrolled in school, the ADA enrollment figures may be lower than the enrollment data reported to the state under the CBEDS program on the CBEDS Information Day. Despite student absences, a school district is still required to teach and provide the science course mandated by the test claim statute. The costs incurred in a claim year to provide the science course are *not* affected, or lowered, by student absences. Article XIII B, section 6 of the California Constitution requires reimbursement for the increased costs mandated by the state. Staff finds that the ADA of pupils in a school district does not provide the accurate enrollment data necessary to determine the increased costs incurred by school districts for teacher salary costs as a result of this mandated program.

Finance also argues that the formula should not include students in grades 9 and 10 since “it is unlikely they would be enrolled in the second science course required for graduation.” However, there is no evidence in the record to support Finance’s argument. As indicated above, the test claim statute requires that the second science course be taken in one of the four years from

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<sup>51</sup> A copy of 2004 CBEDS Manual is in Exhibit C to Item 19, page 151, of the July 28, 2006 Commission hearing.

<sup>52</sup> *Id.* at page 159.

<sup>53</sup> 2007 CBEDS Manual, page 4.

<sup>54</sup> Education Code sections 41601, 46010.

grades 9-12. The court concluded that the class constitutes an additional class required to be provided by the school district.

**Revenue limit apportionments made to school districts cannot be considered offsetting revenue under article XIII B, section 6**

Finally, Finance opposes the adoption of the proposed formula because it does not take into consideration “significant increases” in school district revenue limits, or general purpose funding provided to school districts, since the mandate went into effect. Finance states that revenue limit apportionments are the primary source of general purpose funding for school districts and that Education Code section 41372 requires high school districts to expend 50% of their current expense of education for the payment of teacher salaries. Finance contends that the general purpose funding applied toward the salaries of teachers teaching the second science course should be identified as an offset.

The school districts and their Litigation Group disagree. The school districts contend that identifying revenue limit apportionments as offsetting revenue violates the purpose of article XIII B, section 6. The Litigation Group argues as follows:

However, the revenue limit apportionments which are the subject of the spending requirements [in Education Code sections 41372 and 41374] are specifically excluded by the Constitution as being considered as meeting the State’s financial obligation to reimburse districts for the cost of implementing new mandates. That is the underlying intention of the Gann Limitation from Proposition 4 – to limit the expenditure of tax revenue and to require the State to fund new mandates from sources other than from revenue limits paid out of state and local taxes. To find that such revenue limit dollars constitute offsetting revenue against the costs imposed by a new mandate is in direct conflict with the California Constitution, Article XIII B, §§ 6 [state mandates and 9(b) [mandates of the courts or federal government]].

Based on the history and purpose of article XIII B, section 6, staff finds that the revenue limit apportionments cannot be considered offsetting revenue under article XIII B, section 6 of the California Constitution and, thus, the receipt of the apportionment funding does not affect reimbursement through the proposed reasonable reimbursement methodology as argued by Finance.

Articles XIII A and XIII B were enacted by the voters in 1978 and 1979 to limit the power of state and local governments, including school districts, to adopt and levy taxes, and to further limit government spending by these entities for public purposes. Article XIII B establishes an appropriations limit for both state and local governments and allows no appropriations subject to limitation in excess of the spending limit.<sup>55</sup> Article XIII B defines the relevant “appropriations subject to limitation” as “any authorization to expend during a fiscal year the [entity’s] proceeds of taxes ...”<sup>56</sup> “Proceeds of taxes” include *all* tax revenues of the entity; “[P]roceeds of taxes’

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<sup>55</sup> Article XIII B, section 2.

<sup>56</sup> Article XIII B, section 8, subdivision (b).

generally contemplates only those impositions which raise the general tax revenues for the entity.”<sup>57</sup>

The courts have recognized that articles XIII A and XIII B “severely” restricted the taxing and spending powers of local government entities.<sup>58</sup> In light of these restrictions, article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.<sup>59</sup> The courts have found that article XIII B, section 6 “provide[s] local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources,”<sup>60</sup> and that “section 6, ... is expressly concerned with ‘costs’ incurred by local government as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas.”<sup>61</sup>

The proceeds of taxes for school districts are different than those of other local government entities, such as counties and cities, because the general purpose revenue of school districts has always been partially provided by the state’s general fund. Since 1849, article XVI, section 8 of the California Constitution has required a State School Fund for support of the public school system: “[f]rom all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.” Before Proposition 13 limited the power of school districts to levy additional tax revenue, school districts received a large percentage of their financial support from local property taxes, which was then supplemented by the State School Fund. “Specifically, in this ... pre-Proposition 13 period, 55.7 percent of school revenues came from local property taxes and 35.3 percent came from state aid.”<sup>62</sup> State aid was provided in two forms; basic aid, which consisted of a flat dollar amount per pupil, and equalization aid, which was distributed in inverse proportion to the wealth of the district.<sup>63</sup> In 1971, the California Supreme Court, in *Serrano v. Priest*, determined that the system of public school financing in California created an unconstitutional equal protection disparity in funding based on the reliance on the wealth of a school district’s real estate. The court held that public school financing that failed to equalize school spending for each student was unconstitutional.<sup>64</sup> In response to *Serrano*, the Legislature enacted Senate Bill 90 in an attempt to equalize school funding. Senate Bill 90 increased state funding for school districts and created “revenue limits,” which limited the expenditures per pupil in school districts with

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<sup>57</sup> Article XIII B, section 8, subdivision (c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 983.

