

**ITEM 3**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, 48209.14

Statutes 1993, Chapter 160 (AB 19); Statutes 1994, Chapter 1262 (AB 2768)

*School District of Choice: Transfers and Appeals*

Fiscal Year 1997-1998

11-4451-I-05

Chula Vista Elementary School District, Claimant

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# SixTen and Associates

## Mandate Reimbursement Services

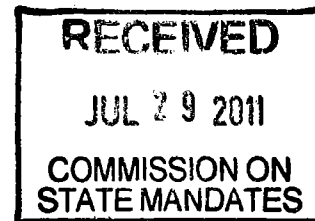
Exhibit A

KEITH B. PETERSEN, President  
P.O. Box 340430  
Sacramento, CA 95834-0430  
Telephone: (916) 419-7093  
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com  
5252 Balboa Avenue, Suite 900  
San Diego, CA 92117  
Telephone: (858) 514-8605  
Fax: (858) 514-8645

July 25, 2011

Drew Bohan, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



RE: Chula Vista Elementary School District  
160/93 School District of Choice: Transfers and Appeals  
Fiscal Year: 1997-98  
Incorrect Reduction Claim

Dear Mr. Bohan:

Enclosed is the original and two copies of the above referenced incorrect reduction claim for Chula Vista Elementary School District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

Oscar Esquivel, Assistant Superintendent  
Business Services and Support  
Chula Vista Elementary School District  
84 East J Street  
Chula Vista, CA 91910-6199

Sincerely,

A handwritten signature in cursive script, appearing to read "KB Petersen".

Keith B. Petersen

C: Oscar Esquivel, Assistant Superintendent  
Business Services and Support

# COMMISSION ON STATE MANDATES

## 1. INCORRECT REDUCTION CLAIM TITLE

160/93 and 1262/94 School District of Choice:  
Transfers and Appeals

## 2. CLAIMANT INFORMATION

Chula Vista Elementary School District

Oscar Esquivel, Assistant Superintendent  
Business Services and Support  
Chula Vista Elementary School District  
84 East J Street  
Chula Vista, CA 91910-6199  
Voice: 619-425-9600  
Fax: 619-427-0463  
E-Mail: oscar.esquivel@cvesd.org

## 3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President  
SixTen and Associates  
P.O. Box 340430  
Sacramento, CA 95834-0430  
Voice: (916) 419-7093  
Fax: (916) 263-9701  
E-mail: Kbpsixten@aol.com

## 4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Statutes of 1993, Chapter 160  
Statutes of 1994, Chapter 1262  
Education Code Section 48209.13

For CSM Use Only

Filing Date:

RECEIVED

JUL 29 2011

COMMISSION ON  
STATE MANDATES

IRC #:

11-4451-E-05

## 5. AMOUNT OF INCORRECT REDUCTION

| <u>Fiscal Year</u> | <u>Amount<br/>of Reduction</u> |
|--------------------|--------------------------------|
| 1997-98            | \$25,081                       |

## 6. NOTICE OF NO INTENT TO CONSOLIDATE

This claim is **not** being filed with the intent to consolidate on behalf of other claimants.

Sections 7-13 are attached as follows:

|                                  |                  |
|----------------------------------|------------------|
| 7. Written Detailed Narrative    | Pages 1 to 14    |
| 8. Controller Desk Review Letter | Exhibit <u>A</u> |
| 9. District Correspondence       | Exhibit <u>B</u> |
| 10. Annual Claim                 | Exhibit <u>C</u> |
| 11. Statements of Decision       | Exhibit <u>D</u> |
| 12. Parameters and Guidelines    | Exhibit <u>E</u> |
| 13. Claiming Instructions        | Exhibit <u>F</u> |

## 14. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Oscar Esquivel, Assistant Superintendent  
Business Services and Support

  
Signature

7/19/11  
Date

1 **Claim Prepared by:**  
2 Keith B. Petersen, President  
3 SixTen and Associates  
4 P.O. Box 340430  
5 Sacramento, CA 95834-0430  
6 Voice: (916) 419-7093  
7 Fax: (916) 263-9701  
8 E-mail: Kbpsixten@aol.com

9 BEFORE THE  
10 COMMISSION ON STATE MANDATES  
11 STATE OF CALIFORNIA

12 INCORRECT REDUCTION CLAIM OF: )  
13 ) No. CSM \_\_\_\_\_  
14 )  
15 ) Statutes of 1993, Chapter 160  
16 )  
17 **CHULA VISTA ELEMENTARY** ) Education Code Section 48209.13  
18 )  
19 **SCHOOL DISTRICT** ) School District of Choice: Transfers  
20 ) and Appeals  
21 )  
22 ) Annual Reimbursement Claim:  
23 Claimant )  
24 ) Fiscal Year 1997-98  
25 )  
26 \_\_\_\_\_ )  
INCORRECT REDUCTION CLAIM FILING

27 PART I. AUTHORITY FOR THE CLAIM

28 The Commission on State Mandates has the authority pursuant to Government  
29 Code Section 17551(d) " . . . to hear and decide upon a claim by a local agency or  
30 school district, filed on or after January 1, 1985, that the Controller has incorrectly  
31 reduced payments to the local agency or school district pursuant to paragraph (2) of  
32 subdivision (d) of Section 17561." Chula Vista Elementary School District (hereafter  
33 "District") is a school district as defined in Government Code Section 17519. Title 2,  
34 CCR, Section 1185 (a), requires the claimant to file an incorrect reduction claim with the

Incorrect Reduction Claim of Chula Vista Elementary School District  
160/93 School District of Choice: Transfers and Appeals

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1 Commission.

2 This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185(b),  
3 requires incorrect reduction claims to be filed no later than three years following the  
4 date of the Controller's "written notice of adjustment notifying the claimant of a  
5 reduction." The Controller conducted a desk review of the District's FY 1997-98 annual  
6 claim. The District received a "results of review" letter dated April 29, 2009, reducing its  
7 claim as a result of the desk review. This letter constitutes a demand for repayment  
8 and adjudication of the claim. The letter is attached as Exhibit "A."

9 PART II. SUMMARY OF THE CLAIM

10 The Controller conducted a "desk review" of the District's annual reimbursement  
11 claim for FY 1997-98 for the cost of complying with the legislatively mandated program  
12 Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994, School District of  
13 Choice: Transfers and Appeals. As a result of the review, the Controller determined  
14 that the entire \$25,081 of the claimed costs were unallowable:

| 15 | <u>Fiscal</u> | <u>Amount</u>  | <u>Review</u>     | <u>SCO</u>      | <u>Amount Due</u>             |
|----|---------------|----------------|-------------------|-----------------|-------------------------------|
| 16 | <u>Year</u>   | <u>Claimed</u> | <u>Adjustment</u> | <u>Payments</u> | <u>&lt;State&gt; District</u> |
| 17 | 1997-98       | \$25,081       | \$25,081          | \$ 0            | \$ 0                          |

18 The Controller's April 29, 2009, results of review letter does not indicate that any  
19 previous payment was made on this annual claim.

20 Chronology of the Desk Review Action

21 The documentation available to the claimant indicates that the State Controller  
22 adjudicated the claim for FY 1997-98 as follows:

Incorrect Reduction Claim of Chula Vista Elementary School District  
160/93 School District of Choice: Transfers and Appeals

- 1 1. On or about December 16, 1999, the District submitted its annual reimbursement  
2 claim for FY 1997-98 actual costs in the amount of \$25,081. It appears from a  
3 date-stamp on the annual claim form FAM-27 that the claim may have been  
4 received by the Controller on January 6, 2000. See Exhibit "C."
- 5 2. In a letter dated April 29, 2009, the Controller notified the District of its "results of  
6 review" of the FY 1997-98 annual claim which eliminated the entire claimed  
7 amount of \$25,081 as an "Intradistrict Cost Adjustment" and related "Indirect  
8 Costs Overstated." It cannot be ascertained from this letter why the adjustment  
9 was made. See Exhibit "A."
- 10 3. The District has no record of any remittance advices or payment action notice  
11 letters received from the Controller prior to April 29, 2009. The Controller is the  
12 custodian of those records and can provide them in their response to this  
13 incorrect reduction claim.
- 14 4. On behalf of the District, SixTen and Associates sent an e-mail dated May 4,  
15 2009, to Kim Nguyen, State Controller's Office, Division of Accounting and  
16 Reporting, requesting an explanation of the reasons for the April 29, 2009,  
17 action. On the same date, Ms. Nguyen responded by e-mail stating that the  
18 request would need to be made to Dennis Speciale, State Controller's Office,  
19 Division of Accounting and Reporting. SixTen and Associates forwarded the  
20 May 4, 2009, Nguyen e-mail to Mr. Speciale on the same day. Mr. Speciale  
21 responded by e-mail on June 2, 2009, stating that the activity of responding to

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 information requests for *interdistrict* transfers are “valid costs,” but that  
2 information requests for *intradistrict* requests are “not reimbursable.” See Exhibit  
3 “B.”

4 5. SixTen and Associates sent an e-mail dated December 15, 2009, to Mr. Speciale  
5 requesting a copy of the FY 1997-98 annual claim and supporting documents.  
6 Mr. Ryan Jeske, State Controller’s Office, Division of Accounting and Reporting,  
7 responded by e-mail on the same date and indicated the information would be  
8 located in archives and sent later by e-mail. See Exhibit “B.”

9 6. A copy of the filed annual claim with the Controller’s desk review notations was  
10 received from the Controller on December 16, 2009. See Exhibit “C.”

11 The District has no record of any audit findings or any other explanation of the reasons  
12 for the adjustment. No information about the adjudication of the FY 1997-98 annual  
13 claim has been received by the District other than that stated in the e-mails referenced  
14 above.

15 PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

16 The District has not filed any previous incorrect reduction claim for this mandate  
17 program. Four other school districts filed incorrect reduction claims in 2004 and 2005  
18 for this program on different subject matter, that of the “contemporaneous source  
19 document rule” that later was the subject of the *Clovis* litigation. The incorrect reduction  
20 claim of Newport-Mesa Unified School District was withdrawn April 6, 2011, as a result  
21 of a revised audit report issued in March 2011, to implement the *Clovis* appellate court

1 case decision regarding “contemporaneous source documentation” standards. The  
2 incorrect reduction claim of Norwalk-La Mirada Unified School District was withdrawn  
3 July 7, 2011, for the same reason. The District is not aware of the status of the  
4 incorrect reduction claim of Clovis Unified School District. The District is informed and  
5 believes that the Controller plans to issue a revised audit report for the Grossmont  
6 Union High School District to implement the *Clovis* appellate court case decision  
7 regarding “contemporaneous source documentation” standards, which when confirmed  
8 by a payment notice, may result in the withdrawal of that incorrect reduction claim.

9 PART IV. BASIS FOR REIMBURSEMENT

10 1. Mandate Legislation

11 Chapter 160, Statutes of 1993 added Article 1.5, “Pupil Attendance Alternatives,”  
12 to Chapter 2, Part 27 of the Education Code (section 48209, et seq.) which established  
13 a new program of optional interdistrict attendance based on student choice among  
14 participating districts. Chapter 1262, Statutes of 1994, amended Education Code  
15 Section 48209.9, adding new subdivision (d), to establish the statutory right of the  
16 parent or guardian of a pupil who is prohibited from transferring pursuant to either  
17 Education Code section 48209.1, subdivision (b), or section 48209.7 to appeal this  
18 decision to the county board of education.

19 2. Test Claims

20 On February 23, 1995, the Commission on State Mandates, in test claim CSM  
21 4451, determined that Education Code sections 48209.1, 48209.10, 48209.13 and



Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 48209.14, as added by Chapter 160, Statutes of 1993, imposed a new program of  
2 optional interdistrict attendance based on a choice of participating districts. Regarding  
3 Section 48209.13, the statement of decision states (on pages 7 and 11):

4 " Regarding Education Code section 48209.13, the Commission observed  
5 that this section is worded broadly, covering many types of information already  
6 required under other statutory provisions. For example, a request for a copy of  
7 the annual notification to parents falls within the broad categories set forth in  
8 section 48209.13, but such a request includes the same information described  
9 under Education Code section 48980. The Commission found the only difference  
10 is that section 48290.13 stipulates the information be provided upon request,  
11 which implies maintaining a supply of the annual parental notification on hand.

12 The Commission also found that the requirement to make information  
13 available upon request applies to all school districts, not just school districts  
14 offering alternative pupil attendance choices.

15 The Commission found that there is a higher level of service imposed  
16 upon school districts to the extent that such requests are specifically related to  
17 alternative pupil attendance choices. Further, the Commission recognized that  
18 Education Code section 48209.13 does not specify how the information is to be  
19 conveyed and, therefore, found that it is a reasonable presumption that this  
20 information could be conveyed by phone, in person, or via a mailed request,  
21 Lastly, the Commission found that some of the reimbursable costs for this limited  
22 mandated activity would be offset or reduced by the amount of fees that may be  
23 charged by school districts as authorized under the California Public Records Act  
24 (Government Code section 6250 and following).

25  
26 Further, the Commission concludes that Education Code section  
27 48209.13, as added by Chapter 160/93, imposes a new program or higher level  
28 of service in an existing program within the meaning of section 6 of article XIII B  
29 of the California Constitution and Government Code section 17514 by requiring  
30 all school districts to make information specifically related to alternative pupil  
31 attendance choices available to any interested person upon request. However,  
32 this limited mandated activity would not apply to such requests already provided  
33 for elsewhere in the law. Further, some of the reimbursable costs for this  
34 mandated activity would be offset or reduced by the amount of fees that may be  
35 charged by school districts as authorized under the California Public Records Act  
36 (Government Code section 6250 and following)."

37 On March 28, 1996, the Commission on State Mandates, in test claim CSM

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 4476, determined that Education Code section 48209.9 as amended by Chapter 1262,  
2 Statutes of 1994 to add new subdivision (d), imposed an increased level of service on  
3 school districts and county offices of education by establishing the statutory right of the  
4 parent or guardian of a pupil who is prohibited from transferring pursuant to either  
5 Education Code section 48209.1, subdivision (b), or section 48209.7 to appeal this  
6 decision to the county board of education. Section 48209.13 was not the subject of this  
7 second test claim and was not modified by the findings of the second test claim.

8 Copies of the statements of decisions are attached as Exhibit "D."

9 3. Parameters and Guidelines

10 The original parameters and guidelines for this test claim were adopted on  
11 August 24, 1995. The original parameters and guidelines (for CSM 4451) were then  
12 amended on July 25, 1996, to include the increased reimbursable activities mandated  
13 by Chapter 1262, Statutes of 1994 (CSM 4476). The parameters and guidelines, as  
14 amended on July 25, 1996, state:

15 "II. COMMISSION ON STATE MANDATE DECISION

- 16 5) Pursuant to section 48209.13, make information specifically related  
17 to alternative pupil attendance choices available to any interested  
18 person upon request. This limited mandated activity would not  
19 apply to such request already provided for elsewhere in the law.

20 V. REIMBURSABLE COSTS

21 A) Scope of the Mandate

- 22 1) All school districts shall be reimbursed for the costs incurred  
23 to make information specifically related to alternative pupil  
24 attendance choices available to any interested person upon

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 request. This reimbursement does not apply to such  
2 requests already provided for elsewhere in the law. These  
3 costs shall be offset to the extent that fees may be charged  
4 pursuant to the California Public Records Act (Government  
5 Code section 6250 et seq.).”

6 The parameters and guidelines were amended on May 27, 2004, to terminate  
7 reimbursement for this program pursuant to Statutes 2002, Chapter 1032, effective  
8 September 27, 2002. A copy of the parameters and guidelines, as amended on July  
9 25, 1996, is attached as Exhibit “E.”

10 4. Claiming Instructions

11 The Controller has periodically issued or revised claiming instructions for the  
12 School District of Choice program. A copy of the March 1997 original claiming  
13 instructions, as revised September 1997, is attached as Exhibit “F.” The  
14 March/September 1997 claiming instructions are believed to be the version extant at  
15 the time the claims which are the subject of this incorrect reduction claim were filed.  
16 However, since the Controller’s claim forms and instructions have not been adopted as  
17 regulations, they have no force of law, and, therefore, have no effect on the outcome of  
18 this incorrect reduction claim.

19 V. CLAIMANT’S RESPONSE TO THE STATE CONTROLLER

20 As indicated in the e-mails, the District contacted the Controller to obtain a  
21 description of the reason for the adjustment. After receipt of that information, no further  
22 action was taken by the District with the Controller since the Controller’s position on the  
23 subject matter of this incorrect reduction claim has already been stated in the

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 December 23, 2005, audit report for Grossmont Union High School District for this  
2 mandate program, and the Controller's May 1, 2009, response to the still pending  
3 incorrect reduction claim (CSM 05-4451-I-03) filed March 20, 2006, by Grossmont  
4 Union High School District. These extensive documents are a matter of public record  
5 and available to interested parties at the Commission's website. The issue presented  
6 by this incorrect reduction claim is also the subject of the Palmdale School District audit  
7 of this mandate dated October 6, 2006. Audit reports are a matter of public record and  
8 available to interested parties at the Controller's website.

9 **PART VI. STATEMENT OF THE ISSUES**

10 **Information Requests**

11 The Controller's results of review letter and e-mails assert that the District  
12 claimed unallowable costs of \$25,081 (direct employee salaries and benefit costs in the  
13 amount of \$23,884 and related indirect costs of \$1,197) for the activity of responding to  
14 information requests, which is the entire amount claimed. In the Grossmont Union High  
15 School District audit report, the Controller similarly asserted that the Grossmont District  
16 improperly claimed staff time spent on information requests for other transfers, that is,  
17 interdistrict transfers for parent employment and other reasons (pages 5 and 8):

18 "Furthermore, when we inquired about how employees spent the  
19 estimated time, the district revealed that the estimate included time spent  
20 responding to all information requests. Per the district, information requests  
21 could relate to both intradistrict and interdistrict transfer requests. Activities  
22 associated with responding to intradistrict transfer requests and interdistrict  
23 transfer requests based on parent's place of employment (Interdistrict Transfer  
24 Requests; Parent's Employment mandate) and other interdistrict transfers  
25 (Interdistrict Attendance Permit mandate) are unrelated to this mandated

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 program.

2  
3 Parameters and Guidelines specifically states that costs incurred for  
4 requests provided elsewhere in the law are not reimbursable. The Education  
5 Code Section 48209.13 contains no express reference to any type of pupil  
6 transfer, between either schools or districts. This section, when reviewed in the  
7 context of the mandate (Chapter 160, Statutes of 1993, Article 1.5, Pupil  
8 Attendance Alternative) implies that pupils be provided with the alternative to  
9 transfer to a school district of choice—an interdistrict transfer. Thus, the mandate  
10 only provides reimbursement for costs incurred for information request for  
11 alternative pupil choices as it relates to the school district of choice.”

12 The Controller states in the Grossmont audit report that since Education Code  
13 Section 48209.13 contains no “express” reference to any type of pupil transfer, that the  
14 section “reviewed in the context of the mandate” somehow “implies” that the mandate  
15 provides only for reimbursement for costs incurred for information requests for  
16 alternative pupil choices as it relates to the school district of choice program. The  
17 Controller is straining to extract a specific meaning from the statute when no such effort  
18 is required. The statement of decision is quite clear: all school districts are required “to  
19 make information specifically related to alternative pupil attendance choices available to  
20 any interested person upon request.”

21 Education Code 48209.13, as added by Chapter 160/93, states: “Each school  
22 district shall make information regarding its schools, programs, policies, and procedures  
23 available to any interested person upon request.” By contrast, Education Code section  
24 48209.15 as added by Chapter 160/93, states at subdivision (a) that: “ It is the intent of  
25 the Legislature that every parent in this state be informed of their opportunity for  
26 currently existing choice options under this article regardless of ethnicity, primary

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 language, or literacy." Note that the clear language of Section 48209.15 limits its scope  
2 to the program created by Chapter 160/93, but the clear language of Section 48209.13  
3 includes all types of information without regard to the scope of Chapter 160/93. Thus,  
4 there is no need for the Controller to extract an artificial implication. The statute is  
5 clear: the scope of the activity applies to "information regarding its schools, programs,  
6 policies, and procedures available to any interested person upon request."

7 The parameters and guidelines have included, as a reimbursable activity, the  
8 cost of responding to information requests for all alternative attendance choices  
9 available. The scope of this mandate is to respond to all alternative attendance  
10 choices, not just school district of choice, unless responding to the request was  
11 otherwise provided for by law. In order for the Controller to exclude the cost of  
12 responding to any particular type of alternative attendance transfer because it is  
13 provided for reimbursement elsewhere, the Controller would have to demonstrate the  
14 type and amount of those costs. The Controller has not done so.

15 **Statute of Limitations for Audit**

16 This issue is not a finding of the Controller. The District asserts that the FY  
17 1997-98 annual claim was beyond the statute of limitations for an audit when the  
18 Controller issued its results of the review letter on April 29, 2009.

19 Chronology of Claim Action Dates

|                      |   |
|----------------------|---|
| 20 January 6, 2000   | FY 1997-98 annual claim received by the Controller  |
| 21 December 31, 2002 | FY 1997-98 statute of limitations for audit expires |

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 April 29, 2009 Results of Review Letter issued

2 Prior to January 1, 1994, no statute specifically governed the statute of  
3 limitations for audits of mandate reimbursement claims. Statutes of 1993, Chapter 906,  
4 Section 2, operative January 1, 1994, added Government Code Section 17558.5 to  
5 establish for the first time a specific statute of limitations for audit of mandate  
6 reimbursement claims:

7 “(a) A reimbursement claim for actual costs filed by a local agency or school  
8 district pursuant to this chapter is subject to audit by the Controller no later than  
9 four years after the end of the calendar year in which the reimbursement claim is  
10 filed or last amended. However, if no funds are appropriated for the program for  
11 the fiscal year for which the claim is made, the time for the Controller to initiate  
12 an audit shall commence to run from the date of initial payment of the claim.”