<sup>58</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.

<sup>61</sup> *County of Sonoma, supra*, 84 Cal.App.4th at page 1284.

<sup>62</sup> *Id.* at page 1271.

<sup>63</sup> *Id.* at page 1272, fn. 6.

<sup>64</sup> *Serrano v. Priest* (1971) 5 Cal.3d 584, 598, 614-615.

ample local funding.<sup>65</sup> But Senate Bill 90 created special exceptions to the revenue limits that still allowed wealthier districts to raise more local revenue. The court found that Senate Bill 90 was also unconstitutional.<sup>66</sup> Before the Legislature could resolve the equal protection problems with school funding, Proposition 13 was enacted in 1978 and significantly reduced and capped the property tax revenues used to fund school districts. “Proposition 13 ensured that the state, rather than local school districts, would control funding for public schools.”<sup>67</sup> In 1979, the Legislature reduced the share of local property tax revenues allocated to schools from approximately 53 percent to approximately 35 percent and made up the difference with state funds.<sup>68</sup> Joint state and local funding responsibility for school districts existed when article XIII B, section 6 became effective on July 1, 1980.<sup>69</sup>

The proceeds of taxes or general purpose revenue for school districts remain jointly funded with state and local revenues today. Education Code section 14002 requires the State Controller’s Office, each fiscal year, to transfer from the General Fund to that portion of the State School Fund restricted for elementary and high school purposes, a total amount per pupil in average daily attendance (ADA) during the preceding fiscal year credited to all elementary, high school, and unified school districts, and to county superintendent of schools, of \$180. This money is allocated through base revenue limit apportionments to each school district based on the district’s ADA pursuant to Education Code sections 41300 and 42238 et seq. Generally, pursuant to Education Code section 42238, each school district receives the state aid share of the revenue limit minus the sum of local revenues that count toward the revenue limit of the district. Local revenues include the district’s share of the 1% maximum property rate on secured and unsecured property tax rolls under article XIII A, supplemental secured roll taxes, timber yield taxes, and property tax revenue shifted under the Educational Revenue Augmentation Fund (ERAF) from cities, counties, and special districts to schools.<sup>70</sup>

The money apportioned to the school districts through revenue limit apportionments is unrestricted, unless otherwise provided by law, and can be used for any purpose. (Ed. Code, § 41370.) One of the limitations for use of the revenue limit apportionments is provided in Education Code sections 41372 and 41374. These sections require high school districts (except small districts as specified in section 41374) to expend 50%, and unified school districts to expend 55%, of the district’s current expense of education on the salaries of classroom teachers for grades 9 through 12. The “current expense of education” is specifically defined to include the gross total expended for certificated salaries and benefits; classified salaries and benefits; and replacement books, supplies, and equipment.

Although Education Code sections 41372 and 41374 direct the expenditure of a portion of the district’s revenue, the amount spent by the district on teacher salaries cannot be considered

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<sup>65</sup> *Belanger v. Madera Unified School Dist.* (1992) 963 F.2d 248, 251.

<sup>66</sup> *Ibid*, citing *Serrano v. Priest* (1976) 18 Cal.3d 728 (*Serrano II*).

<sup>67</sup> *Ibid*.

<sup>68</sup> *County of Sonoma, supra*, 84 Cal.App.4th at page 1274.

<sup>69</sup> *Ibid*.

<sup>70</sup> “Revenue and Revenue Limits, A Guide to School Finance in California,” by Paul M. Goldfinger, 2006 Edition, page 72.

offsetting revenue for purposes of the *Graduation Requirements* mandated program. Such an interpretation would require school districts to use their proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6. As indicated above, article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.<sup>71</sup>

Therefore, staff finds that a school district's receipt of apportionment funding does not affect the reimbursement required by article XIII B, section 6, or the proposed reasonable reimbursement methodology.<sup>72</sup>

Moreover, there is no evidence that the state has appropriated funds specifically intended to fund the cost of providing the second science course mandated by Education Code section 51225.3, as required by Government Code section 17556, subdivision (e). If funds are specifically appropriated for this program in the future, the parameters and guidelines already require school districts to identify such funds as offsetting revenue. The offset paragraph currently provides in relevant part the following:

In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The proposed "one quarter class load method" does not alter these potential future offsets.

Accordingly, staff finds the "one quarter class load method" satisfies the definition of a reasonable reimbursement methodology, but recommends modifications to the proposal as described below.

#### **D. Staff's proposed modifications to the methodology**

San Diego Unified School District recommends that the methodology use the average teacher salary for claiming costs, while the State Controller's Office proposes the use of the average *science* teacher salary. Staff recommends that the Commission adopt the proposal using the average teacher salary because school districts are already reporting that number to the state Department of Education (Form J-90). School districts voluntarily report to the state the salary

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<sup>71</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d at page 836, fn. 6; *County of Sonoma*, *supra*, 84 Cal.App.4th at page 1284.

<sup>72</sup> The Department of Finance argues in its October 17, 2008 filing that "to disallow revenue limit funding as an available offset to teacher salaries is inconsistent with the Commission's Reconsideration of Prior Statement of Decision for School Accountability Report Cards [SARC] (No 04-RL-9721-11, 05-RL-9721-03) wherein the Commission recognized revenue limit funding as not unavailable for teacher salaries." The Commission's decision on reconsideration of the SARC test claim denied the claim on multiple grounds, including no new program or higher level of service and no increased costs mandated by the state based on Government Code sections 17556, subdivision (f), and the funding provisions of Proposition 98 that created the SARC program. School districts have challenged the SARC decision, and other reconsideration decisions, alleging multiple constitutional violations in *California School Boards Association, et al. v. State of California, et al.*, Third District Court of Appeal, Case No. C055700. The case remains pending.

and benefits of their certificated personnel on state Form J-90, and in fiscal year 2005-2006, 84% of the school districts in the state (representing 98% of the state's ADA) reported the average teacher salary to the state.

Staff further recommends that the last step in the proposed formula, which reduces the increased teacher cost by the portion of science teachers funded by restricted resources, be identified in the offset paragraph of the parameters and guidelines and not included in Section IV, Reimbursable Activities. Leaving the offset language in the formula in Section IV of the parameters and guidelines, and having a separate paragraph for offsetting revenues in Section VII, is confusing. All potential offsetting revenue should be identified in one location of the parameters and guidelines. Thus, staff recommends that the offset paragraph be amended to add the following language: "total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California State School Accounting Manual shall be identified and deducted from this claim."

In addition, the San Diego and Castro Valley proposals discuss the application of the indirect cost rate in the last step of the formula and apply the indirect cost rate to the direct costs before deducting teacher salary costs by the amount of revenue received for salaries from restricted resources. The Controller's Office does not agree with this language. Staff notes that the current claiming instructions issued by the State Controller's Office in its School Mandated Cost Manual for the *Graduation Requirements* program requires claimants to calculate indirect costs before applying the offsets. Staff recommends that the indirect cost language remain in the boilerplate language and not be included in the proposed formula.

Finally, the State Controller's Office requests the addition of language in the parameters and guidelines to state that supporting documentation shall be retained to support data elements needed to complete the calculation including enrollment, average science class size, total science classes, average teacher salary and benefits, and costs funded by restricted resources. This request is supported by the Court's judgment and ruling in the *San Diego Unified School District* case. The Court held that a documentation requirement for the costs incurred under a mandated program "has a firm legal basis in subdivision (e) of Government Code section 17556 and California Code of Regulations, title 2, section 1183.1(a)(9)."<sup>73</sup> As described below, staff proposes that the Commission add record retention language to the parameter and guidelines consistent with the Controller's request.

The Department of Finance wants the Commission to go farther if it adopts the one quarter class load method, and require school districts to retain documentation on science courses offered by a school district that are not mandated by the state and on the number of students completing more than the two science courses mandated by the state. Finance states the following:

We note that while [the draft staff analysis] acknowledges, for purposes of calculating instructional material costs, that the San Diego Unified School District requires three years of science instruction for graduation and the Grossmont Union High School District offers several science courses that do not meet the state's science course requirements for biological and physical sciences, the staff's proposed Record Retention section does not include language requiring districts to retain this information. According to the State Department of

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<sup>73</sup> Ruling, page 18.

Education, not all science courses offered in California high schools meet the state's high school graduation requirements for physical and biological sciences. We contend that retention of these two data elements, science courses offered with relevant CBEDS course code and number of students completing more than two science courses, is relevant and necessary for an accurate cost calculation. Teacher salaries and other instructional costs related to science courses not meeting the state standard for graduation and science classes provided beyond the state's graduation requirement do not qualify as state-mandated reimbursable activities and should be included in the calculation of reimbursable costs.<sup>74</sup>

The Commission does not have the authority to require school districts to retain documentation regarding science courses that are *not* mandated by the state, or students taking these non-mandated courses. These courses are not reimbursable, and are not included in the proposed one quarter class load method for determining teacher salary costs for the mandated science course. Thus, Finance's request goes beyond the scope of this mandate.