13 Thus, there are two standards. A funded claim is “subject to audit” for four years after  
14 the end of the calendar year in which the claim was filed. An “unfunded” claim must  
15 have its audit “initiated” within four years of first payment. Statutes of 1995, Chapter  
16 945, Section 13, operative July 1, 1996, repealed and replaced Section 17558.5,  
17 changing only the period of limitations:

18 “(a) A reimbursement claim for actual costs filed by a local agency or school  
19 district pursuant to this chapter is subject to audit by the Controller no later than  
20 two years after the end of the calendar year in which the reimbursement claim is  
21 filed or last amended. However, if no funds are appropriated for the program for  
22 the fiscal year for which the claim is made, the time for the Controller to initiate  
23 an audit shall commence to run from the date of initial payment of the claim.”  
24

25 The FY 1997-98 annual claim is subject to the two-year statute of limitations  
26 established by Chapter 945, Statutes of 1995. Since funds were appropriated for the  
27 program for the fiscal year which are the subject of the audit, the alternative

Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 measurement date is not applicable, and the potential factual issue of when the audit is  
2 initiated is not relevant. Therefore, the audit adjustments are barred by the statute of  
3 limitations and the FY 1997-98 claim was no longer subject to audit adjustment when  
4 the desk review letter was issued.

5 **PART VII. RELIEF REQUESTED**

6 The District filed its annual reimbursement claims within the time limits  
7 prescribed by the Government Code. The amounts claimed by the District for  
8 reimbursement of the costs of implementing the program imposed by Chapter 160,  
9 Statutes of 1993, Chapter 1262, Statutes of 1994, School District of Choice: Transfer  
10 and Appeals, represent the actual costs incurred by the District to carry out this  
11 program. These costs were properly claimed pursuant to the Commission's parameters  
12 and guidelines. Reimbursement of these costs is required under Article XIII B, Section 6  
13 of the California Constitution. The Controller denied reimbursement without any basis  
14 in law or fact. The District has met its burden of going forward on this claim by  
15 complying with the requirements of Section 1185, Title 2, California Code of  
16 Regulations. Because the Controller has enforced and is seeking to enforce these  
17 adjustments without benefit of statute or regulation, the burden of proof is now upon the  
18 Controller to establish a legal basis for its actions. The District requests that the  
19 Commission make findings of fact and law on each and every adjustment made by the  
20 Controller and each and every procedural and jurisdictional issue raised in this claim,  
21 and order the Controller to correct its audit report findings therefrom.



Incorrect Reduction Claim of Chula Vista Elementary School District  
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1 PART VIII. CERTIFICATION

2 By my signature below, I hereby declare, under penalty of perjury under the laws  
3 of the State of California, that the information in this incorrect reduction claim  
4 submission is true and complete to the best of my own knowledge or information or  
5 belief, and that the attached documents are true and correct copies of documents  
6 received from or sent by the state agency which originated the document.

7 Executed on July 19, 2011, at Chula Vista, California, by

8 Oscar Esquivel  
9 Oscar Esquivel, Assistant Superintendent  
10 Business Services and Support  
11 Chula Vista Elementary School District  
12 84 East J Street  
13 Chula Vista, CA 91910-6199  
14 Voice: 619-425-9600  
15 Fax: 619-427-0463  
16 E-Mail: oscar.esquivel@cvesd.org

17 APPOINTMENT OF REPRESENTATIVE

18 Chula Vista Elementary School District appoints Keith B. Petersen, SixTen and  
19 Associates, as its representative for this incorrect reduction claim.

20 Oscar Esquivel 7/19/11  
21 Oscar Esquivel Assistant Superintendent Date  
22 Business Services and Support  
23 Chula Vista Elementary School District

24 Attachments:

- 25 Exhibit "A" Controller's "results of review letter" dated April 29, 2011  
26 Exhibit "B" Desk Review e-mail correspondence  
27 Exhibit "C" FY 1997098 Annual Reimbursement Claim (Controllers' copy)  
28 Exhibit "D" CSM-4451 Commission Statement of Decision  
29 CSM-4476 Commission Proposed Statement of Decision  
30 Exhibit "E" Parameters and Guidelines, July 25, 1996  
31 Exhibit "F" Controller's claiming instructions, March/September 1997





**JOHN CHIANG**  
California State Controller  
Division of Accounting and Reporting  
APRIL 29, 2009

537035  
00156  
2009/04/29

BD OF TRUSTEES  
CHULA VISTA ELEMENTARY SD  
SAN DIEGO COUNTY  
84 EAST J STREET  
CHULA VISTA CA 91910-6199

**RECEIVED**

MAY 04 2009

CHULA VISTA ELEM SCH DIST  
ACCOUNTING DEPT

DEAR CLAIMANT:

RE: SCH DIST CHOICE CH1262/94

WE HAVE REVIEWED YOUR 1997/1998 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

|                               |    |                  |
|-------------------------------|----|------------------|
| AMOUNT CLAIMED                |    | 25,081.00        |
| ADJUSTMENT TO CLAIM:          |    |                  |
| INDIRECT COSTS OVERSTATED     | -  | 1,197.00         |
| INTRADISTRICT COST ADJUSTMENT | -  | 23,884.00        |
| TOTAL ADJUSTMENTS             | -  | <u>25,081.00</u> |
| AMOUNT DUE CLAIMANT           | \$ | <u>0.00</u>      |

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT KIM NGUYEN AT (916) 324-7876 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875.

SINCERELY,

*Ginny Brummels*  
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION  
P.O. BOX 942850 SACRAMENTO, CA 94250-5875



Subj: **Fwd: Chula Vista Elementary SD S37035**  
Date: 6/2/2009 1:50:40 P.M. Pacific Daylight Time  
From: Bpbsixten  
To: Djbsixten

Diane,  
Info received regarding CVE.  
Bob

—Original Message—

From: DSpeciale@sco.ca.gov  
To: Bpbsixten@aol.com  
Cc: knguyen@sco.ca.gov; gibrummels@sco.ca.gov  
Sent: Tue, 2 Jun 2009 11:48 am  
Subject: RE: Chula Vista Elementary SD S37035

Hey Bob,

Hope things are going good. I will do the best I can to explain the adjustment below.

Referencing:  
Chula Vista Elementary (S37035)  
Program 156, School District of Choice Chapter 1262/94  
Fiscal Year: 1997/1998

An adjustment was made, "Intradistrict Cost Adjustment" for \$23,884.00. This adjustment was made specifically for cost items dealing with Information Request. The adjustments criteria are has follows:

- 1) If a group of cost fall under the description of providing "...information request..." relating to "...interdistrict district transfer..." then no adjustments are made to these costs. These are valid costs as they relate to providing interdistrict information requests.
- 2) If a group of cost falls under the description of providing "...information requests..." relating to "...intradistrict..." or "...within the school district...", then we will need to remove these cost. Intradistrict-related cost are not reimbursable.

I hope this clears things up for you and the Chula Vista Elementary SD.  
And yes, I am still working on the E-Claiming system, thanks for asking. I don't think I will ever be completely done. Programs are added, suspended or modified annually. You take it easy Bob.

Regards,

Dennis Speciale  
Accounting Administrator I (Specialist)  
State Controller Office  
Local Reimbursements Section  
(916) 324-0254

---

**From:** Bpbsixten@aol.com [mailto:Bpbsixten@aol.com]  
**Sent:** Monday, May 04, 2009 01:14 PM  
**To:** Speciale, Dennis  
**Cc:** Djbsixten@aol.com; Nguyen, Kim D.  
**Subject:** Fwd: Chula Vista Elementary SD S37035

Dennis,

I am forwarding this to you per Kim Nguyen, can you assist me with an explanation?

Thanks, are you still working on the on-line claim filing system or is that complete?

Bob Berg EA  
SixTen and Associates  
858-514-8605 Voice  
858-514-8645 Fax

---

From: knguyen@sco.ca.gov  
To: bpbsixten@aol.com  
Sent: 5/4/2009 1:09:57 P.M. Pacific Daylight Time  
Subject: RE: Chula Vista Elementary SD S37035

Hi Bob,  
This claim adjustment of the SD made by Dennis Speciale, one of our co-workers, his work phone number is (916) 324-0254. He is off today, call him for assistance tomorrow. Thanks.

---

**From:** bpbsixten@aol.com [mailto:bpbsixten@aol.com]  
**Sent:** Monday, May 04, 2009 12:45 PM  
**To:** Nguyen, Kim D.  
**Cc:** Djbsixten@aol.com  
**Subject:** Chula Vista Elementary SD S37035

Kim,

Chula Vista Elementary (S37035) received an advisory dated April 29, 2009 regarding their Mandate Claim for Program 156, School District of Choice Chapter 1262/94 for fiscal year 1997/1998.

The advisory states "Intradistrict Cost Adjustment" of 23,884.00.

The district has requested that we query the state regarding this adjustment and ask for an explanation.

As you are listed as the "contact person" on this advisory, would you please provide us with an explanation of the adjustment?

Thank you,

Robert "Bob" Berg EA  
SixTen and Associates  
858-514-8605  
858-514-8645 (Fax)

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**Subj:** RE: Chula Vista Elem SD S37035  
**Date:** 12/15/2009 1:46:07 P.M. Pacific Standard Time  
**From:** RJeske@sco.ca.gov  
**To:** Bpbsixten@aol.com  
**CC:** DSpeciale@sco.ca.gov

Sir,

The records you requested are not currently on hand at our current location. Those older documents are at an offsite location and I placed the order from archives, and I will get that document scanned and forwarded to you as soon as I am able to. If the document is to large, I will contact you to figure out other arrangements.

Thank you,

### Ryan F. Jeske

State Controller's Office  
 Division of Accounting & Reporting  
 P.O. Box 942850  
 Sacramento, CA 94250  
 (916) 323-2363, Fax (916)323-6527

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**From:** Speciale, Dennis  
**Sent:** Tuesday, December 15, 2009 01:33 PM  
**To:** Jeske, Ryan  
**Subject:** FW: Chula Vista Elem SD S37035

Ryan Jeske,

Mr. Berg, from SixTen and Associates, has requested getting copies of a claim and supporting documents for Program 156 "School District of Choice" for F/Y 1997-98. You will probably have to order these from archive. Please let me know how long will take to retrieve these. Thanks.

---

**From:** Bpbsixten@aol.com [mailto:Bpbsixten@aol.com]  
**Sent:** Tuesday, December 15, 2009 09:33 AM  
**To:** Speciale, Dennis  
**Cc:** Djbsixten@aol.com  
**Subject:** Chula Vista Elem SD S37035

Dennis,

Chula Vista Elem SD is a current client of ours and has asked for our assistance in obtaining a copy of their mandated cost claim for School District of Choice for F/Y 1997/1998 (Program 156). Would it be possible for you to provide us a copy of this claim plus all supporting documentation that has been submitted to date? Our phone and fax number are listed below.

Thank you for your time.

Robert P. Berg  
 SixTen and Associates  
[www.sixtenandassociates.com](http://www.sixtenandassociates.com)  
 858-514-8605 Voice  
 858-514-8645 Fax





**CLAIM FOR PAYMENT**

Pursuant to Government Code Section 17561

**SCHOOL DISTRICT OF CHOICE:  
TRANSFERS AND APPEALS**

(19) Program Number 00156

JAN 6 2000

(20) Date File

~~DEC 31 1999~~

(21) LRS Input

|   |   |  |                                 |        |
|---|---|--|---------------------------------|--------|
| L<br>A<br>B<br>E<br>L<br>H<br>E<br>R<br>E           | (01) Claimant Identification Number:<br><b>S37035</b> |  | <b>Reimbursement Claim Data</b> |        |
|   | (02) Mailing Address                                  |  | (22) SDC-1, (03)(a)             | 0      |
|   | Claimant Name<br><b>CHULA VISTA ELEMENTARY SD</b>     |  | (23) SDC-1, (03)(b)             | 0      |
|   | County Of Location<br><b>SAN DIEGO</b>                |  | (24) SDC-1, (03)(c)             | 0      |
|   | Street Address or P.O. Box<br><b>84 EAST J STREET</b> |  | (25) SDC-1, (03)(d)             | 0      |
|   | City  | State  | Zip Code                        |        |
| <b>CHULA VISTA</b>                                  | <b>CA</b>   | <b>91910</b>   | (26) SDC-1, (04)(1)(d)          | 23,884 |
| <b>Type of Claim</b>                                | <b>Estimated Claim</b>                                | <b>Reimbursement Claim</b>                             |                                 |        |
|   | (03) Estimated <input type="checkbox"/>               | (09) Reimbursement <input checked="" type="checkbox"/> | (27) SDC-1, (04)(2)(d)          | 0      |
|   | (04) Combined <input type="checkbox"/>                | (10) Combined <input type="checkbox"/>                 | (28) SDC-1, (04)(3)(d)          | 0      |
|   | (05) Amended <input type="checkbox"/>                 | (11) Amended <input type="checkbox"/>                  | (29) SDC-1, (04)(4)(d)          | 0      |
|   |   |  | (30) SDC-1, (04)(5)(d)          | 0      |
| <b>Fiscal Year of Cost</b>                          | (06) _____ / _____                                    | (12) 1997 / 1998                                       | (31) SDC-1, (06)                | 6      |
| <b>Total Claimed Amount</b>                         | (07)  | (13) \$ 25,081   | (32)                            |        |
| <b>Less: 10% Late Penalty, not to exceed \$1000</b> |   | (14) \$ 0  | (33)                            |        |
| <b>Less: Estimated Claim Payment Received</b>       |   | (15) (25081)   | (34) adjustment                 |        |
| <b>Net Claimed Amount</b>                           |   | (16) \$ 0  | (35)                            |        |
| <b>Due From State</b>                               | (08)  | (17) \$ 0  | (36)                            |        |
| <b>Due to State</b>                                 |   | (18)   | (37)                            |        |

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994, set forth on the attached statements.

Signature of Authorized Representative

*Lowell Billings*  
 \_\_\_\_\_  
 LOWELL BILLINGS, Ed.D.  
 Type or Print Name

Date

12-16-99  
 \_\_\_\_\_  
 ASSISTANT SUPERINTENDENT BUSINESS SERVICES  
 Title

(39) Name of Contact Person For Claim

Steve Smith, Mandated Cost Systems

Telephone Number

916-487-4435

Ext. \_\_\_\_\_

*Original*  
 24

|  |  |
|--|--|
| <b>CLAIM PAYMENT</b><br>Pursuant to Government Code Section 17561<br><b>SCHOOL DISTRICT OF CHOICE:</b><br><b>TRANSFERS AND APPEALS</b> | (19) Program Number 00156<br>(20) Date File <u>7/20/99</u><br>(21) LRS Input <u>      </u> / <u>      </u> / <u>      </u> |
|--|--|

|   |   |                                 |        |
|---|---|---------------------------------|--------|
| L<br>A<br>B<br>E<br>L<br>H<br>E<br>R<br>E | (01) Claimant Identification Number:<br><b>S37035</b> | <b>Reimbursement Claim Data</b> |        |
|   | (02) Mailing Address                                  | (22) SDC-1, (03)(a)             | 0      |
|   | Claimant Name<br><b>CHULA VISTA ELEMENTARY SD</b>     | (23) SDC-1, (03)(b)             | 0      |
|   | County Of Location<br><b>SAN DIEGO</b>                | (24) SDC-1, (03)(c)             | 0      |
|   | Street Address or P.O. Box<br><b>84 EAST J STREET</b> | (25) SDC-1, (03)(d)             | 0      |
|   | City State Zip Code<br><b>CHULA VISTA CA 91910</b>    | (26) SDC-1, (04)(1)(d)          | 23,884 |

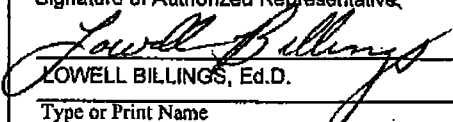
| Type of Claim                                | Estimated Claim                         | Reimbursement Claim                                    |   |
|--|---|--|---|
|  | (03) Estimated <input type="checkbox"/> | (09) Reimbursement <input checked="" type="checkbox"/> | (27) SDC-1, (04)(2)(d) <span style="float:right">0</span> |
|  | (04) Combined <input type="checkbox"/>  | (10) Combined <input type="checkbox"/>                 | (28) SDC-1, (04)(3)(d) <span style="float:right">0</span> |
|  | (05) Amended <input type="checkbox"/>   | (11) Amended <input type="checkbox"/>                  | (29) SDC-1, (04)(4)(d) <span style="float:right">0</span> |
|  |   |  | (30) SDC-1, (04)(5)(d) <span style="float:right">0</span> |
| Fiscal Year of Cost                          | (06) <u>      </u> / <u>      </u>      | (12) 1997 / 1998                                       | (31) SDC-1, (06) <span style="float:right">6</span>       |
| Total Claimed Amount                         | (07)                                    | (13) \$ 25,081   | (32)  |
| Less: 10% Late Penalty, not to exceed \$1000 |   | (14) \$ 1,000  | (33)  |
| Less: Estimated Claim Payment Received       |   | (15)   | (34)  |
| Net Claimed Amount                           |   | (16) \$ 24,081   | (35)  |
| Due From State                               | (08)                                    | (17) \$ 24,081   | (36)  |
| Due to State                                 |   | (18)   | (37)  |

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 160, Statutes of 1993 and Chapter 1262, Statutes of 1994, set forth on the attached statements.

|  |   |
|--|---|
| Signature of Authorized Representative<br><br>_____<br>LOWELL BILLINGS, Ed.D.<br>Type or Print Name | Date<br><u>12-10-99</u><br>_____<br>ASSISTANT SUPERINTENDENT BUSINESS SERVICES<br>Title |
| (39) Name of Contact Person For Claim<br>Steve Smith, Mandated Cost Systems  | Telephone Number<br>916-487-4435 Ext. _____   |

|  |                             |
|--|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>CLAIM SUMMARY</b> | <b>FORM</b><br><b>SDC-1</b> |
|--|-----------------------------|

|   |  |
|---|--|
| (01) Claimant:<br><br>S37035<br>CHULA VISTA ELEMENTARY SD | (02) Type of Claim:      Fiscal Year:<br><br>Reimbursement <input checked="" type="checkbox"/> 1997 / 1998<br>Estimated <input type="checkbox"/> |
|---|--|

|   |   |
|---|---|
| <b>Claim Statistics</b>   |   |
| (03) (a) Number of requests for "choice" transfers out of the district of residence     | 0 |
| (b) Number of "choice" transfers out of the district of residence granted               | 0 |
| (c) Number of requests for "choice" transfers into the district of choice               | 0 |
| (d) Number of "choice" transfers into the district of choice that were granted          | 0 |
| (e) Number of "choice" transfer appeals filed, when denied by the district of residence | 0 |

|                                      |                              |                               |                            |                   |
|--------------------------------------|------------------------------|-------------------------------|----------------------------|-------------------|
| <b>Direct Costs</b>                  | <b>Object Accounts</b>       |                               |                            |                   |
| (04) Reimbursable Components         | (a)<br>Salaries and Benefits | (b)<br>Materials and Supplies | (c)<br>Contracted Services | (d)<br>Total      |
| 1. Information Requests              | 23,884                       | 0                             | 0                          | <del>23,884</del> |
| 2. Implementing Pupil Transfers      | 0                            | 0                             | 0                          | 0                 |
| 3. Data Collection and Reporting     | 0                            | 0                             | 0                          | 0                 |
| 4. Court-ordered Desegregation Plans | 0                            | 0                             | 0                          | 0                 |
| 5. Appeals Process                   | 0                            | 0                             | 0                          | 0                 |
| (05) Total Direct Costs              | 23,884                       | 0                             | 0                          | <del>23,884</del> |

|                                       |  |
|---------------------------------------|--|
| <b>Indirect Costs</b>                 |  |
| (06) Indirect Cost Rate               | [From J-380 or J-580]      5.01 %                              |
| (07) Total Indirect Costs             | [Line (06) x {(line (05)(d) - line (05)(c))}] <del>1,197</del> |
| (08) Total Direct and Indirect Costs: | [Line (05)(d) + line (07)] <del>25,081</del>                   |

|  |   |
|--|---|
| <b>Cost Reduction</b>                          |   |
| (09) Less: Offsetting Savings, if applicable   |   |
| (10) Less: Other Reimbursements, if applicable |   |
| (11) Total Claimed Amount                      | [Line (08) - {Line (09) + Line (10)}] <del>25,081</del> |

|   |                             |
|---|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT / ACTIVITY COST DETAIL</b> | <b>FORM</b><br><b>SDC-2</b> |
|---|-----------------------------|

|  |   |
|--|---|
| (01) Claimant <b>CHULA VISTA ELEMENTARY SD</b> | (02) Fiscal Year costs were incurred<br>1997-1998 |
|--|---|

(03) Reimbursable Component: Check **only** one box per form to identify the component being claimed.