In its October 17, 2008 filing, the Department of Finance further requests that the parameters and guidelines require claimants *to submit with their claim* the same documentation the trial court stated the State Controller could require in an audit. This request defeats the purpose of a reasonable reimbursement methodology, which "balances accuracy with simplicity" and is used in lieu of filing detailed documentation of actual costs. The State Controller's Office has the authority, pursuant to Government Code section 17561, subdivision (d)(2) and the court's decision in the *San Diego* case, to audit the application of the reasonable reimbursement methodology and to request additional documentation from a claimant.

Accordingly, staff recommends that the following record retention language be included in the parameters and guidelines:

### **RECORD RETENTION**

#### Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter<sup>75</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

Pursuant to Government Code section 17561, subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

School districts must retain documentation which supports the reimbursement of teacher salary costs, including documentation supporting enrollment, average science class size,

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<sup>74</sup> Exhibit Q.

<sup>75</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

total science classes, average teacher salary and benefits, and offsetting revenue funded by restricted resources during the period subject to audit.

Accordingly, staff recommends that the following reasonable reimbursement methodology representing the “one quarter class load method” for claiming teacher salary costs be added to the parameters and guidelines beginning in fiscal year 1995-1996:

The increased teacher costs are calculated based on the number of teachers that teach the additional year of science as follows:

1. Total regular secondary enrollment for grades 9-12 on the CBEDS Information Day for the claim year is divided by four representing the additional year of science.
2. The number of additional classes is the enrollment in (1) divided by the average science class size.
3. The additional teachers are determined by dividing the additional classes in (2) by the classes taught by a full-time equivalent teacher (5 class periods).
4. The increased cost is determined by multiplying the number of teachers in (3) by the average annual teacher salary and benefit cost for the school district for the claim year.

The parameters and guidelines adopted on January 24, 1991, would be amended for costs incurred beginning in fiscal year 1995-1996 to include a section on “Claim Preparation and Submission: Reasonable Reimbursement Methodology to clarify the claiming methods for the reimbursable activities.

**Issue 8: Should the Commission amend the parameters and guidelines to add reimbursement for the salaries and benefits of “other science instruction personnel”?**

Castro Valley requests reimbursement for the salaries and benefits of “other (non-classroom teacher) science instruction personnel (e.g. laboratory assistants)” for grades 9-12. Castro Valley argues that the Statement of Decision and the first parameters and guidelines indicate as a matter of law that reimbursement was not limited to science teachers and, thus, there is no need to determine if other personnel, such as lab assistants, are reasonably necessary within the context of the parameters and guidelines.

The Department of Finance and the State Controller’s Office oppose this request, contending that any increased costs incurred for science instruction personnel other than teachers has not been mandated by the state.

For the reasons below, staff disagrees with Castro Valley and recommends that the Commission not adopt this proposal.

The test claim statute mandates school districts to provide a second science course, either biological or physical, in order for students to graduate from high school. The statute is silent with respect to how a school district is to provide the course. Thus, the test claim statute, on its face, does not mandate school districts to hire science instruction personnel, such as lab assistants. It is clear, however, that certificated teachers are required to teach this science course.

Since the 1943 Education Code, school districts have been required to conform their educational program to state standards. (Ed. Code, § 51041.) Section 51041 states the following:

The governing board of every school district shall evaluate its educational program, and shall make such revisions as it deems necessary. *Any revised educational program shall conform to the requirements of this division* [Division 4, Instruction and Services, Elementary and Secondary Education]. (Emphasis added.)

The test claim statute, Education Code section 51225.3, is within Division 4 of the Education Code and describes the state-mandated courses of instruction required for high school graduation, including the science course at issue here. Education Code section 44805, enacted before the test statute, further states that “every teacher in the public schools shall enforce the course of study . . . prescribed for schools.”

Moreover, despite Castro Valley’s assertion that the Commission has already determined that reimbursement is not limited to science teachers, neither the Statement of Decision nor the original parameters and guidelines make a finding that reimbursement is required for “other science instruction personnel.” The Statement of Decision states in relevant part that “[s]ome of the Santa Barbara High School District’s increased costs resulting from compliance with Education Code Section 51225.3 are costs mandated by the State,” but the decision provides no specificity with regard to the reimbursable activities.<sup>76</sup> (Emphasis added.) The parameters and guidelines authorize reimbursement for the “increased cost to school district for staffing . . .,” but do not specifically authorize reimbursement for instructional personnel or lab assistants.<sup>77</sup> Accordingly, staff finds that hiring science instruction personnel, other than teachers, is not mandated by the state.

Thus, pursuant to section 1183.1, subdivision (a)(4), of the Commission’s regulations, the issue is whether using science instruction personnel other than teachers to help provide the science course is reasonably necessary to comply with the mandate to provide the second science course to high school students.

There is no evidence in the record or the law to support the claim that using science instruction personnel other than teachers is reasonably necessary to comply with the mandate to provide the second science course. Therefore, staff recommends that the Commission deny this request for amendment.<sup>78</sup>

**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 reimbursement methodology for the cost of the activity?**

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<sup>76</sup> Exhibit A.

<sup>77</sup> Exhibit B.

<sup>78</sup> Since staff recommends that the Commission deny the request for reimbursement for instructional personnel other than teachers, staff will not address the requestors’ proposed reimbursement methodology for this alleged cost.

The parameters and guidelines authorize reimbursement for “supplying” the new mandated science course. This reimbursable activity is currently in the same paragraph as the activity for “staffing,” or teaching, the science course.

Castro Valley requests that the Commission amend the parameters and guidelines to identify the reimbursement of supplying the science course in a separate paragraph than staffing for purposes of clarity. The requestors further propose the following reimbursement methodology for supplying science instruction materials.

Increased cost to school district for ~~staffing and~~ supplying the new science classes mandated.

In the absence of more precise cost accounting documentation, the calculated cost of “increased science instruction materials (textbooks, materials and supplies)” shall be fifty-percent (50%) of the actual total cost of science instruction materials for grades 9-12 expended during the claim year, after application of the relevant indirect cost rate. The calculated costs of “increased science instruction materials” shall be reduced by one-half of the total amount of any restricted funding or reimbursement received or used for grade 9-12 science instruction materials for the claim year from sources which do not require repayment by the school district.

The State Controller’s Office opposes the reimbursement methodology proposed by Castro Valley on the ground that the methodology is arbitrary. Instead, the State Controller’s Office and San Diego Unified School District propose another formula similar to the one-quarter class load method for teacher salary costs. Although San Diego has not proposed a specific formula or any language for the proposed reasonable reimbursement methodology, the Controller’s Office has proposed the following language for materials and supplies for the science course.

The increased material and supply costs are calculated based on the number of additional classes to teach the additional year of science as follows:

1. Total science material and supply costs are divided by total science classes offered to determine an average cost per science class.
2. The increased cost is determined by multiplying the average material and supply cost per class in (1) by the increased science classes [determined in the second step of the “one quarter class load method”].
3. The reimbursable cost is determined by reducing the increased cost in (2) by the portion of all science classes’ material and supply costs funded by restricted resources.

The Controller’s Office uses the following assumptions to support the proposed method for claiming material and supply costs:

- The assumptions for material and supply costs are the same as the teacher costs calculation. The assumption is that the total enrollment will take the additional year of science in one of the four years of high school. The costs are based on the additional classes needed to provide the additional science course.

- The method uses the same increased classes computed in the teacher calculation to determine increased material and supply costs.
- The Schiff-Bustamante grant is a restricted resource and would be considered offsetting revenue just as restricted revenues concerning the teacher costs.
- Total science classes offered to include non mandate science classes – however the method only uses the increased classes from the teacher calculation to determine the increased material and supply costs.

The Department of Finance is opposed to the adoption of a reimbursement methodology for instructional materials. Finance states the following:

Finance is opposed to adopting a cost methodology for instructional materials that uses total costs for all science materials as its basis. The claims submitted for any instructional materials costs should be based on actual procurement costs, which are offset by any State Instructional Materials Fund (commencing with CA Education Code Section 60240) resources provided by the state directly on a per pupil basis, or indirectly as expenditures out of a local instructional materials account which received its revenue from the state fund, or any revenue limit or discretionary funding provided by the state which local education agencies use for purchasing the required materials.

By assuming one-half of science instructional materials costs should be reimbursed by the state, the proposed methodology precludes the possibility that state funds may be sufficient to fund all one-time costs for all classes including science.

The Annual Budget contains funding specifically dedicated to offset costs for instructional materials. The 2007 Budget Act contains \$419.8 million Proposition 98 General Fund to assist local education agencies with obtaining standards aligned instructional materials, including those for science courses, for all students in a timely manner. The state also invested \$1 billion for instructional materials under the Schiff-Bustamante Instructional Materials Program, which required the funds to be used for the core curriculum areas, including science. Further, in 1997-98, the state provided \$71.5 million for the purchase of science laboratory materials and equipment.

First, staff finds that a separate paragraph for supplying the mandated science course helps to clarify the reimbursable activities. Thus, with respect to supplying the science course, staff recommends that the Commission amend the parameters and guidelines, beginning in fiscal year 2006-2007, with the following language:

~~Increased cost to school district for staffing and~~ supplying the new science classes mandated with science instructional materials (textbooks, materials, and supplies).

Staff finds, however, that the proposed formulas for reimbursing science instructional materials do not satisfy the requirements of a “reasonable reimbursement methodology” and, thus, recommends that the Commission not adopt the proposed formulas.

Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines a “reasonable reimbursement methodology” to “mean a formula for

reimbursing local agencies and school districts for costs mandated by the state ...” It requires that two elements be shown: (1) that the methodology considers the variation of costs among local agencies and school districts to implement the mandate, and (2) that the methodology reimburses local agencies or school districts for implementing the mandate in a “cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).) The Commission’s regulations, section 1183.13, subdivision (d), states that proposed reasonable reimbursement methodologies “shall include any documentation or assumption relied upon to develop the methodology.”

There is no evidence in the record that the proposed methodologies reimburse school districts for implementing the mandate in a cost-efficient manner. Both formulas begin by using the actual total costs for science materials and supplies. Although the state mandates schools to provide two science courses in grades 9 to 12 (with the test claim statute increasing the state requirement of one science course to two science courses) - state law, in Education Code section 51225.3, subdivision (a)(2), also allows school districts to offer, at their discretion, “other coursework as the governing board of the school district may by rule specify.” Thus, the actual total costs for science materials and supplies for a claim year may include costs for more than the minimum two science courses. In this respect, the 50% method proposed by Castro Valley (50% of the actual total cost of science instruction materials for grades 9-12 expended during the claim year, reduced by 50% of the restricted funding received for materials) could result in reimbursement for materials and supplies for courses that are not mandated by the state. Although the proposal of the State Controller’s Office uses the average material cost per science class offered in their formula, which is then multiplied by the increased science classes (total enrollment divided by four), the average cost per science class may also include costs for courses that are not mandated by the state. For example, San Diego Unified School District, for the 2007-2008 school year, requires three years of science instruction for graduation, rather than two, and offers 14 science courses to satisfy the graduation requirement.<sup>79</sup> In addition, Grossmont offers several science courses that do not meet the two required science courses mandated by the state in biological and physical sciences, including Introduction to Forensic Science, Introduction to Health Careers, Healthcare Essentials, and Astronomy.<sup>80</sup>

Moreover, staff disagrees with the assumption that the proposed formula for reimbursing materials and supplies is based on the same assumption as the formula for reimbursing teacher salary costs. The proposed formulas are very different. The one quarter class load method for teacher salary costs starts with, and is based on, total enrollment in grades 9 to 12. Every student enrolled in high school is mandated by the state to take and complete the science course at issue in this case to graduate from high school. The proposed formula for materials and supplies, however, is based on the total science material and supply costs of a district, which as indicated above, includes costs that are not mandated by the state.

Thus, staff recommends that the Commission deny these proposed reasonable reimbursement methodologies because the proposed formula does not satisfy the requirements of a “reasonable

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<sup>79</sup> See, <http://studata.sandi.net/cos> (San Diego Unified School District, Course of Study K-12: 2007-08, page SCI-8).

<sup>80</sup> See, Master Course Catalog for Grossmont Union High School District, July 2007, pages R1-R3.

reimbursement methodology,” and continue to authorize reimbursement based on actual costs claimed.

In response to the draft staff analysis, Castro Valley argues that its proposed methodology is not a reasonable reimbursement methodology and, thus, the reasons stated above to deny the request are without foundation. Castro Valley argues that the proposal to reimburse 50% of the total costs for acquiring materials and supplies is based on actual costs.

Staff disagrees with Castro Valley’s argument. Government Code section 17518.5, subdivision (a), defines “reasonable reimbursement methodology” as a “formula” for reimbursing local agencies and school districts. Webster’s Dictionary defines “formula” to mean “[a] mathematical statement, esp. an equation, of a rule, principle, answer, or other logical relation.”<sup>81</sup> The New Oxford American Dictionary defines “formula” as “a mathematical relationship or rule expressed in symbols” and “a method, statement, or procedure for achieving something.”<sup>82</sup> Staff finds that a proposed mathematical method of reimbursing school districts for acquiring 50 % of their science material and supply costs is a formula and, thus, a proposed reasonable reimbursement methodology. Therefore, Government Code section 17518.5 applies and is binding.

Staff further recommends that the Commission amend the offsetting revenue and reimbursement section of the parameters and guidelines, beginning in fiscal year 1995-1996, to specifically identify the sources of revenue appropriated from the state and used by school districts for instructional materials for the second science course mandated by the test claim statute. The Schiff-Bustamante Instructional Materials Program (Ed. Code, §§ 60450 et seq.), a funding source identified by Finance, was in effect from August 19, 1998 until January 1, 2004, when the program was repealed for lack of funding. (Stats. 2002, ch. 1168 (AB 1818, § 71), eff. Jan. 1, 2004). These provisions provided a supplemental appropriation to school districts, apportioned according to the number of pupils enrolled in the preceding fiscal year as evidenced by CBEDS data, for instructional materials in core curriculum areas, including science, that were aligned with state content standards adopted in 1997 and 1998. The legislation does not prioritize the expenditure of funds, or require that the funding be used first for the *Graduation Requirements* mandate. The statutes require only that the money be used on purchasing instructional materials for core curriculum. Thus, staff recommends that the funding appropriated under the Schiff-Bustamante Instructional Materials Program (Ed. Code, §§ 60450 et seq.) be identified as an offset and deducted from the claim to the extent school districts used this funding for purchasing materials for the *Graduation Requirements* mandate.