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Information Requests | <input type="checkbox"/> Court-ordered Desegregation Plans |
| <input type="checkbox"/> Implementing Pupil Transfers    | <input type="checkbox"/> Appeal Process                    |
| <input type="checkbox"/> Data Collection and Reporting   |  |

(04) Description of Expenses: Complete columns (a) through (f). **Object Accounts**

| (a)<br>Employee Names, Job Classifications, Functions Performed<br>and<br>Description of Expenses   | (b)<br>Hourly Rate<br>or<br>Unit Cost | (c)<br>Hours Worked<br>or<br>Quantity | (d)<br>Salaries and<br>Benefits | (e)<br>Materials and<br>Supplies | (f)<br>Contracted<br>Services |
|---|---------------------------------------|---------------------------------------|---------------------------------|----------------------------------|-------------------------------|
| <b>COSTS OF RESPONDING TO INFORMATION REQUESTS (BOTH ORALLY AND PROVIDING WRITTEN MATERIAL) REGARDING SCHOOLS WITHIN THE DISTRICT. THESE REQUESTS ARE FROM PARENTS WHO ARE CONSIDERING WHETHER TO REQUEST A SCHOOL (OTHER THAN THEIR SCHOOL OF RESIDENCE) UNDER THE ALTERNATIVE ATTENDANCE OPTIONS OF OPEN ENROLLMENT, INTRA-DISTRICT TRANSFER OR INTERDISTRICT TRANSFER.</b> |                                       |                                       |                                 |                                  |                               |
| ACEVES, E/PRINCIPAL   | 58.70                                 | 13.58                                 | 797                             |                                  |                               |
| ALVARADO, L/PRINCIPAL   | 56.45                                 | 8.92                                  | 504                             |                                  |                               |
| ARAGON, S/SCHOOL SECRETARY  | 24.83                                 | 14.42                                 | 358                             |                                  |                               |
| ARAKI, S/SCHOOL SECRETARY   | 22.60                                 | 2.08                                  | 47                              |                                  |                               |
| BAXTER, N/SCHOOL SECRETARY  | 20.55                                 | 1.92                                  | 39                              |                                  |                               |
| BJORNSTAD, G/PRINCIPAL  | 58.13                                 | 5.92                                  | 344                             |                                  |                               |
| BOURKE, D/SCHOOL SECRETARY  | 20.76                                 | 4.33                                  | 90                              |                                  |                               |
| BOYLE, C/SCHOOL SECRETARY   | 23.32                                 | 6.25                                  | 146                             |                                  |                               |
| BYRNE, D/SCHOOL SECRETARY   | 15.96                                 | 5.17                                  | 83                              |                                  |                               |
| CACHO, M/SPECIALIST   | 21.85                                 | 13.33                                 | 291                             |                                  |                               |
| CASAS, L/SCHOOL SECRETARY   | 20.62                                 | 13.33                                 | 275                             |                                  |                               |
| CASTANEDA, R/PRINCIPAL  | 54.98                                 | 8.33                                  | 458                             |                                  |                               |
| COLLINS, W/PRINCIPAL  | 66.08                                 | 11.92                                 | 788                             |                                  |                               |
| COSTA, G/SCHOOL SECRETARY   | 21.15                                 | 5.58                                  | 118                             |                                  |                               |
| COX, C/ADMINISTRATOR  | 62.14                                 | 18.92                                 | 1176                            |                                  |                               |
| DIMAPILIS, C/SCHOOL SECRETARY   | 23.53                                 | 1.75                                  | 41                              |                                  |                               |

|  |                            |      |  |  |  |
|--|----------------------------|------|--|--|--|
| (05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/> | Page: <u>1</u> of <u>4</u> | 5555 |  |  |  |
|--|----------------------------|------|--|--|--|

|   |                             |
|---|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT / ACTIVITY COST DETAIL</b> | <b>FORM</b><br><b>SDC-2</b> |
|---|-----------------------------|

|  |   |
|--|---|
| (01) Claimant <b>CHULA VISTA ELEMENTARY SD</b> | (02) Fiscal Year costs were incurred<br>1997-1998 |
|--|---|

(03) Reimbursable Component: Check **only** one box per form to identify the component being claimed.

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Information Requests | <input type="checkbox"/> Court-ordered Desegregation Plans |
| <input type="checkbox"/> Implementing Pupil Transfers    | <input type="checkbox"/> Appeal Process                    |
| <input type="checkbox"/> Data Collection and Reporting   |  |

(04) Description of Expenses: Complete columns (a) through (f). **Object Accounts**

| (a)<br>Employee Names, Job Classifications, Functions Performed<br>and<br>Description of Expenses | (b)<br>Hourly Rate<br>or<br>Unit Cost | (c)<br>Hours Worked<br>or<br>Quantity | (d)<br>Salaries and<br>Benefits | (e)<br>Materials and<br>Supplies | (f)<br>Contracted<br>Services |
|---|---------------------------------------|---------------------------------------|---------------------------------|----------------------------------|-------------------------------|
| DOMINGUEZ, S/SCHOOL SECRETARY   | 18.53                                 | 12.92                                 | 239                             |                                  |                               |
| DONDELINGER, G/PRINCIPAL  | 52.89                                 | 5.08                                  | 269                             |                                  |                               |
| EDROZA, A/SCHOOL SECRETARY  | 21.83                                 | 9.92                                  | 217                             |                                  |                               |
| ELLIOTT, F/PRINCIPAL  | 55.88                                 | 11.50                                 | 643                             |                                  |                               |
| ERNST, C/PRINCIPAL  | 54.79                                 | 12.67                                 | 694                             |                                  |                               |
| FREEMAN, R/SCHOOL SECRETARY   | 21.66                                 | 1.92                                  | 42                              |                                  |                               |
| GONZALES, A/PRINCIPAL   | 56.11                                 | 14.67                                 | 823                             |                                  |                               |
| GONZALEZ-SADLER, T/PRINCIPAL  | 56.46                                 | 1.75                                  | 99                              |                                  |                               |
| GRIGSBY, M/PRINCIPAL  | 59.67                                 | 7.83                                  | 467                             |                                  |                               |
| GUGERTY, J/PRINCIPAL  | 55.43                                 | 13.00                                 | 721                             |                                  |                               |
| HALL, W/PRINCIPAL   | 56.22                                 | 12.00                                 | 675                             |                                  |                               |
| HARDER, J/PRINCIPAL   | 56.90                                 | 6.00                                  | 341                             |                                  |                               |
| HASTINGS, C/CLERK   | 24.69                                 | 25.92                                 | 640                             |                                  |                               |
| HUMPHREY, M/PRINCIPAL   | 46.70                                 | 11.42                                 | 533                             |                                  |                               |
| HUNTINGTON, F/PRINCIPAL   | 56.05                                 | 1.92                                  | 108                             |                                  |                               |
| JANUARY, J/PRINCIPAL  | 58.47                                 | 17.00                                 | 994                             |                                  |                               |
| LALOR, C/SCHOOL SECRETARY   | 21.98                                 | 13.17                                 | 289                             |                                  |                               |
| LARA, M/SCHOOL SECRETARY  | 23.13                                 | 5.92                                  | 137                             |                                  |                               |
| LOUCH, M/SCHOOL SECRETARY   | 22.58                                 | 5.92                                  | 134                             |                                  |                               |
| MADISON, V/PRINCIPAL  | 56.90                                 | 6.17                                  | 351                             |                                  |                               |
| MAHLER, S/PRINCIPAL   | 54.76                                 | 1.75                                  | 96                              |                                  |                               |
| MANRIQUEZ, H/PRINCIPAL  | 46.12                                 | 11.17                                 | 515                             |                                  |                               |
| MARQUEZ, T/SCHOOL SECRETARY   | 21.19                                 | 2.08                                  | 44                              |                                  |                               |
| MATZ, P/PRINCIPAL   | 54.55                                 | 11.17                                 | 609                             |                                  |                               |
| MCGRATH, B/PRINCIPAL  | 58.19                                 | 4.92                                  | 286                             |                                  |                               |
| MESSERSMITH, S/SCHOOL SECRETARY   | 18.69                                 | 7.75                                  | 145                             |                                  |                               |

|  |                            |       |
|--|----------------------------|-------|
| (05) Total <input type="checkbox"/> Subtotal <input checked="" type="checkbox"/> | Page: <u>2</u> of <u>4</u> | 15666 |
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|   |                             |
|---|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT / ACTIVITY COST DETAIL</b> | <b>FORM</b><br><b>SDC-2</b> |
|---|-----------------------------|

(01) Claimant **CHULA VISTA ELEMENTARY SD**

(02) Fiscal Year costs were incurred  
1997-1998

(03) Reimbursable Component: Check **only** one box per form to identify the component being claimed.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Information Requests | <input type="checkbox"/> Court-ordered Desegregation Plans |
| <input type="checkbox"/> Implementing Pupil Transfers    | <input type="checkbox"/> Appeal Process                    |
| <input type="checkbox"/> Data Collection and Reporting   |  |

(04) Description of Expenses: Complete columns (a) through (f).

**Object Accounts**

| (a)<br>Employee Names, Job Classifications, Functions Performed<br>and<br>Description of Expenses  | (b)<br>Hourly Rate<br>or<br>Unit Cost | (c)<br>Hours Worked<br>or<br>Quantity | (d)<br>Salaries and<br>Benefits | (e)<br>Materials and<br>Supplies | (f)<br>Contracted<br>Services |
|--|---------------------------------------|---------------------------------------|---------------------------------|----------------------------------|-------------------------------|
| NELSON, B/PRINCIPAL  | 54.38                                 | 7.42                                  | 404                             |                                  |                               |
| NELSON, J/PRINCIPAL  | 59.24                                 | 5.42                                  | 321                             |                                  |                               |
| NEWTON, B/SCHOOL SECRETARY   | 23.55                                 | 1.92                                  | 45                              |                                  |                               |
| PADILLA, C/PRINCIPAL   | 54.90                                 | 2.08                                  | 114                             |                                  |                               |
| PIERCE, T/SCHOOL SECRETARY   | 22.99                                 | 12.25                                 | 282                             |                                  |                               |
| PRALL, M/PRINCIPAL   | 52.83                                 | 10.00                                 | 528                             |                                  |                               |
| QUINONES, D/SCHOOL SECRETARY   | 20.01                                 | 5.50                                  | 110                             |                                  |                               |
| RAMIREZ, J/PRINCIPAL   | 39.23                                 | 6.67                                  | 262                             |                                  |                               |
| REGALADO, C/SCHOOL SECRETARY   | 20.84                                 | 1.92                                  | 40                              |                                  |                               |
| REILLY, E/SCHOOL SECRETARY   | 24.40                                 | 13.25                                 | 323                             |                                  |                               |
| RODRIGUEZ, C/PRINCIPAL   | 55.43                                 | 17.25                                 | 956                             |                                  |                               |
| ROTH, P/PRINCIPAL  | 53.70                                 | 11.83                                 | 635                             |                                  |                               |
| SAUNDERS, R/SCHOOL SECRETARY   | 22.21                                 | 6.00                                  | 133                             |                                  |                               |
| SMITH, C/PRINCIPAL   | 54.79                                 | 8.00                                  | 438                             |                                  |                               |
| SMITH, S/SCHOOL SECRETARY  | 22.29                                 | 1.92                                  | 43                              |                                  |                               |
| SPICER, L/SCHOOL SECRETARY   | 20.70                                 | 5.58                                  | 116                             |                                  |                               |
| SWIFT, C/SCHOOL SECRETARY  | 20.70                                 | 7.75                                  | 160                             |                                  |                               |
| TAGLE, L/PRINCIPAL   | 62.15                                 | 7.75                                  | 482                             |                                  |                               |
| VAN ZANT, S/PRINCIPAL  | 56.22                                 | 5.92                                  | 333                             |                                  |                               |
| WALKENHORST, L/SCHOOL SECRETARY  | 23.03                                 | 6.92                                  | 159                             |                                  |                               |
| WILLADSEN, S/PRINCIPAL   | 50.12                                 | 6.67                                  | 334                             |                                  |                               |
| ZAVALA, M/SCHOOL SECRETARY   | 21.44                                 | 1.75                                  | 38                              |                                  |                               |
| <b>COSTS OF RESPONDING TO REQUESTS FOR<br/>INFORMATION REGARDING ALTERNATIVE PROGRAMS<br/>AVAILABLE WITHIN THE SCHOOL DISTRICT (I.E.<br/>INDEPENDENT STUDY, HOME STUDY ETC.)</b> |                                       |                                       |                                 |                                  |                               |

(05) Total  Subtotal

Page: 3 of 4

21922

|   |                             |
|---|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT / ACTIVITY COST DETAIL</b> | <b>FORM</b><br><b>SDC-2</b> |
|---|-----------------------------|

|  |  |
|--|--|
| (01) Claimant <b>CHULA VISTA ELEMENTARY SD</b> | (02) Fiscal Year costs were incurred<br><b>1997-1998</b> |
|--|--|

(03) Reimbursable Component: Check **only** one box per form to identify the component being claimed.

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Information Requests | <input type="checkbox"/> Court-ordered Desegregation Plans |
| <input type="checkbox"/> Implementing Pupil Transfers    | <input type="checkbox"/> Appeal Process                    |
| <input type="checkbox"/> Data Collection and Reporting   |  |

(04) Description of Expenses: Complete columns (a) through (f). **Object Accounts**

| (a)<br>Employee Names, Job Classifications, Functions Performed<br>and<br>Description of Expenses  | (b)<br>Hourly Rate<br>or<br>Unit Cost | (c)<br>Hours Worked<br>or<br>Quantity | (d)<br>Salaries and<br>Benefits | (e)<br>Materials and<br>Supplies | (f)<br>Contracted<br>Services |
|--|---------------------------------------|---------------------------------------|---------------------------------|----------------------------------|-------------------------------|
| COX, C/ADMINISTRATOR   | 62.14                                 | 14.42                                 | 896                             |                                  |                               |
| HASTINGS, C/CLERK  | 24.69                                 | 12.25                                 | 302                             |                                  |                               |
| <b>COSTS OF PROVIDING INFORMATION TO PARENTS<br/>ON THE POLICY AND PROCEDURE TO MAKE A<br/>REQUEST FOR ALTERNATIVE ATTENDANCE WITHIN<br/>THE DISTRICT.</b> |                                       |                                       |                                 |                                  |                               |
| COX, C/ADMINISTRATOR   | 62.14                                 | 9.92                                  | 616                             |                                  |                               |
| HASTINGS, C/CLERK  | 24.69                                 | 6.00                                  | 148                             |                                  |                               |

|  |                            |       |
|--|----------------------------|-------|
| (05) Total <input checked="" type="checkbox"/> Subtotal <input type="checkbox"/> | Page: <u>4</u> of <u>4</u> | 23884 |
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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

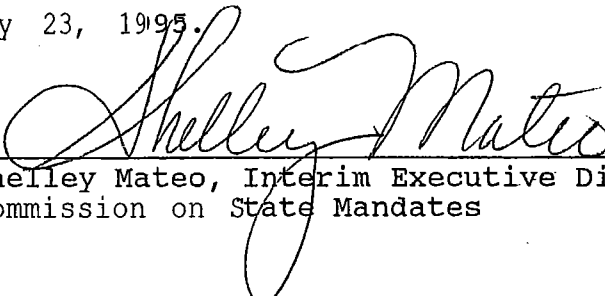
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4 Application by: )  
5 ) No. CSM-4451  
6 San Diego Unifed ) Education Code  
7 School District, ) Sections 48209.1  
8 ) 48209.2, 48209.7  
9 ) 48209.10, 48209.13,  
10 ) 48209.14, and 48209.15  
11 ) Chapter 160, Statutes of 1993  
12 )  
13 Claimant ) **School District of Choice**  
14 )  
15 )  
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DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on February 23, 1995.

IT IS so ORDERED February 23, 1995.

  
\_\_\_\_\_  
Shelley Mateo, Interim Executive Director  
Commission on State Mandates

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of: )  
San Diego Unified )  
School District, )  
Claimant )

No. CSM-445 1  
Education Code  
Sections 48209.1,  
48209.2, 48209.7,  
48209.10, 48209.13,  
48209.14, and 48209.15  
Chapter 160, Statutes of 1993  
*School District of Choice*

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PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on February 23, 1995, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Ms. Carol Berg appeared on behalf of the Education Mandated Cost Network, and Mr. James Apps appeared on behalf of the Department of Finance. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Education Code sections 48209.1, 48209.2, 48209.7, 48209.10, 48209.13, 48209.14, and 48209.15, as added by Chapter 160, Statutes of 1993 (Chapter 160/93), require school districts to implement a new program or provide a higher level of service in an existing program, within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 175 14?

//  
//  
//

BACKGROUND AND FINDINGS OF FACT

1  
2 The test claim was filed with the Commission on February 22, 1994, by the San Diego  
3 Unified School District.

4  
5 The elements for filing a test claim, as specified in section 1183 of Title 2 of the California  
6 Code of Regulations, were satisfied.

7  
8 Chapter 160/93 added Education Code sections 48209.1, 48209.2, 48209.7, 48209.10,  
9 48209.13, 48209.14, and 48209.15 as follows:

10 48209.1:

11 "(a) The governing board of any school district may accept interdistrict transfers. No school district that receives  
12 an application for attendance under this article is required to admit pupils to its schools. If, however, the  
13 governing board elects to accept transfers as authorized under this article, it shall, by resolution, elect to accept  
14 transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure  
that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation  
of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any  
pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

15 "(b) Either the pupil's school district of residence or the school district of choice may prohibit the transfer of a  
16 pupil under this article or limit the number of pupils so transferred if the governing board of the district  
determines that the transfer would negatively impact any of the following:

17 "(1) The court-ordered desegregation plan of the district.

18 "(2) The voluntary desegregation plan of the district that meets the criteria of Section 42249.

"(3) The racial and ethnic balance of the district."

19 48209.2:

20 "School districts are encouraged to hold informational hearings during the spring semester of 1994 on the current  
21 educational program the district is offering so that parents may provide input to the district on methods to  
22 improve the current program and so that parents may make informed decisions regarding their children's  
education. "

23 48209.7:

24 "(a) A school district of residence with average daily attendance greater than 50,000 may limit the number of  
pupils transferring out each year to 1 percent of its current year estimated average daily attendance.

25 "(b) A school district of residence with average daily attendance less than 50,000 may limit the number of pupils  
26 transferring out to 3 percent of its current year estimated average daily attendance and may limit the maximum  
27 number of pupils transferring out for the duration of the program authorized by this article to 10 percent of the  
average daily attendance for that period. "

1 48209.10:

2 "(a) Any school district of choice that admits any pupil under this section shall accept any completed coursework,  
3 attendance, and other academic progress credited to that pupil by the school district or districts previously  
4 attended by that pupil, and shall grant academic standing to that pupil based upon the district's evaluation of that  
5 academic progress.

6 "(b) Any school district of choice that admits a pupil under this section may revoke the pupil's transfer if the  
7 pupil is recommended for expulsion pursuant to Section 48918. "

8 48209.13:

9 ~~"Each school district shall make information regarding its schools, programs, policies, and procedures available  
10 to any interested person upon request."~~

11 48209.14:

12 "(a) Pursuant to this article, each school district shall keep an accounting of all requests made for alternative  
13 attendance and records of all disposition of those requests that shall include, but are not to be limited to, all of the  
14 following:

15 "(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records shall  
16 indicate the reasons for the denials.

17 "(2) The number of pupils transferred out of the district.

18 "(3) The number of pupils transferred into the districts.

19 "(b) The information maintained pursuant to subdivision (a) shall be reported to the governing board of the  
20 school district at an open meeting of the governing board. After the information is reported to the governing  
21 board of the school district, the information shall be reported to the Superintendent of Public Instruction no later  
22 than January 1, 1996, and annually thereafter, and the superintendent shall make the information available to the  
23 Governor, the Legislature, and the public." (Section 48209.14, as amended by Chapter 915, Statutes of 1993,  
24 which extended the date from 1995 to 1996 and made a typographical correction.)

25 48209.15:

26 ~~"(a) It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently  
27 existing choice options under this article regardless of ethnicity, primary language, or literacy."~~

28 "(b) Notwithstanding Section 48980, before the beginning of the first semester or quarter of the regular school  
term, each county board of education shall, to the extent that funding is provided for the purposes of this section,  
adopt a plan to conduct an aggressive, focused outreach program that meets the intent of this section."

By way of background, the Commission noted that the statutory provisions, commencing with  
Education Code section 48209 of Chapter 160/93, create another pupil attendance alternative  
or method under which interdistrict transfers may occur. The Commission observed that there  
are two additional options that allow pupils to transfer between districts. Education Code  
sections 46600 *et seq.* allows two or more districts to enter into an agreement for the  
interdistrict transfer of pupils [the subject of another test claim entitled *Interdistrict Attendance  
Permits* (CSM-4442) scheduled to be heard April, 1995]. In addition, the Commission

1 observed that Education Code section 48204, subdivision (f), provides for interdistrict  
2 transfers based on the location of the parent's place of employment [the subject of a test claim  
3 entitled *Interdistrict Transfer Requests: Parent's Employment* (CSM-4445) which the  
4 Commission heard on January 19, 1995 , which was determined to contain a state-mandated  
5 program].

6  
7 The Commission noted that the school district of choice program does not supersede or revoke  
8 either of the other previously mentioned interdistrict methods of pupil transfer.

9  
10 Regarding Education Code section 48209.1, subdivision (a), the Commission observed that  
11 this subdivision provides that a school district may elect to accept pupils from another district,  
12 subject to conditions set forth therein. Thus, the Commission found that the election to  
13 become a school district of choice, pursuant to subdivision (a), is a voluntary act and,  
14 accordingly, does not impose a reimbursable state mandated program upon school districts of  
15 choice. However, the Commission noted that school districts *of residence* (sending districts)  
16 do not have a similar choice for participation. When pupils from a school district of residence  
17 transfer to a school district of choice, a school district of residence must, under limited  
18 circumstances, comply with certain statutory requirements. Thus, subdivision (a) establishes  
19 the foundation of a state-reimbursable program for school districts of residence, the specific  
20 duties of which are created in other subsections and subdivisions of Education Code section  
21 48209.

22  
23 Regarding Education Code section 48209. 1, subdivision (b), the Commission observed this  
24 subdivision states that either the pupil's school district of residence or the school district of  
25 choice may prohibit the transfer of a pupil if the transfer negatively impacts a court-ordered  
26 desegregation plan of the district, a voluntary desegregation plan of the district, or the racial  
27 and ethnic balance of the district. The Commission found there are no state mandated  
28 activities imposed upon the school district of choice under subdivision (b) because the election

1 to become a school district of choice is a voluntary act and, therefore, such a district accepts  
2 all of the terms and related conditions. Moreover, the statutory language under subdivision (b)  
3 uses permissive language: "*may prohibit.*" Thus, the act of accepting or rejecting a transfer is  
4 voluntary, regardless of the impact on the court-ordered or voluntary desegregation plan, or  
5 the racial and ethnic balance of the district.

6  
7 The Commission noted this permissive language also applies to a school district of residence  
8 (sending districts). However, the Commission also recognized that a district of residence  
9 operating under a court-ordered desegregation plan has little option but to manage that plan  
10 assertively, despite the permissive wording of subdivision (b). The Commission therefore  
11 found that Education Code section 48209.1, subdivision (b), does impose a state mandated  
12 program limited to school districts of residence operating under or subject to a court-ordered  
13 desegregation plan. To the extent that a school district of residence is otherwise prepared to  
14 approve a transfer request to a school district of choice, the provisions of the test claim  
15 legislation implicitly require the district of residence to confirm that the proposed transfer does  
16 not negatively impact its court-ordered desegregation plan. The Commission found that there  
17 was no prior law affecting this matter.

18  
19 With respect to Education Code section 48209.2, the Commission observed that this section  
20 evidences the Legislature's intent to enhance parental opportunity to contribute to improvement  
21 of educational programs. Further, the Commission noted that school districts are *encouraged*  
22 but not *required* to hold informational hearings. Therefore, the Commission found that  
23 informational hearings held in the spring semester of 1994 pursuant to section 48209.2 are  
24 optional and *not* required for school districts.

25  
26 Regarding Education Code section 48209.7, subdivisions (a) and (b), the Commission  
27 observed that these provisions describe attendance conditions under which a district of  
28 residence may limit the number of pupils transferring out. The limitation varies with district

1 size, as measured by average daily attendance. Further, under this section, the Commission  
2 noted that districts of residence *may* limit, rather than *shall* limit. The Commission therefore  
3 found that the activities set forth in Education Code section 48209.7 are permissive and do not  
4 require a school district of residence to establish mandatory limits on transfers to school  
5 districts of choice.

6  
7 Regarding Education Code section 48209.10, subdivision (a), the Commission observed that  
8 this subdivision directs school districts of choice to accept records of transfers and that  
9 subdivision (b) authorizes districts of choice to revoke a transfer if the pupil is recommended  
10 for expulsion. With respect to school districts of choice, the requirement set forth in  
11 subdivision (a) results from the election to become a school district of choice. Further, the  
12 authorization in paragraph (b) is permissive in execution. Therefore, the Commission found  
13 the activities under Education Code section 48209.10, subdivisions (a) and (b), are not  
14 required upon school districts of choice.

15  
16 However, the Commission did find that subdivision (a) of Education Code section 48209.10  
17 implicitly requires school districts of residence to send the transferring pupil's coursework and  
18 other records to the school district of choice. Further, the Commission found that  
19 subdivision (b) implicitly requires school districts of residence to accept back pupil records  
20 when a recommendation to expel results in revocation of transfer by the school district of  
21 choice. This workload is not optional for school districts of residence. Although the  
22 Commission noted that prior law (former Education Code section 49068, as amended by  
23 Chapter 1010/76) required a pupil's records to be transferred by the former district to the new  
24 district of attendance, the activities under subdivision (b) impose a higher level of service.

25  
26 In summary, the Commission found that subdivisions (a) and (b) of Education Code section  
27 48209.10 impose an increased level of service on school districts of residence to provide the  
28 pupil's completed coursework, attendance, and other academic progress to the school district

1 of choice. Further, if a transfer is revoked based upon a recommendation to expel, school  
2 districts of residence are required to accept the pupil back, along with any completed  
3 coursework, attendance, and other academic progress. In addition, the Commission noted that  
4 any activities performed by the school district of residence related to further review or  
5 implementation of an expulsion recommended by the school district of choice, will be  
6 addressed in the test claim entitled *Pupil Expulsions* (CSM-4455).

7  
8 Regarding Education Code section 48209.13, the Commission observed that this section is  
9 worded broadly, covering many types of information already required under other statutory  
10 provisions. For example, a request for a copy of the annual notification to parents falls within  
11 the broad categories set forth in section 48209.13, but such a request includes the same  
12 information described under Education Code section 48980. The Commission found the only  
13 difference is that section 48290.13 stipulates the information be provided upon request, which  
14 implies maintaining a supply of the annual parental notification on hand.

15  
16 The Commission also found that the requirement to make information available upon request  
17 applies to all school districts, not just school districts offering alternative pupil attendance  
18 choices.

19  
20 The Commission found that there is a higher level of service imposed upon school districts to  
21 the extent that such requests are specifically related to alternative pupil attendance choices.  
22 Further, the Commission recognized that Education Code section 48209.13 does not specify  
23 how the information is to be conveyed and, therefore, found that it is a reasonable presumption  
24 that this information could be conveyed by phone, in person, or via a mailed request. Lastly,  
25 the Commission found that some of the reimbursable costs for this limited mandated activity  
26 would be offset or reduced by the amount of fees that may be charged by school districts as  
27 authorized under the California Public Records Act (Government Code section 6250 and  
28 following).



1 With respect to Education Code section 48209.14, the Commission observed this section  
2 48209.14 provides that each school district is required to keep an accounting of all requests  
3 and to report such information as specified in the statute. Under prior law (Education Code  
4 section 46600, derived from Chapter 2, Statutes of 1959), attendance reporting was required  
5 for school funding, among other purposes. Moreover, county boards of education have been  
6 granted the right to adopt reporting requirements for transfers between school districts under  
7 their jurisdiction (Education Code section 48202, added by Chapter 1009, Statutes of 1965,  
8 and amended by Chapter 125, Statutes of 1970, and Chapter 1253, Statutes of 1975). In  
9 addition, data on interdistrict transfers had to be maintained for physically handicapped,  
10 mentally handicapped or multiple handicapped pupils (Education Codes section 48203, added  
11 by Chapter 598, Statutes of 1973.) However, the Commission did not identify any state  
12 requirements under prior law that directed the accounting and reporting of school of choice  
13 interdistrict transfers.

14  
15 The Commission observed that the accounting and reporting requirements pursuant to  
16 Education Code section 48209.14 can be subdivided into two categories. In the first category  
17 are all transfer requests to enter a "school district of choice." Because a school district elects  
18 to become a school district of choice, the accounting and reporting requirements by a school  
19 district of choice for transfer requests into that district stems from that voluntary election.  
20 Therefore, such statutory conditions do not impose a reimbursable state mandated program.

21  
22 In the second category are all transfer requests to leave a district of residence. The  
23 Commission found that when pupils transfer from their school district of residence, the  
24 accounting and reporting of this information are now required of the school district of  
25 residence. (The Commission noted that a school district of choice is also regarded as a school  
26 district of residence for the pupils living within its boundaries).

1 Further, the Commission found the statutory language at hand implicitly requires that school  
2 districts adopt cost effective methods of assembling and maintaining the data as specified in  
3 section 48209.14, subdivisions (a) and (b).

4  
5 In view of the foregoing, the Commission found that a higher level of service is imposed upon  
6 school districts of residence to account for all requests made to a school district of choice and  
7 record the disposition of those requests including the number granted, denied or withdrawn.  
8 In the case of denied requests, the records shall indicate the reasons for the denials. Also the  
9 records shall disclose the number of pupils transferred out of these districts. In addition, the  
10 information maintained shall be reported to the governing board of the school district and to  
11 the Superintendent of Public Instruction no later than January 1, 1996, and annually thereafter.  
12 The Commission also found that school districts of residence are required to adopt cost  
13 effective methods of assembling and maintaining the information described section 48209.14.

14  
15 Lastly, the Commission found that the provisions of Education Code section 48209.14,  
16 subdivisions (a) and (b), do not impose upon school districts of choice a reimbursable state  
17 mandated program because these districts voluntarily elected to participate as a school district  
18 of choice to receive new pupils.

19  
20 Regarding subdivision (a) of Education Code section 48209.15, the Commission observed that  
21 while the language does evidence legislative intent, it does not mandate a duty on school  
22 districts. With respect to subdivision (b), the Commission noted that, despite the "shall adopt"  
23 language, the adoption of a plan for an outreach program is not required unless funding is  
24 provided specifically for the purpose of section 48209.15. The Commission found that  
25 Education Code section 48209.15, subdivisions (a) and (b), does not impose a reimbursable  
26 state mandated program .

1                   APPLICABLE LAW RELEVANT TO THE DETERMINATION  
2                   OF A REIMBURSABLE STATE MANDATED PROGRAM

3  
4 Government Code section 17500 and following, and section 6 of article XIII B of the California  
5 Constitution and related case law.

6  
7                   CONCLUSION

8  
9 The Commission determines that it has the authority to decide this claim under the provisions  
10 of Government Code sections 17500 and 1755 1, subdivision (a).

11  
12 In view of all of the foregoing, the Commission concludes that Education Code sections  
13 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), and 48209.14, as added by  
14 Chapter 160, Statutes of 1993, do impose a new program or higher level of service in an  
15 existing program within the meaning of section 6 of article XIII B of the California  
16 Constitution and Government Code section 17514 by requiring school districts of residence  
17 (sending districts) to:

- 18  
19           1) Determine whether the transfer will negatively impact the district's applicable court-  
20           ordered desegregation plan (to the extent that a school district of residence is otherwise  
21           prepared to approve a transfer request to a school district of choice).  
22  
23           2) Upon notification from the school district of choice, provide the district of choice  
24           information regarding the transferring pupil's completed coursework, attendance, and  
25           other academic progress. Additionally, upon revocation of a transfer based upon  
26           expulsion, accept back from the school district of choice any completed coursework,  
27           attendance, and other academic progress of the pupil.  
28

3) Keep an account of all requests to transfer to a school district of choice and records of all disposition of those requests including the number of requests granted, denied or withdrawn. In the case of denied requests, the records shall indicate the reasons for the denials. Also, the records shall disclose the number of pupils transferred out of these districts. In addition, the information maintained shall be reported to the governing board of the school district and to the Superintendent of Public Instruction no later than January 1, 1996, and annually thereafter .

4) Adopt cost effective methods of assembling and maintaining the information described in Education Code section 48209.14.

Further, the Commission concludes that Education Code section 48209.13, as added by Chapter 160/93, imposes a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514 by requiring all school districts to make information specifically related to alternative pupil attendance choices available to any interested person upon request. However, this limited mandated activity would not apply to such requests already provided for elsewhere in the law. Further, some of the reimbursable costs for this mandated activity would be offset or reduced by the amount of fees that may be charged by school districts as authorized under the California Public Records Act (Government Code section 6250 and following).

And finally, the Commission concludes, except as specified above, the remainder of Education Code sections 48209.1, subdivisions (a) and (b), 48209.10, 48209.13, 48209.14, and all of Education Code sections 48209.2, 48290.7, and 48209.15, do not impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514.

1 | Accordingly, costs incurred related to the aforementioned reimbursable state mandated  
 2 | programs contained in Education Code sections 48209.1, subdivision (b), 48209.10,  
 3 | subdivisions (a) and (b); 48209.13 and 48209.14 are costs mandated by the state and are  
 4 | subject to reimbursement within the meaning of section 6 of article XIII B of the California  
 5 | Constitution. Therefore, the claimant is directed to submit parameters and guidelines,  
 6 | pursuant to Government Code section 17557 and Title 2, California Code of Regulations,  
 7 | section 1183.1, to the Commission for its consideration.

8 |  
 9 | The foregoing conclusions pertaining to the requirements contained in Education Code  
 10 | sections 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), 48209.13 and 48209.14,  
 11 | are subject to the following conditions:

12 |  
 13 |       The determination of a reimbursable state mandated program does not mean that all  
 14 |       increased costs claimed will be reimbursed. Reimbursement, if any, is subject to  
 15 |       Commission approval of parameters and guidelines for reimbursement of the mandated  
 16 |       program; approval of a statewide cost estimate; a specific legislative appropriation for  
 17 |       such purpose; a timely-filed claim for reimbursement; and subsequent review of the  
 18 |       claim by the State Controller's Office.

19 |       If the statewide cost estimate for this mandate does not exceed one million dollars  
 20 |       (\$1,000,000) during the first twelve (12) month period following the operative date of the  
 21 |       mandate, the Commission shall certify such estimated amount to the State Controller's  
 22 |       Office, and the State Controller shall receive, review, and pay claims from the State  
 23 |       Mandates Claims Fund as claims are received. (Government Code section 17610).

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1 The test claim was filed with the Commission on April 3, 1995, by the San Diego  
2 Unified School District.

3 The elements for filing a test claim, as specified in section 1183 of Title 2 of the  
4 California Code of Regulations, were satisfied.

5 Education Code section 48209.1, as amended by Chapter 1262/94, states the following:

- 6 (a) The governing board of any school district may accept interdistrict transfers. No school  
7 district that receives an application for attendance under this article is required to admit pupils  
8 to its schools. If, however, the governing board elects to accept transfers as authorized under  
9 this article, it shall, by resolution, elect to accept transfer pupils, determine and adopt the  
10 number of transfers it is willing to accept under this article, and ensure that pupils admitted  
11 under the policy are selected through a random, unbiased process that prohibits an evaluation  
12 of whether or not the pupil should be enrolled based upon his or her academic or athletic  
13 performance. Any pupil accepted for transfer shall be deemed to have fulfilled the  
14 requirements of Section 48204.
- 15 (b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to  
16 the school district of choice pursuant to subdivision (c) of Section 48209.9, or the school  
17 district of choice may prohibit the transfer of a pupil under this article or limit the number of  
18 pupils so transferred if the governing board of the district determines that the transfer would  
19 negatively impact any of the following:
- 15 (1) The court-ordered desegregation plan of the district.
  - 16 (2) The voluntary desegregation plan of the district that meets the criteria of Section  
17 42249.
  - 18 (3) The racial and ethnic balance of the district.
- 19 (c) The school district of residence shall not adopt policies that in any way block or discourage  
20 pupils from applying for transfer to another district. (Additions or changes are indicated by  
21 underline.)

22 Education Code section 48209.7, as added by Chapter 160/93 and amended by Chapter 915/93,  
23 states the following:

- 24 (a) A school district of residence with average daily attendance greater than 50,000 may limit the  
25 number of pupils transferring out each year under this article to 1 percent of its current year  
26 estimated average daily attendance.
- 27 (b) A school district of residence with average daily attendance less than 50,000 may limit the  
28 number of pupils transferring out under this article to 3 percent of its current year estimated  
29 average daily attendance and may limit the maximum number of pupils transferring out under  
30 this article for the duration of the program authorized by this article to 10 percent of  
31 the average daily attendance for that period.<sup>2</sup> (Additions or changes are indicated by  
32 underline.)

33 Education Code section 48209.9, as amended by Chapter 1262/94, states the following:

- 34 (a) Commencing January 1, 1994, any application for transfer under this article shall be  
35 submitted by the pupil's parent or guardian to the school district of choice that has elected to  
36 accept transfer pupils pursuant to Section 48209.1 prior to January 1 of the school year

37 <sup>2</sup> Article 1.5 was added by Stats.1993, c.160 (A.B.19), section 1, becomes inoperative July 1, 2000 and is repealed Jan. 1, 2001,  
38 under the provisions of section 48209.16.

1 preceding the school year for which the pupil is to be transferred. This application deadline  
2 may be waived upon agreement of the pupil's school district of residence and the school  
district of choice. No applications shall be submitted after January 1, 1999.

- 3 (b) The application shall be submitted on a form provided for this purpose by the State  
4 Department of Education and may request enrollment of the pupil in a specific school or  
5 program of the district.
- 6 (c) Not later than 90 days after the receipt by a school district of an application for transfer, the  
7 governing board of the district shall notify the parent or guardian in writing whether the  
8 application has been provisionally accepted or rejected or of the pupil's position on any  
9 waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year  
10 for which the pupil is to be transferred. In the event of an acceptance, that notice shall be  
11 provided also to the school district of residence. If the application is rejected, the district  
12 governing board shall set forth in the written notification to the parent or guardian the  
13 specific reason or reasons for that determination, and shall ensure that the determination, and  
14 the specific reason or reasons therefor, are accurately recorded in the minutes of the board  
15 meeting in which the determination was made.
- 16 (d) The parent or guardian of a pupil who is prohibited from transferring pursuant to either  
17 subdivision (b) of Section 48209.1 or Section 48209.7 may appeal the decision to the county  
18 board of education.
- 19 (e) Final acceptance of the transfer is applicable for one school year and will be renewed  
20 automatically each year unless the school district of choice through the adoption of a  
21 resolution withdraws from participation in the program and no longer will accept any transfer  
22 pupils from other districts. However, if a school district of choice withdraws from  
23 participation in the program, high school pupils admitted under this article may continue until  
24 they graduate from high school. (Additions or changes are indicated by underline.)

18 The Commission on State Mandates determined on April 28, 1995, that when a  
19 school district elects to become a school district of choice (the receiving district in the choice  
20 transfer process) under Education Code section 48209.1 of Chapter 160/93, such election is a  
21 voluntary, permissive act and, accordingly, not a reimbursable state mandated program.<sup>3</sup>

22 For the school district of residence (the sending district in the choice transfer  
23 process), the Commission also determined in CSM-4451 that a limited state mandated activity  
24 exists in section 48209.1, subdivision (b). That subdivision states that the "... school district of  
25 residence ... may prohibit the transfer of a pupil under this article..." and the permissive "may"  
26 thus seemingly avoids any subsequent reimbursable state mandated duties specified in section  
27 48209.1. Nevertheless, the Commission determined that a district of residence, only when  
28 subject to a court-ordered desegregation plan, must confirm that the proposed transfer does not  
negatively impact such plan. This activity constitutes a reimbursable state mandated program.



1                   However, because this activity has already been recognized for reimbursement in  
2 a separate test claim, the Commission determined that no reimbursable state mandated program  
3 exists in section 48209.1 for the purposes of this test claim.<sup>4</sup> The Commission found that the  
4 changes which have been made to section 48209.1 since its previous decision on this section  
5 serve to provide technical clarifications in subdivisions (a) and (b). In the new subdivision (c),  
6 however, the Legislature made clear a policy that school districts of residence are not to adopt  
7 policies which block or discourage pupils from applying for transfer to another district. None of  
8 these changes subsequent to the Chapter 160/93 amendment would appear to negate the  
9 Commission's decision on CSM-4451. Finally, despite claimant's contention that the Chapter  
10 1262/94 amendment to section 48209.9 impacts the CSM-4451 Commission determination on  
11 section 48209.1, the Commission disagreed and determined that section 48209.1 contains no  
12 reimbursable state mandated program.

13                   Regarding Education Code section 48209.7, the Commission's Statement of  
14 Decision (CSM-4451) also addressed this section and stated that no reimbursable state mandated  
15 program exists regarding school districts of residence. Section 48209.7 provides a mathematical  
16 limitation that a school district of residence may use in the event that it decides to prohibit a  
17 pupil from leaving its district to attend a school district of choice. Similarly, in this  
18 test claim, CSM-4476, the Commission again determined that the use of the word "may" makes  
19 district limitations under section 48209.7 permissive. The Commission noted that no substantive  
20 changes have been made to section 48209.7 which would negate its April 28, 1995 determination  
21 on this section. Although claimant contends that the Chapter 1262/94 amendment to section  
22 48209.9 impacts the CSM-4451 Commission determination on  
23 section 48209.7, the Commission disagreed and determined that section 48209.7 contains no  
24 reimbursable state mandated program.

25                   Regarding Education Code section 48209.9, Chapter 1262/94, added subdivision  
26 (d) to this section, which provides, "[t]he parent or guardian of a pupil who is prohibited from  
27 transferring pursuant to either subdivision (b) of Section 48209.1 or Section 48209.7 may appeal  
28 the decision to the county board of education."

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<sup>3</sup> See Statement of Decision, CSM-4451, School District of Choice, adopted on April 28, 1995.

<sup>4</sup> See Statement of Decision, CSM-4451, School District of Choice, adopted on April 28, 1995.

1           Because the parent/guardian has a new statutory right to appeal a transfer that was  
2 prohibited under these two sections, the county board of education has no option but to respond  
3 to that appeal (regardless of whether or not the denial was discretionary on the part of the school  
4 district).

5           No prior requirements regarding this matter existed in law. The Commission  
6 therefore determined that the parent/guardian's authority to appeal a denied transfer imposes a  
7 reimbursable state mandated program upon county boards of education.

8           Further, although not explicitly required, the county board must first establish an  
9 appropriate process for these appeal hearings. Claimant states the appeals process could be  
10 modeled after the complex process provided for in sections 46601 and 46602.

11           Although recognizing the need for a process, the Commission disagreed with  
12 claimant's suggestion of using sections 44601 and 44602 as a model for the parameters and  
13 guidelines. The Commission noted that the Legislature, in enacting subdivision (d), did not spell  
14 out elaborate procedures similar to those contained in sections 46601 and 46602; further, the  
15 Legislature could have simply incorporated by reference the provisions of sections 46601 and  
16 46602, but did not. The Commission also observed that new subdivision (c) to section 48209.1  
17 was added along with subdivision (d) to section 48209.9. (See Chapter 1262/94.) Subdivision  
18 (c) states that, "[t]he school district of residence shall not adopt policies that in any way block or  
19 discourage pupils from applying for transfer to another district." The Commission found that  
20 subdivision (c) expressly warns school districts of residence to not purposefully discourage the  
21 utilization of the school district of choice vehicle and, therefore, school districts will indeed heed  
22 and follow such directive.

23           The Commission found that simple, non-complex appeals procedures were  
24 contemplated by the Legislature in light of the admonition set forth in subdivision (c), rather than  
25 the elaborate procedures such as those contained in sections 46601 and 46602. Therefore, the  
26 Commission determined that simple, non-complex appeals procedures fall within the scope of  
27 the statutory provisions and, accordingly, should be employed in the parameters and guidelines.  
28 Moreover, the Commission found that a simple process is appropriate in view of the limited state  
mandated activity associated with the appeals process upon school districts of residence as  
described below.

1                   Claimant asserted that school districts of residence are required to participate in  
2 and respond to the county board's appeal process. Although this section implicitly requires  
3 district of residence participation, such activity is not considered reimbursable if it results from a  
4 discretionary denial on the part of the district. Section 48209.1 states that the district of  
5 residence, "may prohibit the transfer of a pupil under this article". Likewise, section 48209.7  
6 states in both subdivisions (a) and (b) that the district of residence "may limit...". The inclusion  
7 of the word "may" in both of these sections makes transfer denials permissive. Accordingly, the  
8 Commission determined that any required statutory activity (such as participation in the appeal  
9 process by any school district) resulting from a section 48209.1 or 48209.7 denial is *not*  
10 reimbursable as a *state mandated activity* because of the discretion initially exercised in the  
11 decision to deny. (See *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783;  
12 *County of Contra Costa v. State of California* (1986) 177 Cal. App.3d 62, 79.)