Beginning in fiscal year 2002-2003, Education Code section 60240 et seq. provided funding for instructional materials from the State Instructional Materials Fund. Under these provisions, annual appropriations are made for instructional materials. There is no requirement in state law, however, that these funds must be used to pay the cost of the *Graduation Requirements* mandate. Rather, commencing with the 2002-2003 fiscal year, the State Controller is required to transfer from the General Fund to the State Instructional Materials Fund money to be allotted to school districts by the Board of Education for instructional materials for grades 9 to 12.<sup>83</sup> School

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<sup>81</sup> Webster’s II New College Dictionary (1999), page 440.

<sup>82</sup> The New Oxford American Dictionary (2001), page 666.

<sup>83</sup> Education Code section 60247.5.

districts shall use the funds apportioned solely for the purchase of instructional materials for grades 9 to 12.<sup>84</sup> In addition, the Superintendent of Public Instruction may allocate to school districts funds that were recovered from publishers and deposited into the Instructional Materials Fund as a result of proceedings against the publisher.<sup>85</sup> In the 2006 Budget Act, \$403.5 million was appropriated to the State Instructional Materials Fund.<sup>86</sup> In the 2007 Budget Act, \$419.8 million was appropriated to the State Instructional Materials Fund.<sup>87</sup> See Issue 10 below, for the proposed language for the offsetting revenue and reimbursement section of the parameters and guidelines.

**Issue 10: Should the Commission amend the Offset section of the parameters and guidelines?**

As indicated above, staff recommends that the Commission amend the offset section of the parameters and guidelines, beginning fiscal year 1995-1996, to clarify that the direct and indirect science teacher salary costs incurred as a result of the test claim statute that are funded by restricted resources and program funding as identified by the California Department of Education School Accounting Manual be identified as an offset. In addition, beginning in fiscal year 1995-1996, staff recommends that the offset paragraph be amended to specifically identify funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004)) and the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used by school districts for supplying the second science course mandated by the test claim statute.

In addition to these proposals, Castro Valley requests that the Commission amend the offset section to clarify that reimbursement for the mandated program received from state, *other than state mandate reimbursement*, shall be deducted from the claim.

Staff recommends that the Commission deny Castro Valley's request. If the parameters and guidelines are amended by the Commission, the State Controller's Office will be required to issue revised claiming instructions pursuant to Government Code section 17558. Eligible claimants may be allowed to file new claims under the revised claiming instructions. If a claimant has received state mandate reimbursement, in whole or in part, for the claim year for an activity listed in the revised claiming instructions, the claimant would not be eligible to receive 100% reimbursement for the same activity for same claim year that has already been reimbursed.

Mountain View-Los Altos High School District further proposes to amend the "Offsetting Savings and Reimbursement" section of the parameters and guidelines by adding language directly from the court ruling and judgment in the *San Diego Unified School District* action (Sacramento County Superior Court, Case No. 03CS01401). The proposed language states the following:

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<sup>84</sup> Education Code section 60248.

<sup>85</sup> Education Code section 60251.

<sup>86</sup> Statutes 2006, chapter 47, Item 6110-189-0001.

<sup>87</sup> Statutes 2007, chapter 171, Item 6110-189-0001.

The State Controller, when auditing school district's reimbursement claims under section VI of these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. The State Controller can require claimants to demonstrate that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided. The State Controller may not deny reimbursement of costs for teachers' salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3(a)(1) on the ground that the school district could have offset these costs by using its authority under Education Code section 44955(b) to terminate teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3(a)(2).

With the exception of the second sentence, the language proposed by Mountain View-Los Altos High School District is consistent with the court's Judgment (paras. 1 and 2 (b)), and can also be found on pages 17 and 18 of the court's Ruling on Submitted Matter). The second sentence, as proposed, states the following: "The State Controller can require claimants to demonstrate that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided." The second proposed sentence, however, does not appear in the court's ruling or judgment, and is not consistent with Government Code section 17565; "[i]f a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if a school district was requiring the completion of a second science course in order to graduate before the test claim statute was enacted, and did not increase the school day or year with the addition of the second science course, the district would still be entitled to reimbursement under article XIII B, section 6.

The court's ruling, on page 18, does state the following: "Further, the documentation requirement reflects a reasonable expectation that savings to offset the science teachers' salaries may be generated when students taking the second science course do *not* increase the number of classes that they take overall." (Emphasis added.) Taken in context, the court's decision addresses potential cost savings in the school day or year with respect to a district's authority under Education Code section 44955 to eliminate courses and terminate teachers when the state mandates new curriculum. The court did not have facts before it to address Government Code section 17565 and the ability of a district to seek reimbursement when it did not increase the school day or year with the addition of the second science course.