13                   The one exception, as noted in the Commission's Statement of Decision for  
14 CSM-4451, would be a district of residence subject to a court-ordered desegregation plan which  
15 must confirm that the proposed transfer does not negatively impact that plan. At its  
16 April 28, 1995 hearing, the Commission determined that this confirmation activity imposes a  
17 reimbursable state mandated program upon a district of residence.

18                   Correspondingly, the Commission determined that the district of residence's  
19 participation in and response to a county board of education's appeal process, under subdivision  
20 (d) of section 48209.9, resulting only from a denied transfer based on the negative impact upon  
21 that district's court-ordered desegregation plan, constitutes a reimbursable state mandated  
22 activity.

23                   Finally, the Commission found that none of the previous Commission  
24 determinations as addressed in the claimant's August 15, 1995 rebuttal are comparable to this  
25 claim. Independently of these previous determinations, the Commission determined that the  
26 permissive "may" in sections 48209.1 and 48209.7 clearly does not impose a new program or  
higher level of service upon school districts (as previously determined in CSM-4451).

27                   Further, even with the addition of section 48209.9, which allows for denied  
28 transfer appeals due to section 48209.1 or 48209.7, the Commission determined that no language  
in any of these three sections explicitly or implicitly requires the monitoring of racial or ethnic  
balances or limits as claimant alleged. The Commission reviewed claimant's assertion that

1 school districts would be acting arbitrarily to either approve or deny the transfer without  
2 considering its impact on the ethnic balance of the district, since according to claimant, school  
3 districts have a pre-existing constitutional duty to equalize the demographics of its schools. The  
4 case cited by claimant, *Long Beach Unified School District v. State of California*, (1990) 225  
5 Cal.App.3d 155, and other cases reviewed by the Commission did not support claimant's  
6 assertion that Education Code section 48209.1, subdivision (b)(3), required school districts to  
7 check "the racial and ethnic balance of the district" before approving or denying a choice  
8 transfer. (See *Crawford v. Board of Education* (1976) 17 Cal.3d 280.) Accordingly, the  
9 Commission rejected claimant's contention that school districts have a pre-existing  
10 constitutional duty to equalize the demographics of its schools or to maintain a certain racial and  
11 ethnic balance.

12 Finally, the Commission acknowledged the closing testimony from the  
13 Department of Finance which noted that the Legislature's use of the terms "may" and "shall" in  
14 closely related sections was significant because of the Legislature's awareness of their use of the  
15 two terms and that if the Legislature had wanted to make a statute mandatory, this was clearly  
16 within their purview. (Transcript, Commission Hearing, March 28, 1996, pp. 71-72.)

17  
18 **APPLICABLE LAW RELEVANT TO THE DETERMINATION**  
19 **OF A REIMBURSABLE STATE MANDATED PROGRAM**

20 The applicable law relevant to this determination of a reimbursable state  
21 mandated program is Government Code section 17500 and following, and section 6 of  
22 Article XIII B of the California Constitution, and related case law.

23  
24  
25 **CONCLUSION**

26 Based on the foregoing, the Commission approves the test claim in part. The  
27 Commission finds that the parent/guardian's authority to appeal a denied transfer contained in  
28 section 48209.9, subdivision (d), imposes a reimbursable state mandated program upon county  
boards of education. Because the parent/guardian has a new statutory right to appeal a transfer  
that was prohibited under section 48209.1 or section 48209.7, the county board of education has

1 no option but to respond to that appeal (regardless of whether or not the denial was discretionary  
2 on the part of the school district). Further, although not explicitly required, the county board  
3 must first establish an appropriate, non-complex process for these appeal hearings, which shall  
4 be addressed in the parameters and guidelines. No requirements regarding this matter existed in  
5 law prior to January 1, 1975.

6 The Commission concludes that the district of residence's participation in and  
7 response to a county board of education's appeal process, under subdivision (d) of section  
8 48209.9, resulting solely from a denied transfer based on the negative impact upon that district's  
9 court-ordered desegregation plan, constitutes a reimbursable state mandated activity.

10 Further, the foregoing conclusions pertaining to the requirements contained in  
11 Education Code sections 48209.1, 48209.7 and 48209.9 are subject to the following conditions:

12 The determination of a reimbursable state mandated program does not mean that  
13 all increased costs claimed will be reimbursed. Reimbursement, if any, is subject  
14 to Commission approval of parameters and guidelines for reimbursement of the  
15 mandated program; approval of a statewide cost estimate; a specific legislative  
16 appropriation for such purpose; a timely-filed claim for reimbursement; and  
17 subsequent review of the claim by the State Controller's Office.

18 Finally, the Commission concludes that no reimbursable state mandated programs  
19 exist in section 48209.1, section 48209.7, or in the remainder of section 48209.9 for the purposes  
20 of this test claim.

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Adopted: July 25, 1996  
File Number: CSM-4451, CSM-4476  
Staff: Piper Rodrian  
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## Proposed Amendment to Parameters and Guidelines

### *School District of Choice: Transfers and Appeals*

#### Amending Current Parameters And Guidelines For:

Education Code section 48209.1  
Education Code section 48209.7  
Education Code section 48209.10  
Education Code section 48209.13  
Education Code section 48209.14  
Chapter 160, Statutes of 1993  
*School District of Choice*

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#### To Include:

Education Code section 48209.9  
Chapter 1262, Statutes of 1994  
*Choice Transfer Appeals*

### I. SUMMARY OF THE SOURCE OF THE MANDATE

Chapter 160, Statutes of 1993, added Article 1.5, "Pupil Attendance Alternatives," to Chapter 2, Part 27 of the Education Code (section 48209, et seq.) which established a new program of optional interdistrict attendance based on a choice of participating districts.<sup>1</sup> Chapter 1262, Statutes of 1994, amended Education Code section 48209.9, adding new subdivision (d), to establish the statutory right of the parent or guardian of a pupil who is prohibited from transferring pursuant to either Education Code section 48209.1, subdivision (b), or section 48209.7 to appeal this decision to the county board of education.<sup>2</sup>

Article 1.5 provides that any school district may elect to accept interdistrict transfers pursuant to the Article, that is, to become a school district of attendance "choice" for pupils from other school districts. If a district makes the election, the choice program requires several non-discriminatory policies: (1) transfers are to be allowed on a random basis, subject to a numerical limit adopted by either the "sending" district of residence or "receiving" district of choice and may be prohibited if they adversely affect either school district's integration program; (2) although districts are not required to establish new programs to accommodate the pupil transfer, the school district of choice cannot prohibit a transfer of a pupil just because the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer; (3) resident pupils cannot be displaced by a choice transfer; (4) rejected requests for transfer require that the district provide written notification to the parent or guardian of the reason; and (5) once a transfer is granted, the pupil has the right of continued articulation to other grade levels. Further, all school districts are required to collect and report data on the numbers of requests submitted, transfers granted and transfers denied.

<sup>1</sup> Operative January 1, 1994 and subject to repeal as of January 1, 2001.

<sup>2</sup> Chapter 1262/94 became effective as a matter of urgency on September 30, 1994.

## II. COMMISSION ON STATE MANDATES DECISION

The Commission on State Mandates, in the Statement of Decision adopted at the April 28, 1995 hearing on CSM-4451, entitled *School District of Choice*, and in the Statement of Decision adopted at the May 6, 1996 hearing on CSM-4476, entitled *Choice Transfer Appeals*, found that Education Code sections 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), 48209.13, and 48209.14, as added by Chapter 160, Statutes of 1993, and Education Code section 48209.9, subdivision (d), added by Chapter 1262, Statutes of 1994, impose a new program or higher level of service within the meaning of section 6, Article XIII B of the California Constitution, for school districts of residence to implement pupil transfers to school districts of choice.

The Commission determined that the following provisions established costs mandated by the state pursuant to Government Code section 17514, by requiring school districts of residence to:

- 1) Pursuant to section 48209.1, subdivision (b), make a determination of whether the transfer to the school district of choice will negatively impact the district's applicable court-ordered desegregation plan.<sup>3</sup>
- 2) Pursuant to section 48209.9, subdivision (d), participate in and respond to a county board of education's appeal process, resulting only from a denied transfer based on the negative impact upon that district's court-ordered desegregation plan.
- 3) Pursuant to section 48209.10, subdivision (a) provide to the district of choice information regarding the transferring pupil's completed coursework, attendance, and other academic progress; and pursuant to subdivision (b), implement the return of a pupil whose transfer to a choice district has been revoked upon recommendation for expulsion by the choice district by accepting back from the school district of choice any completed coursework, attendance and other academic progress of the pupil.
- 4) Pursuant to section 48209.14, collect data of all requests to transfer to a school district of choice including the number of transfers granted, denied or withdrawn. In the case of denied requests, the records shall indicate the reasons for the denials. Also, the records shall disclose the number of pupils transferred out of these districts. The information maintained shall be reported to the district governing board and Superintendent of Public Instruction. Adopt cost effective methods of assembling and maintaining the information described in section 48209.14.

The Commission determined that the following provisions established costs mandated by the state pursuant to Government Code section 17514, by requiring all school districts to:

- 5) Pursuant to section 48209.13, make information specifically related to alternative pupil attendance choices available to any interested person upon request. This limited mandated activity would not apply to such requests already provided for elsewhere in the law.

The Commission determined that the following established costs mandated by the state pursuant to Government Code section 17514, by requiring all county boards of education to:

<sup>3</sup> "Section" refers to the Education Code unless otherwise indicated.



- 6) Pursuant to section 48209.9, subdivision (d), establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.
- 7) Pursuant to section 48209.9, subdivision (d), respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.

### III. ELIGIBLE CLAIMANTS

Any "school district", as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

### IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for CSM-4451, entitled *School District of Choice*, was submitted on February 17, 1994. Therefore all mandated costs incurred on or after January 1, 1994, the operative date of Chapters 160, Statutes of 1993, for implementation of sections 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), 48209.13; and 48209.14, are reimbursable. The test claim for CSM-4476, entitled *Choice Transfer Appeals*, was submitted on April 3, 1995. Therefore all mandated costs incurred for the denied choice transfer appeal process on or after September 30, 1994, the operative date of Chapter 1262, Statutes of 1994, for implementation of section 48209.9; subdivision (d), are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. All claims for reimbursement of costs shall be submitted pursuant to Government Code section 17561.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

### V. REIMBURSABLE COSTS

#### A) Scope of the Mandate

- 1) All school districts shall be reimbursed for the costs incurred to make information specifically related to alternative pupil attendance choices available to any interested person upon request. This reimbursement does not apply to such requests already provided for elsewhere in the law. These costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act (Government Code section 6250 et seq.).
- 2) School districts which are districts of residence as a result of the transfer of a resident pupil to a district of choice shall be reimbursed for the costs incurred to:

- a) make a determination of whether the transfer to the school district of choice will negatively impact the district's court-ordered desegregation plan;
  - b) participate in and respond to a county board of education's appeal process, resulting only from a denied transfer based on the negative impact upon that district's court-ordered desegregation plan;
  - c) implement the transfer to the district of choice by providing information regarding the transferring pupil's completed coursework, attendance and other academic progress;
  - d) implement the return of a pupil whose transfer to a choice district has been revoked upon recommendation for expulsion from the choice district by accepting back any completed coursework, attendance and other academic progress of the pupil; and,
  - e) collect data on the number of all requests to transfer to a school district of choice including transfers granted, denied or withdrawn. In the case of denied requests, indicate in the record the reasons for the denials. Annually report these statistics to the district governing board and Superintendent of Public Instruction. Adopt cost effective methods of assembling and maintaining the information described in section 48209.14.
- 3) All county boards of education shall be reimbursed for the costs incurred to establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7 and to respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.

#### B) Reimbursable Activities

For each eligible school district and county office of education, the direct and indirect costs of labor, supplies and services incurred for the following mandate components are reimbursable:

##### 1) Information Requests

For all school districts to respond to telephone and written inquiries for information regarding alternative pupil attendance choices for its schools, programs, policies and procedures. These costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act (Government Code section 6250 et seq.).

##### 2) Implementing Pupil Transfers

For school districts of residence to provide the district of choice information regarding the transferring pupil's completed coursework, attendance and other academic progress, and to otherwise implement the transfer out of pupils, as well as the return transfer of a pupil whose choice transfer has been revoked by the district of choice as the result of a recommendation for expulsion.

### 3) Data Collection and Reporting

For school districts of residence to collect data on the number of transfers granted, denied, or withdrawn and annually report these statistics to the district governing board and Superintendent of Public Instruction.

### 4) Court-ordered Desegregation Plans

For school districts of residence with court-ordered desegregation plans to make a determination of whether the transfer to the school district of choice will negatively impact the plan; and to participate in and respond to a county board of education's appeal process, resulting only from a denied transfer based on the negative impact upon that district's court-ordered desegregation plan.

### 5) County Office Appeals

All county boards of education shall be reimbursed for the costs incurred to establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7 and to respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.

## VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

### A) Reporting By Components

Claimed costs must be allocated according to the five components of reimbursable activity described in section V. B., *Reimbursable Activities*.

### B) Supporting Documentation

Claimed costs should be supported by the following information. Determination of the adequacy of claimants' supporting documentation is within the purview of the State Controller, as permitted by law.

#### 1) Employee Salaries and Benefits

Identify the employee(s) and their job classification, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

#### 2) Materials and Supplies

Only the expenditures which can be identified as a direct cost of the mandate can be claimed. List costs of materials which have been consumed or expended specifically for the purpose of this mandate.

#### 3) Contracted Services

Give the name(s) of the contractor(s) who performed the service(s). Describe the activities performed by each named contractor and give the number of actual hours

spent on the activities. Show the inclusive dates when services were performed and itemize all costs for those services.

#### 4) Allowable Overhead Cost

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-73A (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

#### C) Cost Accounting Statistics

The State Controller is directed to include in its claiming instructions each year the requirement that claimants report to the State Controller the following statistics for the purpose of establishing a database for potential future reimbursement based on prospective rates:

- 1) ~~The number of requests for "choice" transfers out of the district of residence.~~
- 2) The number of "choice" transfers out of the district of residence granted.
- 3) The number of requests for "choice" transfers into the district of choice. (Applicable only to districts which have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
- 4) The number "choice" transfers into the district of choice granted. (Applicable only to districts which have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
- 5) The number of choice transfer appeals filed and where a district of residence denied the choice transfer pursuant to section 48209.1 or 48209.7. (Applicable only to county boards of education.)

#### VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents (e.g. employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

#### VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, i.e., service fees collected, federal funds, other state funds, etc., shall be identified

and deducted from this claim. The Commission has determined that some of the reimbursable costs for the mandated activity found in section 48209.14, to make information specifically related to alternative pupil attendance choices available to any interested person upon request, would be offset or reduced by the amount of fees that may be charged by school districts as authorized under the California Public Records Act (Government Code section 6250 et seq.).

**IX. REQUIRED CERTIFICATION**

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained therein.



## SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS

### 1. Summary of Chapters 160/93 and 1262/94

Education Code § 48209.1, Subdivision (b), § 48209.10, Subdivisions (a) and (b), §§ 48209.13, and 48209.14 as added and amended by Chapter 160, Statutes of 1993, and § 48209.9, Subdivision (d), as amended by Chapter 1262, Statutes of 1994, require that any school district may elect to become a school district of attendance "choice" for pupils of other school districts. However, if a district makes the election, the choice program requires several non-discriminatory policies: (a) Transfers are to be allowed on a random basis, subject to a numerical limit adopted by either the "sending" district of residence or "receiving" district of choice and may be prohibited if they adversely affect either school district's integration program; (b) although districts are not required to establish new programs to accommodate the pupil transfer, the school district of choice cannot prohibit a transfer of a pupil if the cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer; (c) resident pupils cannot be displaced by a choice transfer; (d) rejected requests for transfer require the district to provide written notification of the reason for rejection to the parent or guardian; and (e) once a transfer is granted, the pupil has the right of continuation to other grade levels.

Pursuant to Education Code § 48209.9, the parent or guardian has a new statutory right to appeal a transfer that was prohibited under Subdivision (b) of § 48209.1 or § 48209.7; the county office of education has no option but to respond to that appeal regardless of whether or not the denial was discretionary on the part of the school district.

Further, the parent or guardian has the authority to appeal a denied transfer, but the county office of education must first establish an appropriate process for these special hearings. The district residence's participation in and response to a county office of education's appeal process is reimbursable only if it results solely from a denied transfer based on requirements of a court-ordered desegregation plan. All school districts are required to collect and report data on the number of requests submitted, transfers granted, and transfers denied.

On April 28, 1995, and May 6, 1996, the Commission on State Mandates determined that Chapter 160, Statutes of 1993, and Chapter 1262, Statutes of 1994, resulted in state mandated costs that are reimbursable pursuant to Part 7 (commencing with Government Code § 17500) of Division 4 of Title 2.

### 2. Eligible Claimants

Any school district (K-12) or county office of education that incurs increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

### 3. Appropriations

These claiming instructions are issued following the adoption of the program's parameters and guidelines by the Commission on State Mandates. Funding for the payment of initial claims covering the period January 1, 1994, to June 30, 1994, and fiscal years 1994/95, 1995/96, and 1996/97 may be made available in a future appropriations act, subject to approval of the Legislature and the Governor.

To determine if this program is funded in subsequent fiscal years, refer to the schedule "Appropriation for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in September of each year to county superintendents of schools and superintendents of schools.

#### 4. Types of Claims

##### A. Reimbursement and Estimated Claims

A claimant may file a reimbursement and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

##### B. Minimum Claim

Government Code § 17564(a) provides that no claim shall be filed pursuant to Government Code § 17561 unless such a claim exceeds \$200 per program per fiscal year. However, any county superintendent of schools, as fiscal agent for the school district, may submit a combined claim in excess of \$200 on behalf of one or more districts within the county even if the individual district's claim does not exceed \$200. A combined claim must show the individual costs for each district. Once a combined claim is filed, all subsequent years relating to the same mandate must be filed in a combined form. The county receives the reimbursement payment and is responsible for disbursing funds to each participating district. A district may withdraw from the combined claim form by providing a written notice to the county superintendent of schools and the State Controller's Office of its intent to file a separate claim, at least 180 days prior to the deadline for filing the claim.

#### 5. Filing Deadline

##### A. Initial Claims

Initial claims must be filed within 120 days from the issuance date of the claiming instructions. Accordingly:

- (1) Reimbursement claims detailing the actual costs incurred for the period 01/01/94 to 06/30/94, and 1994/95 and 1995/96 fiscal years must be filed with the State Controller's Office and postmarked by July 28, 1997. If the reimbursement claim is filed after the deadline of July 28, 1997, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.
- (2) Estimated claims for costs to be incurred during the 1996/97 fiscal year must be filed with the State Controller's Office and postmarked by July 28, 1997. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1996/97 reimbursement claim must be filed by November 30, 1997.

##### B. Annually Thereafter

Refer to the item "Reimbursable State Mandated Cost Programs" contained in the annual cover letter for mandated cost programs issued annually in September, which identifies the fiscal years for which claims may be filed. If an "x" is shown for the program listed under "19\_\_/19\_\_ Reimbursement Claim," and/or "19\_\_/19\_\_ Estimated Claim," claims may be filed as follows:

- (1) An estimated claim must be filed with the State Controller's Office and postmarked by November 30 of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.



After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30 of the following fiscal year. If the district fails to file a reimbursement claim, monies received for the estimated claim must be returned to the State. If no estimated claim was filed, the district may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. For information regarding appropriations for reimbursement claims, refer to the "Appropriation for State Mandated Cost Programs" in the previous fiscal year's annual claiming instructions.

- (2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

## 6. Scope of the Mandate

- A. All school districts are required to make information specifically related to alternative pupil attendance choices available to any interested person on request, unless such requests are already provided for elsewhere by law. A claim for costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act (Government Code § 6250 et seq.).
- B. School districts which are districts of residence as a result of the transfer of a resident pupil to a district of choice shall:
  - (1) Make a determination of whether the transfer to the school district of choice will negatively impact the district's court-ordered desegregation plan.
  - (2) Participate in and respond to a county office of education's appeal process, resulting only from a denied transfer based on the negative impact on that district's court-ordered desegregation plan.
  - (3) Implement the transfer to the district of choice by providing information regarding the transferring pupil's completed coursework, attendance, and other academic progress.
  - (4) Implement the return of a pupil whose transfer to a choice district has been revoked upon recommendation for expulsion from the choice district by accepting back any completed coursework, attendance, and other academic progress of the pupil.
  - (5) Collect data on the number of all requests to transfer to a school district of choice including transfers granted, denied, or withdrawn. In the case of denied requests, indicate in the record the reason for the denials. Annually report these statistics to the district governing board and Superintendent of Public Instruction. Adopt cost effective methods of asseribiing and maintaining the information described in Education Code § 48209.14.
- C. All county offices of education shall:
  - (1) Establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence.
  - (2) Respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence.

**7. Reimbursable Components**

Eligible claimants will be reimbursed for costs incurred in performing the following activities:

**A. Information Requests**

Response to telephone and written inquiries for information regarding alternative pupil attendance choice for its schools, programs, policies, and procedures. These costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act ( Government Code § 6250 et seq.).

**B. Implementing Pupil Transfers**

School districts of residence to provide the district of choice, information regarding the transferring pupil's completed coursework, attendance, and other academic progress, and to otherwise implement the transfer out of pupils, as well as the return transfer of a pupil whose choice transfer has been revoked by the district of choice as a result of a recommendation for expulsion.

**C. Data Collection and Reporting**

School districts of residence to collect data on the number of transfers granted, denied, or withdrawn, and annually report these statistics to the district governing board and Superintendent of Public Instruction.

**D. Court-ordered Desegregation Plans**

School districts of residence with court-ordered desegregation plans to make a determination of whether the transfer to a school district of choice will negatively impact the plan; and to participate in and to respond to a county board of education's appeal process, resulting only from a denied transfer based on the negative impact upon that district court-ordered desegregation plan.

The above components, 7.A. through 7.D., are reimbursable for the period 1/1/94 through 6/30/94, 1994/95, and subsequent fiscal years.

**E. Appeal Process**

All county boards of education shall establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7 and to respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.

The above component 7.E., is reimbursable for the period 9/30/94 through 6/30/95, 1995/96, and subsequent fiscal years.

**8. Reimbursement Limitations**

- A.** Any offsetting savings or reimbursement the claimant received from any source (e.g. service fees collected, federal funds, other state funds, etc.) as a result of this mandate shall be identified and deducted so only net local costs are claimed.
- B.** The reimbursable costs for the mandated activity to make information specifically related to alternative pupil attendance choices available to interested parties, must be offset or reduced by the amount of fees that may be charged by school districts as authorized under California Public Records Act (Government Code § 6250 et seq.).

**9. Claiming Forms and Instructions**

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms SDC-1 and SDC-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated or reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

**A. Form SDC-2, Component/Activity Cost Detail**

This form is used to segregate the detailed costs by claim component. A separate form SDC-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

**(1) Salaries and Benefits**

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed and specify the actual time devoted to each function by each employee, the productive hourly rates and related fringe benefits.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on this mandate.

**(2) Materials and Supplies**

Only expenditures that can be identified as a direct cost of the mandate may be claimed. List the cost of materials consumed or expended specifically for the purpose of this mandate.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders and other documents evidencing the validity of the expenditures.

**(3) Contracted Services**

Contracting costs are reimbursable to the extent that the function to be performed requires special skill or knowledge that is not readily available from the claimant's staff, or the service to be provided by the contractor is cost effective. Use of contract services must be justified by the claimant.

Give the name(s) of contractor(s) who performed the service(s). Describe the activities performed by each named contractor, actual time spent on this mandate, inclusive dates when services were performed, and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices, and other documents evidencing the validity of the expenditures.

For audit purposes, all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

**B. Form SDC-1, Claim Summary**

This form is used to summarize direct costs by claim component and compute allowable indirect costs for the mandate. Claim statistics shall identify the work performed for costs claimed. The claimant must give the following statistics:

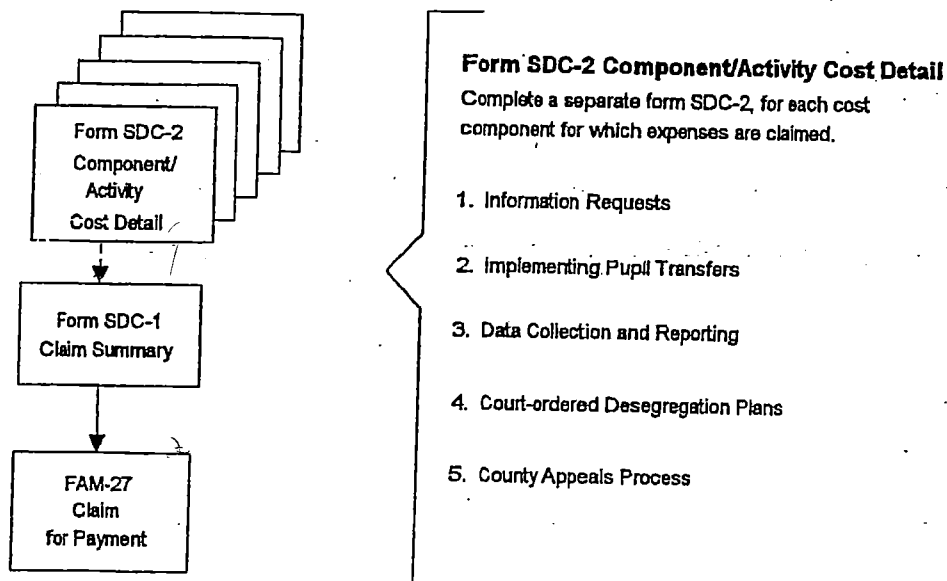
- (1) The number of requests for "choice" transfers out of the district of residence.
- (2) The number of "choice" transfers out of the district of residence granted.
- (3) The number of requests for "choice" transfers into the district of choice.  
(Applicable only to districts that have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
- (4) The number of "choice" transfers into the district of choice that were granted.  
(Applicable only to districts that have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
- (5) The number of "choice" transfer appeals filed, when the "choice" transfers were denied by the district of residence pursuant to section 48209.1 or 48209.7.  
(Applicable only to county boards of education.)

School districts and local offices of education may compute the amount of indirect costs utilizing the State Department of Education's Annual Program Cost Data Report J-380 or J-580 rate, as applicable. The cost data on this form are carried forward to form FAM-27.

**C. Form FAM-27, Claim for Payment**

Form FAM-27 contains a certification that must be signed by an authorized representative of the district. All applicable information from form SDC-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

**Illustration of Claim Forms**



|  |  |  |
|--|--|--|
| <b>CLAIM FOR PAYMENT</b><br>Pursuant to Government Code Section 17561<br><b>SCHOOL DISTRICT OF CHOICE:</b><br><b>TRANSFERS AND APPEALS</b> | For State Controller's Office Only<br>(19) Program Number 00156<br>(20) Date Filed ___/___/___<br>(21) LRS Input ___/___/___ | Program<br><span style="font-size: 2em; font-weight: bold;">156</span> |
|--|--|--|

|   |   |                                 |  |
|---|---|---------------------------------|--|
| L<br>A<br>B<br>E<br>L<br><br>H<br>E<br>R<br>E | (01) Claimant Identification Number                                 | <b>Reimbursement Claim Data</b> |  |
|   | (02) Claimant Name  | (22) SDC-1, (03)(a)             |  |
|   | County of Location  | (23) SDC-1, (03)(b)             |  |
|   | Street Address or P.O. Box <span style="float: right;">Suite</span> | (24) SDC-1, (03)(c)             |  |
|   | City <span style="float: right;">State Zip Code</span>              | (25) SDC-1, (03)(d)             |  |

| Type of Claim                                 | Estimated Claim                         | Reimbursement Claim                         |                        |
|---|---|---|------------------------|
|   | (03) Estimated <input type="checkbox"/> | (09) Reimbursement <input type="checkbox"/> | (26) SDC-1, (03)(e)    |
|   | (04) Combined <input type="checkbox"/>  | (10) Combined <input type="checkbox"/>      | (27) SDC-1, (04)(1)(d) |
|   | (05) Amended <input type="checkbox"/>   | (11) Amended <input type="checkbox"/>       | (28) SDC-1, (04)(2)(d) |
|   |   |   | (29) SDC-1, (04)(3)(d) |
| Fiscal Year of Cost                           | (06) 20___/20___                        | (12) 20___/20___                            | (30) SDC-1, (04)(4)(d) |
| Total Claimed Amount                          | (07)                                    | (13)  | (31) SDC-1, (04)(5)(d) |
| Less: 10% Late Penalty, not to exceed \$1,000 |   | (14)  | (32) SDC-1, (06)       |
| Less: Prior Claim Payment Received            |   | (15)  | (33)                   |
| Net Claimed Amount                            |   | (16)  | (34)                   |
| Due to Claimant                               | (08)                                    | (17)  | (35)                   |
| Due to State                                  |   | (18)  | (36)                   |

**(37) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file claims with the State of California for costs mandated by Chapter 160, Statutes of 1993, and Chapter 1262, Statutes of 1994, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 160, Statutes of 1993, and Chapter 1262, Statutes of 1994.

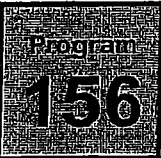
The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 160, Statutes of 1993, and Chapter 1262, Statutes of 1994, set forth on the attached statements.

Signature of Authorized Officer \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
 Type or Print Name Title

(38) Name of Contact Person for Claim Telephone Number ( ) - Ext.

E-Mail Address \_\_\_\_\_



**SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS**  
**Certification Claim Form**  
**Instructions**

**FORM**  
**FAM-27**

- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address was enclosed with the letter regarding the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form SDC-1 and enter the amount from line (11).
- (08) Enter the same amount as shown on line (07).
- ~~(09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.~~
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form SDC-1, line (11).
- (14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., SDC-1, (03)(a), means the information is located on form SDC-1, block (03), line (a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. Completion of this data block will expedite the payment process.
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

**SUBMIT A SIGNED, ORIGINAL FORM FAM-27 WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS (NO COPIES NECESSARY) TO:**

*Address, if delivered by U.S. Postal Service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 P.O. Box 942850  
 Sacramento, CA 94250

*Address, if delivered by other delivery service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursements Section  
 Division of Accounting and Reporting  
 3301 C Street, Suite 500  
 Sacramento, CA 95816

|  |                             |
|--|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>CLAIM SUMMARY</b> | <b>FORM</b><br><b>SDC-1</b> |
|--|-----------------------------|

|               |  |             |
|---------------|--|-------------|
| (01) Claimant | (02) Type of Claim                     | Fiscal Year |
|               | Reimbursement <input type="checkbox"/> | 19__/19__   |
|               | Estimated <input type="checkbox"/>     |             |

**Claim Statistics**

|   |  |
|---|--|
| (03)(a) Number of requests for "choice" transfers out of the district of residence      |  |
| (b) Number of "choice" transfers out of the district of residence granted               |  |
| (c) Number of requests for "choice" transfers into the district of choice               |  |
| (d) Number of "choice" transfers into the district of choice that were granted          |  |
| (e) Number of "choice" transfer appeals filed, when denied by the district of residence |  |

| Direct Costs                         | Object Accounts       |                        |                     |       |
|--------------------------------------|-----------------------|------------------------|---------------------|-------|
| (04) Reimbursable Components:        | (a)                   | (b)                    | (c)                 | (d)   |
|                                      | Salaries and Benefits | Materials and Supplies | Contracted Services | Total |
| 1. Information Requests              |                       |                        |                     |       |
| 2. Implementing Pupil Transfers      |                       |                        |                     |       |
| 3. Data Collection and Reporting     |                       |                        |                     |       |
| 4. Court-ordered Desegregation Plans |                       |                        |                     |       |
| 5. Appeals Process                   |                       |                        |                     |       |
| (05) Total Direct Costs              |                       |                        |                     |       |

**Indirect Costs**

|                                      |   |   |
|--------------------------------------|---|---|
| (06) Indirect Cost Rate              | [From J-380 or J-580]                       | % |
| (07) Total Indirect Costs            | [Line (06) x (Line (05)(d) - line (05)(c))] |   |
| (08) Total Direct and Indirect Costs | [Line (05)(d) + line (07)]                  |   |

**Cost Reduction**

|  |                                       |
|--|---------------------------------------|
| (09) Less: Offsetting Savings, if applicable   |                                       |
| (10) Less: Other Reimbursements, if applicable |                                       |
| (11) Total Claimed Amount                      | [Line (08) - (Line (09) + Line (10))] |

|   |                             |
|---|-----------------------------|
| <b>SCHOOL DISTRICT OF CHOICE AND CHOICE TRANSFER APPEALS</b><br><b>CLAIM SUMMARY</b><br><b>Instructions</b> | <b>FORM</b><br><b>SDC-1</b> |
|---|-----------------------------|

- (01) Enter the name of the claimant.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.
- Form SDC-1 must be filed for a reimbursement claim. Do not complete form SDC-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form SDC-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the following statistical information:
- (a) Number of requests for "choice" transfers out of the district of residence.
  - (b) Number of "choice" transfers out of the district of residence granted.
  - (c) Number of requests for "choice" transfers into the district of choice. (Applicable only to districts which have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
  - (d) Number of "choice" transfers into the district of choice. (Applicable only to districts which have adopted the choice plan, and are filing claims for reimbursement as a result of their concurrent status as a "district of residence".)
  - (e) Number of "choice" transfer appeals filed where a district of residence denied the choice transfer pursuant to § 48209.1 or 48409.7. (Applicable only to county offices of education.)
- (04) Reimbursable Components. For each reimbursable component enter the totals from form SDC-2 line (05), columns (d), (e), and (f) to form SDC-1, block (04) columns (a), (b), and (c) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total block (05) columns (a), through (d).
- (06) Indirect Cost Rate. Enter the indirect cost rate from the Department of Education form J-380 or J-580, as applicable, for the fiscal year of the costs.
- (07) Total Indirect Costs. Enter the result of multiplying the difference of Total Direct Costs, line (05)(d) and Contracted Services, line (05)(c) by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of line (05)(d) and line (07).
- (09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements, if applicable. Enter the amount of fees that could have been collected by the school district as authorized under the California Public Records Act (Government Code § 6250 et. seq.) for providing information requested by interested persons regarding its schools. In addition, enter the amount of any other reimbursements received from any source (i.e., service fees collected, federal funds, other state funds, etc.) which reimbursed any portion of the mandated cost program. Submit a detailed schedule of the reimbursement sources and amounts.
- (11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder of this line and carry the amount forward to form FAM-27, line (07), for the Estimated Claim, or line (13), for the Reimbursement Claim.



|   |                             |
|---|-----------------------------|
| <b>MANDATED COSTS</b><br><b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT/ACTIVITY COST DETAIL</b> | <b>FORM</b><br><b>SDC-2</b> |
|---|-----------------------------|

|               |                                      |
|---------------|--------------------------------------|
| (01) Claimant | (02) Fiscal Year Costs Were Incurred |
|---------------|--------------------------------------|

(03) Reimbursable Component: Check only one box per form to identify the component being claimed.

|  |  |
|--|--|
| <input type="checkbox"/> Information Requests          | <input type="checkbox"/> Court-ordered Desegregation Plans |
| <input type="checkbox"/> Implementing Pupil Transfers  | <input type="checkbox"/> Appeal Process                    |
| <input type="checkbox"/> Data Collection and Reporting |  |

(04) Description of Expenses: Complete columns (a) through (f). **Object Accounts**

| (a)<br>Employee Names, Job Classifications, Functions Performed<br>and<br>Description of Expenses | (b)<br>Hourly Rate<br>or<br>Unit Cost | (c)<br>Hours Worked<br>or<br>Quantity | Object Accounts                 |                                  |                               |
|---|---------------------------------------|---------------------------------------|---------------------------------|----------------------------------|-------------------------------|
|   |                                       |                                       | (d)<br>Salaries and<br>Benefits | (e)<br>Materials and<br>Supplies | (f)<br>Contracted<br>Services |
|   |                                       |                                       |                                 |                                  |                               |

|            |                      |          |                      |                      |  |  |  |
|------------|----------------------|----------|----------------------|----------------------|--|--|--|
| (05) Total | <input type="text"/> | Subtotal | <input type="text"/> | Page: _____ of _____ |  |  |  |
|------------|----------------------|----------|----------------------|----------------------|--|--|--|

|  |               |
|--|---------------|
| <b>SCHOOL DISTRICT OF CHOICE: TRANSFERS AND APPEALS</b><br><b>COMPONENT/ACTIVITY COST DETAIL</b><br>Instructions | FORM<br>SDC-2 |
|--|---------------|

- (01) Enter the name of the claimant.
- (02) Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form SDC-2 shall be prepared for each component which applies.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of their activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contracted services, etc. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed. If the descriptions are incomplete, the claim cannot be processed for payment.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed, or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

| Object/<br>Subobject<br>Accounts | Columns  |              |   |  |   |                                      | Submit these<br>supporting<br>documents<br>with the claim |
|----------------------------------|--|--------------|---|--|---|--------------------------------------|---|
|                                  | (a)  | (b)          | (c)   | (d)  | (e)   | (f)                                  |   |
| Salaries                         | Employee Name                                      | Hourly Rate  | Hours Worked                                    | Salaries =<br>Hourly Rate<br>x<br>Hours Worked |   |                                      |   |
| Benefits                         | Title<br><br>Activities Performed                  | Benefit Rate |   | Benefits =<br>Benefit Rate<br>x<br>Salaries    |   |                                      |   |
| Materials and Supplies           | Description of Supplies Used                       | Unit Cost    | Quantity Used                                   |  | Cost =<br>Unit Cost<br>x<br>Quantity Consumed |                                      |   |
| Contracted Services              | Name of Contractor<br><br>Specific Tasks Performed | Hourly Rate  | Hours Worked<br><br>Inclusive Dates for Service |  |   | Itemized Cost for Services Performed | Invoice   |

- (05) Total line (04), columns (d), (e), and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (d), (e), and (f) to form SDC-1, block (04) columns (a), (b), and (c) in the appropriate row.



**JOHN CHIANG**  
**California State Controller**  
Division of Accounting and Reporting

**Exhibit B**

November 1, 2011

Nancy Patton, Interim Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: School District of Choice: Transfers and Appeals, 11-4451-I-05  
Chula Vista Elementary School District, Claimant  
Statutes 1993, Chapter 160  
Fiscal Year 1997-1998

Dear Ms. Patton:

We have reviewed the Incorrect Reduction Claim (IRC) submitted by the Chula Vista Elementary School District on July 29, 2011. Based on this review we have discovered that the IRC was not filed within the timeframe required by the regulations. Pursuant to the California Code of Regulations, Title 2, Section 1185(c), all incorrect reduction claims shall be filed with the Commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction. Our records show that an adjustment letter was sent to the district on January 15, 2002, advising the claimant of the reduction. Attached for your information is a copy of the letter. Therefore, we believe that the IRC could not have been filed after January 15, 2005.

If you have any questions, please contact Dennis Speciale at (916) 324-0254 or e-mail to [dspeciale@sco.ca.gov](mailto:dspeciale@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "JAY LAL", with a long horizontal flourish extending to the right.

JAY LAL, Manager  
Local Reimbursements Section

Attachment

cc: Richard Chivaro, Chief Counsel, State Controller's Office



Received  
November 1, 2011  
Commission on  
State Mandates  
s3708

**KATHLEEN CONNELL**  
CONTROLLER OF THE STATE OF CALIFORNIA  
DIVISION OF ACCOUNTING AND REPORTING

JANUARY 15, 2002

BD OF TRUSTEES  
CHULA VISTA ELEMENTARY SD  
SAN DIEGO COUNTY  
84 EAST J STREET  
CHULA VISTA CA 91910-6199

DEAR CLAIMANT:

RE: SCH DIST CHOICE CH1262/94

WE HAVE REVIEWED YOUR 1997/1998 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

|                               |    |           |
|-------------------------------|----|-----------|
| AMOUNT CLAIMED                |    | 25,081.00 |
| ADJUSTMENT TO CLAIM:          |    |           |
| INDIRECT COSTS OVERSTATED     | -  | 1,197.00  |
| INTRADISTRICT COST ADJUSTMENT | -  | 23,884.00 |
| LESS: TOTAL ADJUSTMENTS       | -  | 25,081.00 |
|                               |    | -----     |
| CLAIM AMOUNT APPROVED         |    | 0.00      |
|                               |    | -----     |
| AMOUNT DUE CLAIMANT           | \$ | 0.00      |
|                               |    | =====     |

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT HIEP PHAM AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875.

SINCERELY,

*GINNY BRUMMELS*  
GINNY BRUMMELS  
MANAGER

## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
 SACRAMENTO, CA 95814  
 PHONE: (916) 323-3562  
 FAX: (916) 445-0278  
 E-mail: csminfo@csm.ca.gov



March 18, 2016

Mr. Keith Petersen  
 SixTen & Associates  
 P.O. Box 340430  
 Sacramento, CA 95834-0430

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

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*School District of Choice: Transfers and Appeals, 11-4451-I-05*  
 Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14  
 Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)  
 Fiscal Years: 1997-1998  
 Chula Vista Elementary School District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

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

### Written Comments

Written comments may be filed on the draft proposed decision by **April 8, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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

### Hearing

This matter is set for hearing on **Friday, May 27, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 13, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey  
 Executive Director

**ITEM \_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, 48209.14,  
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)

*School District of Choice: Transfers and Appeals*

Fiscal Year 1997-1998

11-4451-I-05

Chula Vista Elementary School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This incorrect reduction claim (IRC) challenges the State Controller’s (Controller’s) finding that the Chula Vista Elementary School District (claimant) claimed unallowable costs of \$25,081 for the *School District of Choice* program for fiscal year 1997-1998. The following issues are addressed:

- Whether the claimant filed the IRC in a timely manner; and
- Whether the Controller initiated the audit in a timely manner.

**The School District of Choice Program**

In 1993 and 1994, the Legislature enacted statutes authorizing school districts to accept and enroll pupils who do not reside in the district upon request to transfer to their “school district of choice,” also known as an interdistrict transfer.<sup>1</sup> The statutes also established the right of a parent or guardian of a pupil to appeal any transfer request denial to the county board of education.

In 1995 and 1996, the Commission adopted decisions on two test claims, *School District of Choice* and *Choice Transfer Appeals*, finding that the test claim statutes imposed a partially reimbursable state-mandated program.<sup>2</sup> The parameters and guidelines for the two programs were consolidated in July 1996, and were renamed *School District of Choice: Transfers and*

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<sup>1</sup> Statutes 1993, chapter 160, adding former Education Code section 48209 et seq., effective January 1, 1994.

<sup>2</sup> Commission on State Mandates, *School District of Choice* Statement of Decision, CSM-4451, adopted April 28, 1995, and *Choice Transfer Appeals* Statement of Decision, CSM-4476, adopted May 6, 1996.

*Appeals.* The parameters and guidelines authorize reimbursement for the following groups of activities beginning in 1994: (1) information requests; (2) implementing pupil transfers; (3) data collection and reporting; (4) for districts with court ordered desegregation plans to determine whether the transfer would negatively impact the plan; (5) for county boards of education to establish a process to hear and decide appeals by parents or guardians of pupils whose transfer has been denied by the district of residence.

On September 28, 2002, the Governor signed Statutes 2002, chapter 1032 (AB 3005), an urgency statute that amended the test claim statutes, making the program discretionary. On May 27, 2004, the Commission amended the parameters and guidelines to end reimbursement for the program on September 27, 2002.<sup>3</sup>

### **Procedural History**

Claimant signed its 1997-1998 reimbursement claim on December 16, 1999, and it was received by the Controller on January 6, 2000.<sup>4</sup> The Controller sent a letter to claimant dated April 29, 2009, which the claimant received on May 4, 2009.<sup>5</sup> On May 4, 2009, the claimant requested an explanation from the Controller regarding the reason for the reduction,<sup>6</sup> to which the Controller responded by e-mail on June 2, 2009.<sup>7</sup> The IRC was filed on July 29, 2011.<sup>8</sup> The Controller filed comments on the IRC on November 1, 2011.<sup>9</sup> The claimant did not file a rebuttal to the Controller's comments.