Thus, staff recommends that the second sentence be deleted and a citation to the court case be added as follows:

Pursuant to the court's ruling and judgment in *San Diego Unified School District action (Sacramento County Superior Court, Case No. 03CS01401)*, the State Controller, when auditing school district's reimbursement claims under ~~section VI~~ of these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired

for the second science course. ~~The State Controller can require claimants to demonstrate that the second science course has increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided.~~ The State Controller may not deny reimbursement of costs for teachers' salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3(a)(1) on the ground that the school district could have offset these costs by using its authority under Education Code section 44955(b) to terminate teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3(a)(2).

Pursuant to Government Code section 17557, the reimbursement period for this request to amend the parameters and guidelines begins July 1, 2004.

The State Controller's Office is required to comply with the court's ruling when auditing and reimbursing teacher salary costs for the *Graduation Requirements* program under principles of collateral estoppel.<sup>88</sup> Collateral estoppel precludes a party from re-litigating the matters previously litigated and determined in a prior proceeding and makes the decision on the matter in the prior proceeding binding in the subsequent matter. Thus, even if the Commission does not amend the parameters and guidelines to include this language, it is still binding on the Controller. Staff recommends that the language be added for purposes of clarity and notice to all eligible claimants.

Staff further recommends that the offset section be amended to the current boilerplate language for claims filed beginning July 1, 2004. Staff's proposed amendments are as follows:

**[Proposed Amendment to the parameters and guidelines adopted on January 24, 1991 for Costs Incurred Beginning in Fiscal Year 1995-1996]**

## **VI. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS**

Any savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes. In addition, reimbursement for this mandate from any source, e.g., including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California State School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials and supplies, and other state funds, shall be

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<sup>88</sup> California Rules of Court, Rule 8.1115.

identified and deducted from this claim. If a school district has previously filed a reimbursement claim for costs incurred from July 1, 1995 through June 30, 2004, 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.

**[Proposed Amendment to the Parameters and Guidelines for Costs Incurred From July 1, 2004, until December 31, 2004]**

**X. OFFSETTING SAVINGS REVENUES AND OTHER REIMBURSEMENTS**

Any offsetting revenues savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes. In addition, reimbursement for this mandate from any source, e.g., including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California State School Accounting; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials and supplies; and other state funds, shall be identified and deducted from this claim. If a school district has previously filed a reimbursement claim for costs incurred from July 1, 2004, through December 31, 2004, 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.

**XI. OFFSETTING SAVINGS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed, e.g., reductions in non-science classes resulting from increase in required science classes.

Pursuant to the court's ruling and judgment in *San Diego Unified School District* action (Sacramento County Superior Court, Case No. 03CS01401), the State Controller, when auditing reimbursement claims under section V of these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. The State Controller may not deny reimbursement of costs for teachers' salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3, subdivision (a)(1), on the ground that the school district could have offset these costs by using its authority under Education Code section 44955, subdivision (b), to terminate teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3, subdivision (a)(2).

**[Proposed Amendment to the parameters and guidelines adopted December 9, 2005 for Costs Incurred Beginning January 1, 2005)**

**VII. OFFSETTING SAVINGS REVENUES AND OTHER REIMBURSEMENTS**

Any offsetting revenues savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, e.g., including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California State School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials and supplies, and other state funds, shall be identified and deducted from this claim. 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.

If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.

**XIII. OFFSETTING SAVINGS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

Pursuant to the court's ruling and judgment in *San Diego Unified School District* action (Sacramento County Superior Court, Case No. 03CS01401), the State Controller, when auditing reimbursement claims under section V of these parameters and guidelines, may require that claimants provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course. The State Controller may not deny reimbursement of costs for teachers' salaries incurred by a school district in providing a second science course pursuant to Education Code section 51225.3, subdivision (a)(1), on the ground that the school district could have offset these costs by using its authority under Education Code section 44955, subdivision (b), to terminate

teachers of other courses provided by the school district, in particular, courses provided pursuant to Education Code section 51225.3, subdivision (a)(2).

### **Conclusion and Staff Recommendation**

Staff recommends that the Commission adopt the following attached proposed parameters and guidelines amendments:

1. (Pink Attachment) Proposed Parameters and Guidelines Amendment (CSM 4181 A, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 1995 through June 30, 2004*
2. (Blue Attachment) Proposed Parameters and Guidelines Amendment (CSM 4181A, 05-PGA-05, 06-PGA-05), Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 2004, through December 31, 2004*
3. (Green Attachment) Proposed Parameters and Guidelines Amendment (04-PGA-30, CSM 4181 A, 05-PGA-05, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *January 1, 2005*

If these documents are adopted, staff recommends that the Commission authorize staff to make necessary technical changes or corrections to these documents before they are issued.