Commission staff issued the Draft Proposed Decision on March 18, 2016.<sup>10</sup>

### **Commission Responsibilities**

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9

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<sup>3</sup> Commission on State Mandates, *School District of Choice: Transfers and Appeals*, 02-PGA-05, adopted May 27, 2004.

<sup>4</sup> Exhibit A, IRC, page 24.

<sup>5</sup> Exhibit A, IRC, page 18. The Controller also alleges that it sent a letter notifying the claimant of the reduction for 1997-1998 on January 15, 2002 (Exhibit B, Controller's Comments on the IRC, page 2), but there is no evidence in the record to support a finding of whether or when this letter was actually sent or that it was received by claimant.

<sup>6</sup> Exhibit A, IRC, pages 20-21.

<sup>7</sup> Exhibit A, IRC, page 20.

<sup>8</sup> Exhibit A, IRC.

<sup>9</sup> Exhibit B, Controller's Comments on the IRC.

<sup>10</sup> Exhibit C, Draft Proposed Decision.

of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the incorrectly reduced costs be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>11</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>12</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>13</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>14</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>15</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

| Issue                     | Description  | Staff Recommendation             |
|---------------------------|--|----------------------------------|
| Timely filing of the IRC. | The Controller argues that the IRC, filed July 29, 2011, was not filed | <i>The IRC was timely filed.</i> |

<sup>11</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>12</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>13</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>14</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>15</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.



|  |  |   |
|--|--|---|
|  | <p>within the three-year period of limitations in the Commission’s regulations, based on an adjustment letter dated January 15, 2002. The claimant contends that it was first notified of an adjustment when it received an adjustment letter dated April 29, 2009. Both letters adjust costs to \$0 and contain the words “intradistrict cost adjustment.”</p> <p>On June 2, 2009, after the claimant requested an explanation about the adjustment, an employee of the State Controller’s Office sent an email explaining that costs claimed for interdistrict transfers (pupils who reside outside the district) are reimbursable, but costs claimed for intradistrict transfers (pupils who reside within the district) are not reimbursable.</p> <p>At the time pertinent to this IRC, former section 1185(b) of the Commission’s regulations stated: “All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller’s remittance advice or other notice of adjustment notifying the claimant of a reduction.”<sup>16</sup></p> <p>And Government Code 17558.5(c) provided: “The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components</p> | <p>For IRCs, the “last element essential to the cause of action” that begins the running of the period of limitations (based on former section 1185 (now § 1185.1) of the Commission’s regulations) is a notice to the claimant of the adjustment that includes the claim components, amounts adjusted, and reason for the adjustment in accordance with Government Code section 17558.5(c).</p> <p>There is no evidence in the record that the January 15, 2002 adjustment letter was mailed or received by the claimant and thus, the Commission cannot find that the period of limitation began to accrue against the claimant with the January 15, 2002 letter. The claimant admits receiving the adjustment letter dated April 29, 2009, and the email from an employee of the Controller on June 2, 2009. Assuming for purposes of argument that either the April 29, 2009 adjustment letter or the June 2, 2009 email provides sufficient notice to the claimant and complies with Government Code section 17558.5(c), the IRC was timely filed on July 29, 2011, within three years of either of these notices.</p> |
|--|--|---|

<sup>16</sup> This regulation has since been renumbered as California Code of Regulations, title 2, section 1185.1(c).

|                                 |   |   |
|---------------------------------|---|---|
|                                 | adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.” <sup>17</sup>   |   |
| Timely initiation of the audit. | <p>At the time the underlying reimbursement claims were filed, Government Code section 17558.5 stated: “A reimbursement claim for actual costs filed by a local agency or school district ... is subject to an audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.” The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit may occur.</p> <p>Here, the claimant states that funds were appropriated for this program, and the Controller has not filed any evidence to the contrary.<sup>18</sup> Thus, the claim is subject to the initiation of an audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed.” Because the reimbursement claim was filed on January 6, 2000, as indicated by the claimant and the date stamp on the claim, the Controller had until December 31, 2002, to initiate the audit.</p> | <p><i>There is no evidence that the Controller timely initiated the audit, and thus, the audit is void.</i></p> <p>There is no evidence in the record to support a finding that the Controller initiated the audit by the December 31, 2002 deadline, so staff cannot find that it was initiated within the two-year period of limitations in Government Code section 17558.5(a).</p> <p>Failure to timely initiate the audit within the two-year deadline is a jurisdictional bar to any reductions made by the Controller of claimant’s reimbursement claims. Therefore, the audit is void.</p> |

**Staff Analysis**

**A. The IRC Was Timely Filed.**

<sup>17</sup> See former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

<sup>18</sup> Exhibit A, IRC, pages 14-15.

The Controller argues that the IRC, filed July 29, 2011, was not filed within the three-year period of limitations in the Commission’s regulations based on an adjustment letter dated January 15, 2002.<sup>19</sup> Staff finds that the IRC was timely filed.

Government Code section 17558.5(c) requires the Controller to notify the claimant of any adjustment to a claim for reimbursement that results from an audit or review. The “notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment.”<sup>20</sup> Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

Since 1999, the Commission’s regulations have provided a period of limitation for filing an IRC. At the time the reimbursement claim in this case was filed in 2000, former section 1185(b) of the Commission’s regulations required IRCs to be “submitted to the Commission no later than three (3) years following the date of the State Controller’s remittance advice notifying the claimant of a reduction.”<sup>21</sup> The issue is when the three-year period began to run.

For IRCs, the “last element essential to the cause of action” that begins the running of the period of limitation pursuant to Government Code section 17558.5 and former section 1185 (now § 1185.1) of the Commission’s regulations, is a notice to the claimant of the adjustment that includes the reason for the adjustment. At the time the Controller’s first letter was allegedly issued in 2002, Government Code section 17558.5(b) provided in pertinent part:

The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.<sup>22</sup>

In this case, the Controller argues that the statute of limitations began accruing against the claimant on January 15, 2002, the date of the Controller asserts that it first sent “an adjustment letter.” However, the claimant does not mention this letter in its IRC, saying that it first received a “result of review” letter on April 29, 2009.<sup>23</sup>

Moreover, there is no evidence in the record that the January 15, 2002 letter was ever sent to the claimant, or that the claimant received it. Unlike the notice dated April 29, 2009, the January 15, 2002 letter was *not* date-stamped “received” by the claimant. Nor was a proof of service or any other evidence of whether or when the letter was actually sent filed with the Controller’s comments on this matter. A statute of limitations does not accrue until a claimant has sufficient

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<sup>19</sup> Exhibit B, Controller’s Comments on the IRC, page 1.

<sup>20</sup> Former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

<sup>21</sup> Former California Code of Regulations, title 2, section 1185(b) (Register 1999, No. 38, eff. September 13, 1999). This same three-year requirement is currently in section 1185.1(c).

<sup>22</sup> See former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996). This section has since been amended and renumbered as 17558.5(c).

<sup>23</sup> Exhibit A, IRC, page 4.

facts to be on notice or constructive notice that a wrong has occurred. In this respect, Government Code section 17558.5 requires the Controller to “notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review” and the notice is required to specify the claim components and amounts adjusted, and “the reason for the adjustment.” On this record, there is no evidence that the claimant received written notice of the adjustment on or about January 15, 2002, and thus, the Commission cannot find that the period of limitation began to accrue against the claimant with the January 15, 2002 letter.

Like the letter dated in 2002, the April 29, 2009 letter provides some indication of the Controller’s findings. However, it did trigger claimant to e-mail the Controller’s Office seeking an explanation of the reduction. The June 2, 2009, e-mail response from the Controller’s Office to the claimant’s representative, which the claimant’s representative acknowledges receiving,<sup>24</sup> states more clearly the Controller’s reasons for the adjustment, but does not explain why costs were reduced to \$0. In addition, no evidence has been submitted that the contents of the employee’s June 2, 2009 e-mail represent an official act or position of the Controller’s Office.<sup>25</sup> The Controller’s comments in response to this IRC do not address the merits of the adjustment, but argue that the IRC was not timely filed.<sup>26</sup>

Thus, it is not clear from this record if the Controller, in the April 29, 2009 notice or June 2, 2009 e-mail, complied with Government Code section 17558.5(c) by providing sufficient notice to the claimant. Notice that complies with section 17558.5(c) is required before time begins to accrue against a claimant to file an IRC.

Regardless of whether the beginning of the accrual period is measured from the April 29, 2009 adjustment letter or the June 2, 2009 email, both of which were received by the claimant, the IRC filed July 29, 2011 (within three years of these notices) is timely pursuant to the Commission’s regulations.

**B. There Is No Evidence in the Record that the Controller Timely Initiated the Audit and thus, the Audit Findings Are Void.**

The claimant alleges that the Controller did not audit its reimbursement claim in a timely manner because the Controller had two years to audit the reimbursement claim, measured from the date

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<sup>24</sup> Exhibit A, IRC, page 20.

<sup>25</sup> California Code of Regulations, title 2, section 1187.5(c) and Government Code section 11515 authorize the Commission to take official notice of any documents that can be judicially noticed by the courts. Evidence Code section 452(c) permits a court to take judicial notice of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” However, the court in *La Chance v. Valverde* (2012) 207 Cal.App.4th 779, 783 rejected a request to take judicial notice of emails exchanged between a deputy attorney general and opposing counsel as the “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States,” of which judicial notice may be taken.”

<sup>26</sup> Exhibit B, Controller’s Comments on IRC.

the claim was filed in January 2000, so an adjustment made in 2009 is beyond the “statute of limitation” provided in Government Code section 17558.5(a).

At the time the reimbursement claim was filed in January 2000 (and as stated in Section VII. of the parameters and guidelines for this program)<sup>27</sup> Government Code section 17558.5(a), as added in 1995, provided that: “A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to an audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.” The phrase “subject to audit” does not require the completion of the audit. Such a reading adds words to the statute that are not there. If the words of a statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute.<sup>28</sup> The statute, however, sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which provides that when no funds are appropriated for the program, “the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.” In 2002, the statute was clarified by changing “subject to audit” to “subject to the initiation of an audit.”<sup>29</sup>

Here, the claimant states that funds were appropriated for this program, and the Controller has not filed any evidence rebutting this assertion.<sup>30</sup> Thus, the first sentence in the 1995 version of section 17558.5(a) applies, specifying that the reimbursement claim is subject to the initiation of an audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed.” Because the reimbursement claim was filed on January 6, 2000,<sup>31</sup> as indicated by the claimant and the date stamp on the claim, the Controller had until December 31, 2002, to initiate the audit.

Since section 17558.5 is silent as to the act or event that initiates an audit, it cannot, as a matter of law, be stated what that act or event is in all cases. The Controller has the burden of proof to show with evidence in the record that the claimant was notified that an audit was initiated by the statutory deadline to ensure that the claimant not dispose of any evidence or documentation to support its claim for reimbursement. In this IRC, there is no evidence in the record to support a finding that the Controller initiated the audit by the December 31, 2002 deadline.

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<sup>27</sup> Exhibit A, IRC, page 59. Section VII. of the parameters and guidelines describes the “Supporting Data” to claim reimbursement and states the claims are subject to audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.” Like section 17558.5, it also says: “However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

<sup>28</sup> *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.

<sup>29</sup> Statutes 2002, chapter 1128.

<sup>30</sup> Exhibit A, IRC, pages 14-15.

<sup>31</sup> Exhibit A, IRC, page 24.

The Controller alleges that the claimant was notified of the audit reduction by the adjustment letter dated January 15, 2002.<sup>32</sup> If this letter can be verified and shown that it was provided to the claimant, it may be shown that the audit commenced some time before January 15, 2002, and before the December 31, 2002 deadline. However, the Controller's allegation that the adjustment letter was sent on January 15, 2002, was not submitted under penalty of perjury in compliance with the Commission's regulations.<sup>33</sup> The letter does not contain a proof of service, certificate of mailing, or an affidavit by the Controller's Office to verify the date of mailing. By itself, the letter is an out of court document being used for the truth of the matter asserted (i.e., that the claimant was notified of a reduction before the time expired to initiate an audit) and is considered unreliable hearsay.<sup>34</sup> Moreover, there is no evidence in the record that the claimant received this letter. Nor does the April 29, 2009 letter provide information to indicate when the Controller initiated the audit. Thus, there is nothing in this record to verify when the Controller initiated the audit, or any evidence that the claimant was notified that it could not dispose of its supporting documents after the December 31, 2002 deadline.

Therefore, based on this record, staff finds that the Controller did not timely initiate the audit pursuant to Government Code section 17558.5(a) and, therefore, the audit findings are void.

### **Conclusion**

For the reasons specified above, staff finds that the Controller did not timely initiate the audit pursuant to Government Code section 17558.5(a) and, therefore, the audit findings are void.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision to approve the IRC and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate to the claimant the \$25,081 incorrectly reduced, consistent with these findings. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

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<sup>32</sup> Exhibit B, Controller's Comments on the IRC, pages 1-2.

<sup>33</sup> California Code of Regulations, title 2, section 1187.5(b).

<sup>34</sup> *People v. Zunis* (2005) 134 Cal.App.4th Supp. 1, 5.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
 ON:  
 Education Code Sections 48209.1, 48209.7,  
 48209.9, 48209.10, 48209.13, 48209.14,  
 Statutes 1993, Chapter 160 (AB 19),  
 Statutes 1994, Chapter 1262 (AB 2768)  
 Fiscal Year 1997-1998  
 Chula Vista Elementary School District,  
 Claimant

Case No.: 11-4451-I-05  
*School District of Choice: Transfers and Appeals*  
 DECISION PURSUANT TO  
 GOVERNMENT CODE SECTION 17500  
 ET SEQ.; CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, DIVISION 2,  
 CHAPTER 2.5, ARTICLE 7  
 (Adopted May 27, 2016)

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 27, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision] as follows:

| Member  | Vote |
|---|------|
| Ken Alex, Director of the Office of Planning and Research                               |      |
| Richard Chivaro, Representative of the State Controller                                 |      |
| Mark Hariri, Representative of the State Treasurer, Vice Chairperson                    |      |
| Sarah Olsen, Public Member  |      |
| Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson |      |
| Carmen Ramirez, City Council Member   |      |
| Don Saylor, County Supervisor   |      |

## **Summary of the Findings**

This incorrect reduction claim (IRC) challenges the State Controller's (Controller's) finding that the Chula Vista Elementary School District (claimant) claimed unallowable costs of \$25,081 for the *School District of Choice* program for fiscal year 1997-1998. The following issues are addressed:

- Whether the claimant filed the IRC in a timely manner; and
- Whether the Controller initiated the audit in a timely manner.

The Commission finds that the IRC was filed in a timely manner, but there is no evidence in the record that the Controller initiated the audit before the statutory deadline. Therefore, the Commission finds that the Controller's audit is void and the IRC is approved. The Controller is requested, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, to reinstate to the claimant all costs incorrectly reduced.

### **COMMISSION FINDINGS**

#### **I. Chronology**

|            |   |
|------------|---|
| 12/16/1999 | Claimant signed its 1997-1998 reimbursement claim. <sup>35</sup>  |
| 01/06/2000 | Controller received the 1997-1998 reimbursement claim. <sup>36</sup>  |
| 04/29/2009 | Controller sent claimant a letter with "results of [its] review" for the 1997-1998 reimbursement claim. <sup>37</sup> |
| 05/04/2009 | Claimant sent an email requesting an explanation of the "Intradistrict Cost Adjustment of 23,884.00." <sup>38</sup>   |
| 06/02/2009 | Controller e-mailed claimant explaining reduction for 1997-1998. <sup>39</sup>  |
| 07/29/2011 | Claimant filed this IRC. <sup>40</sup>  |
| 11/01/2011 | Controller filed comments on the IRC. <sup>41</sup>   |
| 03/18/2016 | Commission staff issued the Draft Proposed Decision. <sup>42</sup>  |

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<sup>35</sup> Exhibit A, IRC, page 24.

<sup>36</sup> *Ibid.* This is based on a date-stamp in the upper right corner of the document.

<sup>37</sup> Exhibit A, IRC, page 18. Note that Controller alleges that it first sent a letter to claimant on January 15, 2002, see Exhibit B, Controller's Comments on the IRC, page 2, but there is no evidence in the record to support a finding that the letter was received by claimant.

<sup>38</sup> Exhibit A, IRC, pages 20-21.

<sup>39</sup> Exhibit A, IRC, page 20.

<sup>40</sup> Exhibit A, IRC.

<sup>41</sup> Exhibit B, Controller's Comments on the IRC.

<sup>42</sup> Exhibit C, Draft Proposed Decision.



## II. Background

Generally, under California law, each person between the ages of six and 18 years of age is required to attend school located in the district where the parent or guardian of the pupil resides.<sup>43</sup> In 1993 and 1994, the Legislature enacted statutes authorizing school districts to accept and enroll pupils who do not reside in the district upon request to transfer to their “school district of choice.”<sup>44</sup> The “*interdistrict*” transfer of pupils is not allowed, however, if the transfer would negatively impact a court-ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the either the school district of residence or school district of choice.<sup>45</sup> The statutes also established the right of a parent or guardian of a pupil to appeal any transfer request denial to the county board of education.<sup>46</sup>

In 1995 and 1996, the Commission adopted decisions on two test claims, *School District of Choice* and *Choice Transfer Appeals*, finding that the test claim statutes imposed a partially reimbursable state-mandated program.<sup>47</sup> The parameters and guidelines for the *School District of Choice* and *Choice Transfer Appeals* programs were consolidated in July 1996, and the consolidated program was renamed *School District of Choice: Transfers and Appeals*. The parameters and guidelines for the program authorize reimbursement for the following activities beginning in 1994:

1. Information requests

For all school districts to respond to telephone and written inquiries for information regarding alternative pupil attendance choices for its schools, programs, policies, and procedures. These costs shall be offset to the extent that fees may be charged pursuant to the California Public Records Act (Government Code section 6250 et seq.).

2. Implementing Pupil Transfers

For school districts of residence to provide the district of choice information regarding the transferring pupil's completed coursework, attendance, and other academic progress, and otherwise implement the transfer out of pupils, as well as the return transfer of a pupil whose choice transfer has been revoked by the district of choice as the result of a recommendation for expulsion.

3. Data Collection and Reporting

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<sup>43</sup> Education Code section 48200.

<sup>44</sup> Statutes 1993, chapter 160, adding former Education Code section 48209 et seq., effective January 1, 1994.

<sup>45</sup> Former Education Code section 48209.1(b).

<sup>46</sup> Former Education Code sections 48209.9(d) (Stats. 1994, ch. 1262, eff. Sept. 30, 1994).

<sup>47</sup> Commission on State Mandates, *School District of Choice* Statement of Decision, CSM-4451, adopted April 28, 1995, and *Choice Transfer Appeals* Statement of Decision, CSM-4476, adopted May 6, 1996.

For school districts of residence to collect data on the number of transfers granted, denied, or withdrawn, and annually report these statistics to the district governing board and Superintendent of Public Instruction.

#### 4. Court-ordered Desegregation Plans

For school districts of residence with court-ordered desegregation plans to make a determination of whether the transfer to the school district of choice will negatively impact the plan.

#### 5. County Office Appeals

All county boards of education shall be reimbursed for the costs incurred to establish an appropriate, non-complex process to hear and decide appeals filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7 and to respond to an appeal filed by the parent or guardian of any pupil who has been denied a choice transfer by a district of residence pursuant to section 48209.1 or 48209.7.<sup>48</sup>

On September 28, 2002, the Governor signed Statutes 2002, chapter 1032 (AB 3005), an urgency statute that amended the code sections approved in the test claim decision, making the program discretionary. On May 27, 2004, the Commission amended the parameters and guidelines to end reimbursement for the program beginning September 27, 2002.<sup>49</sup>

#### The Controller's Audit and Reduction of Costs

The Controller conducted a desk review of the claimant's reimbursement claim for costs incurred in fiscal year 1997-1998, and reduced costs claimed by \$25,081, the entire amount claimed. The Controller did not prepare an audit report explaining the reduction. However, the following facts are in the record.

The fiscal year 1997-1998 reimbursement claim was signed by the claimant on December 16, 1999 and claimant states that it submitted the claim to the Controller on or about that date.<sup>50</sup> The claim requested reimbursement of \$25,081, based only on the direct costs of \$23,884 for salaries and benefits of employees performing the first activity, "Information Requests," and indirect costs of \$1,197.<sup>51</sup> The description of the expenses claimed states:

COSTS OF RESPONDING TO INFORMATION REQUESTS (BOTH ORALLY AND PROVIDING WRITTEN MATERIAL) REGARDING SCHOOLS WITHIN THE DISTRICT, THESE REQUESTS ARE FROM PARENTS WHO ARE CONSIDERING WHETHER TO REQUEST A SCHOOL (OTHER THAN THEIR SCHOOL OF RESIDENCE) UNDER THE ALTERNATIVE

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<sup>48</sup> Exhibit A, IRC, pages 54-60.

<sup>49</sup> Commission on State Mandates, Amendment to the Parameters and Guidelines, *School District of Choice: Transfers and Appeals*, 02-PGA-05, adopted May 27, 2004.

<sup>50</sup> Exhibit A, IRC, pages 5 and 24. The claim in the record appears to have been date-stamped by the Controller on January 6, 2000.

<sup>51</sup> Exhibit A, IRC, pages 24, 26.

ATTENDANCE OPTIONS OF OPEN ENROLLMENT, INTRA-DISTRICT  
TRANSFER OR INTERDISTRICT TRANSFER.<sup>52</sup>

The reimbursement claim is date-stamped January 6, 2000, which the claimant states is the date the Controller received the reimbursement claim.<sup>53</sup> The Controller has not disputed this fact.

The Controller states that an “adjustment letter” on letterhead of the State Controller was sent on January 15, 2002, addressed to the claimant as follows:

Bd of Trustees  
Chula Vista Elementary SD  
San Diego County  
84 East J Street  
Chula Vista, CA 91910-6199<sup>54</sup>

This letter states that the 1997-1998 reimbursement claim requesting reimbursement of \$25,081 was adjusted to \$0 as follows:

|                               |           |                        |
|-------------------------------|-----------|------------------------|
| Amount Claimed                |           | 25,081.00              |
| Adjustment to Claim:          |           |                        |
| Indirect Costs Overstated     | 1,197.00  |                        |
| Intradistrict Cost Adjustment | 23,884.00 |                        |
| Less: Total Adjustments       |           | 25,081.00              |
| Claim Amount Approved         |           | 0.00                   |
| Amount Due Claimant           |           | \$ 0.00. <sup>55</sup> |

The letter also provides the claimant with the name of the contact person at the Controller’s Office for questions. No other information was provided.

The claimant’s IRC does not mention the January 15, 2002 letter. Instead, claimant acknowledges receipt of only one letter from the Controller’s Office dated April 29, 2009, as follows:

The District received a ‘results of review’ letter dated April 29, 2009, reducing its claim as a result of the desk review. This letter constitutes a demand for repayment and adjudication of the claim.<sup>56</sup>

The letter, dated April 29, 2009, is on the Controller’s letterhead, contains the same address for the claimant as the letter dated January 15, 2002, and provides substantially the same information as the letter allegedly issued on January 15, 2002.<sup>57</sup> Unlike the January 15, 2002 letter provided

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<sup>52</sup> Exhibit A, IRC, page 27.

<sup>53</sup> Exhibit A, IRC, pages 5 and 24.

<sup>54</sup> Exhibit B, Controller’s Comments on IRC, page 2.

<sup>55</sup> Exhibit B, Controller’s Comments on IRC, page 2.

<sup>56</sup> Exhibit A, IRC, page 4.

<sup>57</sup> Exhibit A, IRC, page 18.

by the Controller with its comments on the IRC, however, the April 29, 2009 letter is date-stamped by the claimant “RECEIVED May 04, 2009, CHULA VISTA ELEM SCH DIST ACCOUNTING DEPT.”

On May 4, 2009, the claimant’s representative (SixTen and Associates) sent an email to Kim Nguyen of the State Controller’s Office asking for an explanation about the adjustment as follows:

Chula Vista Elementary (S37035) received an advisory dated April 29, 2009 regarding the Mandate Claim for Program 156, School District of Choice Chapter 1262/94 for fiscal year 1997/1998. The advisory states “Intradistrict Cost Adjustment” of \$23,884.00. The district has requested that we query the state regarding this adjustment and ask for an explanation. As you are listed as the “contact person” on this advisory, would you please provide us with an explanation of the adjustment?<sup>58</sup>

Ms. Nguyen of the Controller’s Office responded by email on May 4, 2009, advising the claimant’s representative to contact Dennis Speciale of the Controller’s Office “for assistance tomorrow.”<sup>59</sup> The claimant’s representative then forwarded the emails to Mr. Speciale that same day.<sup>60</sup>

On June 2, 2009, Mr. Speciale of the Controller’s Office emailed the claimant’s representative at 11:48 a.m., explaining that the adjustment was based on cost items dealing with “Information Requests” for *intradistrict* transfers, or transfers within the district, which are not eligible for reimbursement under this program. Reimbursement is required only for information requests on *interdistrict* transfers. The email states in relevant part the following:

I will do the best I can to explain the adjustment below.

Referencing:

Chula Vista Elementary (S37035)

Program 156, School District of Choice Chapter 1262/94

Fiscal Year: 1997/1998

An adjustment was made, “Intradistrict Cost Adjustment” for \$23,884.00. This adjustment was made specifically for cost items dealing with Information Request. The adjustments criteria are has [sic] follows:

- 1) If a group of cost fall under the description of providing “...information request...” relating to “..*interdistrict district transfer*..” then no adjustments are made to these costs. These are valid costs as they relate to providing interdistrict information requests.
- 2) If a group of cost falls under the description of providing “...information requests...” relating to “..*intradistrict*..” or “..*within the school district*..”,

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<sup>58</sup> Exhibit A, IRC, page 21.

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

<sup>60</sup> Exhibit A, IRC, page 20.

then we will need to remove these cost [sic]. Intradistrict-related cost [sic] are not reimbursable.<sup>61</sup>

At 1:50 p.m. the same day, the claimant's representative acknowledged receipt of the Controller's email.<sup>62</sup>

On December 15, 2009, claimant's representative sent an email to Mr. Speciale of the Controller's Office requesting a copy of the reimbursement claim and annual documents.<sup>63</sup> Claimant states that it received the documents on December 16, 2009.<sup>64</sup>

On July 29, 2011, claimant filed this IRC.

### **III. Positions of the Parties**

#### **A. Chula Vista Elementary School District**

The claimant argues that the \$25,081 reduced is incorrect and should be reinstated. According to claimant, it received notice of the reduction on April 29, 2009 as a result of a Controller desk audit, but with no explanation of the reason for the reduction.<sup>65</sup> The claimant argues that the Controller had two years to audit the reimbursement claim, measured from the date the claim was filed in January 2000, and that an adjustment made in 2009 is too late and beyond the "statute of limitation" provided in Government Code section 17558.5(a).

On the merits, claimant argues that the scope of the activity to provide information is broad, and is not limited to requests for information about interdistrict transfers only. Claimant bases its argument on the plain language of former Education Code section 48209.13, which states the following: "Each school district shall make information regarding its schools, programs, policies, and procedures available to any interested person upon request." Thus, claimant argues that it properly claimed costs for providing information about intradistrict transfers.

#### **B. State Controller's Office**

The Controller argues that the IRC was not timely filed because the adjustment letter dated January 15, 2002, advised claimant of the reduction. Therefore, the IRC filed July 29, 2011, was not filed within the three-year deadline required by the Commission's regulations.<sup>66</sup>

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<sup>61</sup> Exhibit A, IRC, page 20. Intradistrict transfers are the subject of a separate mandated program called *Intradistrict Attendance*, CSM 4454, which required school districts to prepare and adopt rules establishing and implementing a policy of open enrollment within the district for residents of the district; establish and operate a random selection process in excess of schoolsite capacity; determine the attendance area capacity of the schools in the district; and evaluate each request for intradistrict attendance for its impact on district racial and ethnic balances.

<sup>62</sup> Exhibit A, IRC, page 20.

<sup>63</sup> Exhibit A, IRC, page 22.

<sup>64</sup> Exhibit A, IRC, page 6.

<sup>65</sup> Exhibit A, IRC, page 18.

<sup>66</sup> Exhibit B, Controller's Comments on the IRC, pages 1-2.

#### IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>67</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>68</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>69</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>70</sup>

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<sup>67</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>68</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>69</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (supra.) 162 Cal.App.4th 534, 547.

<sup>70</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>71</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>72</sup>

**A. The IRC Was Timely Filed.**

The Controller argues that the IRC, filed July 29, 2011, was not filed within the three-year period of limitation in the Commission’s regulations based on the adjustment letter dated January 15, 2002.<sup>73</sup> The Commission finds, based on the evidence in the record, that the IRC was timely filed.

Under the statutory mandates scheme, a reimbursement claim filed by a local agency or school district is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5(a). Government Code section 17558.5(c) requires the Controller to notify the claimant of any adjustment to a claim for reimbursement that results from an audit or review. The “notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment.”<sup>74</sup> Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

Since 1999, the Commission’s regulations have provided a period of limitation for filing an IRC. At the time the reimbursement claim in this case was filed in 2000, former section 1185(b) of the Commission’s regulations required IRCs to be “submitted to the Commission no later than three (3) years following the date of the State Controller’s remittance advice notifying the claimant of a reduction.”<sup>75</sup> The period of limitation for filing an IRC is currently in section 1185.1(c), which similarly provides that “[a]ll incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller’s final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim.” An IRC is deemed incomplete by Commission staff and returned to the claimant if it is not timely filed.<sup>76</sup>

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<sup>71</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>72</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<sup>73</sup> Exhibit B, Controller’s Comments on the IRC, page 1.

<sup>74</sup> Former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

<sup>75</sup> Former California Code of Regulations, title 2, section 1185(b) (Register 1999, No. 38, eff. September 13, 1999).

<sup>76</sup> California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

“Critical to applying a statute of limitations is determining the point when the limitations period begins to run.”<sup>77</sup> Thus, given the multiple documents issued by the Controller in this case, the threshold issue is when the right to file an IRC based on the Controller’s reductions accrued, and consequently when the applicable period of limitations began to run against the claimant.

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.<sup>78</sup> The California Supreme Court has described statutes of limitations as follows:

A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): “[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.”<sup>79</sup>

The general rule, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.<sup>80</sup> Generally, the Court noted, “a plaintiff must file suit within a designated period after the cause of action accrues.”<sup>81</sup> The cause of action accrues, the Court said, “when [it] is complete with all of its elements.”<sup>82</sup> Put another way, the courts have held that “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’”<sup>83</sup> Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional

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<sup>77</sup> *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

<sup>78</sup> *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

<sup>79</sup> *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

<sup>80</sup> See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 [“[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time.”]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 [“A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time.”].

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

<sup>83</sup> *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].



injuries later become manifest,<sup>84</sup> those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or she has been injured.<sup>85</sup> The courts do not toll a statute of limitations because the full extent of the claim, or its legal significance, or even the identity of a defendant, is not yet known at the time the cause of action accrues.<sup>86</sup>

For IRCs, the “last element essential to the cause of action” that begins the running of the period of limitation pursuant to former section 1185 (now § 1185.1) of the Commission’s regulations, is notice to the claimant of the adjustment that includes the claim components, amounts adjusted, and the reason for the adjustment. As enacted in 1995, Government Code section 17558.5(b) provided in pertinent part:

The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance

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<sup>84</sup> *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 [“Generally, statutes of limitation are triggered on the date of injury, and the plaintiff’s ignorance of the injury does not toll the statute... [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to detect injuries or the breach of fiduciary relationship.*” (Emphasis added.); *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 802, where the court held that for statute of limitations purposes, a later physical injury caused by the same conduct “can, in some circumstances, be considered ‘qualitatively different’.” The court limited its holding to latent disease cases, and did not decide whether the same rule applied in other contexts. (*Id.* p. 792.)

<sup>85</sup> *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient’s body, and not medical devices implanted in it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord’s belated discovery of that his homeowner’s policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 [“It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations.”].

<sup>86</sup> *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 [“Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations.”]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 [“The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer.”].

advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.<sup>87</sup>

An IRC can be maintained and filed with the Commission to challenge the Controller's findings pursuant to Government Code sections 17551 and 17558.7, as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the claim components, amounts adjusted, and the reason for adjustment in accordance with Government Code section 17558.5. The Commission's regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5(c), in whatever written form provided by the Controller, to file an IRC with the Commission, or otherwise be barred from such action. The IRC must include a detailed narrative describing the alleged reductions and a copy of any "written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance."<sup>88, 89</sup>

In this case, the Controller contends that the statute of limitations began accruing against the claimant on January 15, 2002, the date the Controller asserts that it sent the first letter. However, the claimant does not mention this letter in its IRC, and instead contends that it first received a letter from the Controller on April 29, 2009, as follows:

This incorrect reduction claim is timely filed. Title 2, CCR, Section 1185(b), requires incorrect reduction claims to be filed no later than three years following the date of the Controller's "written notice of adjustment notifying the claimant of a reduction." The Controller conducted a desk review of the District's FY 1997-98 annual claim. The District received a "results of review" letter dated April 29, 2009, reducing its claim as a result of the desk review. This letter constitutes a demand for repayment and adjudication of the claim.<sup>90</sup>

There is no evidence in the record that the January 15, 2002 letter was ever sent to the claimant, or that the claimant received it. Unlike the letter dated April 29, 2009, the January 15, 2002 letter was *not* date-stamped "received" by the claimant. And as indicated above, a statute of limitations does not accrue until a claimant has sufficient facts to be on notice or constructive notice that a wrong has occurred. In this respect, Government Code section 17558.5 requires the Controller to "notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review" and the notice is required to specify the claim components, amounts adjusted, and the "the reason for the adjustment." Evidence to support the Controller's contention that the January 15, 2002 letter was served on the claimant could come, for example, from a declaration or proof of service by

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<sup>87</sup> See former Government Code section 17558.5(b) (Stats. 1995, ch. 945, eff. July 1, 1996).

<sup>88</sup> California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

<sup>89</sup> This interpretation is consistent with previously adopted Commission decisions. See Commission on State Mandates, Decision, *Collective Bargaining*, 05-4425-I-11, adopted December 5, 2014, and Decision, *Handicapped and Disabled Students*, 05-4282-I-03 adopted September 25, 2015.

<sup>90</sup> Exhibit A, IRC, page 4.

the Controller's Office setting forth the title of the document served, the name and business address of the person making the service, the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and that the envelope was sealed and deposited in the mail with the postage fully prepaid.<sup>91</sup> The fact of service could also be supported by the filing of the return receipt for certified mail with a post office stamp.<sup>92</sup> Evidence in the record that the January 15, 2002 letter was properly mailed or served is required before the Commission can presume under the law that the letter was received in the ordinary course of mail, absent evidence from the claimant to the contrary.<sup>93</sup> However, no such facts are contained in the record for this IRC.<sup>94</sup> Therefore, on this record, there is no evidence that the claimant received written notice of the adjustment on or about January 15, 2002 and, thus, the Commission cannot find that the period of limitation began to accrue against the claimant with the January 15, 2002 letter. Even if evidence were filed to support a finding that the January 15, 2002 letter was mailed to and received by the claimant, additional analysis would still be required to determine whether the letter provided sufficient notice under Government Code section 17558.5 to trigger the accrual of the period of limitation to file an IRC.

The second letter dated April 29, 2009, which the claimant admits receiving on May 4, 2009, contains the same information as the January 15, 2002 letter. Both letters identify the amount adjusted, which was the full amount claimed for the one component of providing information to parents and guardians about alternative pupil attendance choices. However, the later letter prompted the claimant to contact the Controller's Office on May 4, 2009, to ask for an explanation of the adjustment. This raises the issue of whether the information contained in the letter of April 29, 2009, sufficiently specifies the reason for the adjustment as required by Government Code section 17558.5 to trigger accrual of the period of limitation.

Assuming for the purposes of argument that either the April 29, 2009 letter or the June 2, 2009 email, both of which were received by the claimant, complies with Government Code section 17558.5(c), the IRC was timely filed. Whether the beginning of the accrual period is measured from the April 29, 2009 adjustment letter or the June 2, 2009 email, the Commission finds that the IRC filed July 29, 2011 (less than three years after either of these notices) is timely because it complies with the three-year period of limitation in the Commission's regulations.

Accordingly, based on evidence in the record, the Commission finds that this IRC was timely filed.

**B. There Is No Evidence in the Record that the Controller Timely Initiated the Audit and thus, the Audit Findings Are Void.**

The claimant contends that the Controller did not audit its reimbursement claim in a timely manner. The claimant argues that the Controller had two years to audit the reimbursement claim,

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<sup>91</sup> See, e.g., Code of Civil Procedure section 1013a.

<sup>92</sup> *Call v. Los Angeles County Gen. Hosp.* (1978) 77 Cal.App.3d 911, 916-917.

<sup>93</sup> Evidence Code section 641; *Bear Creek Master Ass'n. v. Edwards* (2005) 130 Cal.App.4th 1470, 1486.

<sup>94</sup> In addition, the Controller's allegation of fact (that the letter was sent) was not submitted under penalty of perjury as required by section 1187.5(b) of the Commission's regulations.

measured from the date the claim was filed in January 2000, and that an adjustment made in 2009 is too late and beyond the “statute of limitation” provided in Government Code section 17558.5(a).

At the time the reimbursement claim was filed in January 2000 (and as stated in Section VII. of the parameters and guidelines for this program),<sup>95</sup> Government Code section 17558.5(a), as added in 1995, provided that:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to an audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>96</sup>

The plain language of Government Code section 17558.5, as added in 1995, provides that reimbursement claims are “subject to audit” no later than two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit. Such a reading adds words to the statute that are not there. If the words of a statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute.<sup>97</sup> The statute, however, sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which provides that when no funds are appropriated for the program, “the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

This interpretation is also consistent with the Legislature’s 2002 amendment to Government Code section 17558.5, effective January 1, 2003, clarifying that “subject to audit” means “subject to the initiation of an audit,” as follows in underline and strikeout:

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<sup>95</sup> Exhibit A, IRC, page 59. Section VII. of the parameters and guidelines describes the “Supporting Data” to claim reimbursement as follows:

For auditing purposes, all costs claimed must be traceable to source documents (e.g. employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs. Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

<sup>96</sup> Government Code section 17558.5, as added by Statutes 1995, chapter 945, effective July 1, 1996.

<sup>97</sup> *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than two three years after the end of the calendar year in which 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 ~~made~~-filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>98, 99</sup>

Here, the claimant states that funds were appropriated for this program, and the Controller has not filed any evidence rebutting this assertion.<sup>100</sup> Thus, the first sentence in the 1995 version of section 17558.5(a) applies, specifying that the reimbursement claim is subject to the initiation of an audit “no later than two years after the end of the calendar year in which the reimbursement claim is filed.” Because the reimbursement claim was filed on January 6, 2000,<sup>101</sup> as indicated by the claimant and the date stamp on the letter, the Controller had until December 31, 2002, to initiate the audit.

The Legislature did not specifically define the event that initiates the audit and, unlike other auditing agencies that have adopted formal regulations to clarify when the audit begins (which can be viewed as the controlling interpretation of a statute), the Controller has not adopted a regulation for the audits of state-mandate reimbursement claims.<sup>102</sup> Since section 17558.5 is silent as to the act or event that initiates an audit, the Commission cannot, as a matter of law, state what the act or event is in all cases. Rather, the Commission must determine when the audit commenced and whether it was timely initiated based on the evidence in the record.

The requirement to initiate an audit no later than two years after the end of the calendar year in which the reimbursement claim is filed requires a unilateral act of the Controller. And failure to timely initiate the audit within the two-year deadline is a jurisdictional bar to any reductions made by the Controller of claimant’s reimbursement claims.<sup>103</sup> In this respect, the initiation provisions of Government Code section 17558.5 are better characterized as a statute of repose,

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<sup>98</sup> Statutes 2002, chapter 1128.

<sup>99</sup> This section was amended again (Stats. 2004, ch. 313, eff. Jan. 1, 2005) to require an audit to be completed not later than two years after it is commenced.

<sup>100</sup> Exhibit A, IRC, pages 14-15.

<sup>101</sup> Exhibit A, IRC, page 24.

<sup>102</sup> See, e.g., regulations adopted by the California Board of Equalization (title 18, section 1698.5, stating that an “audit engagement letter” is a letter “used by Board staff to confirm the start of an audit or establish contact with the taxpayer.”).

<sup>103</sup> Courts have ruled that when a deadline is for the protection of a person or class of persons, and the language of the statute as a whole indicates the Legislature’s intent to enforce the deadline, the deadline is mandatory. (*People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (18 Cal.3d 901, 909-910). Because the deadlines in Government Code section 17558.5 are mandatory and not directory, the requirement to meet the statutory deadline is jurisdictional.

rather than a statute of limitations. The statute provides a period during which an audit or review may be initiated, and after which the claimant may enjoy repose, dispose of any evidence or documentation to support their claims, and assert a defense that the audit is not timely and therefore void.

The court in *Giest v. Sequoia Ventures, Inc.*, described a statute of repose as follows:

Unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a *specific event occurs*, regardless of whether a cause of action has accrued or whether any injury has resulted.” [citations] A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded.<sup>104</sup>

Described by another court in *Inco Development Corp. v. Superior Court*,<sup>105</sup> the characteristics of a statute of repose include that it is “not dependent upon traditional concepts of accrual of a claim, but is tied to an independent, objectively determined and verifiable event...”

However, whether analyzed as a statute of repose, or a statute of limitations, the unilateral act that must occur before the expiration of the statutory period may be interpreted similarly. That is, the filing of a civil action may be interpreted analogously to the initiation of an audit, to the extent that the initiation of the audit, like the commencement of a civil action, terminates the running of the statutory period, and vests authority in the party to proceed.<sup>106</sup> However, unlike a plaintiff filing a complaint in court within a statutory time period to protect against a statute of limitations defense barring the matter, Government Code section 17558.5 does not require the Controller to lodge a document to *prove* it timely initiated an audit. Nevertheless, because it is the Controller’s authority to audit that must be exercised within a specified time, it must be within the Controller’s exclusive control to meet or fail to meet the deadline imposed. The Controller has the burden of proof on this issue and must show with evidence in the record that the claimant was notified that an audit was being initiated by the statutory deadline to ensure that the claimant not dispose of any evidence or documentation to support its claim for reimbursement. In this IRC, there is no evidence in the record to support a finding that the Controller initiated the audit by the December 31, 2002 deadline.

The Controller alleges that the claimant was notified of the audit reduction by the letter dated January 15, 2002.<sup>107</sup> Since the letter indicates that the Controller was reducing costs to \$0, then it can logically be presumed, *if* this letter can be verified and shown that it was provided to the

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<sup>104</sup> *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.

<sup>105</sup> *Inco Development Corp. v. Superior Court* (2005), 131 Cal.App.4th 1014.

<sup>106</sup> *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [“A party does not have a vested right in the time for the commencement of an action [and nor] does he have a vested right in the running of the statute of limitations prior to its expiration.” (citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80; *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468)].

<sup>107</sup> Exhibit B, Controller’s Comments on the IRC, pages 1-2.

claimant, that the audit commenced some time before the January 15, 2002 date of the letter and, thus, before the December 31, 2002 deadline.

However, the Controller's allegation that the letter was sent on January 15, 2002, was not submitted under penalty of perjury in compliance with the Commission's regulations.<sup>108</sup> The letter itself does not contain a proof of service, certificate of mailing, or an affidavit by the Controller's Office to verify the date of mailing. By itself, the letter is an out of court document being used for the truth of the matter asserted (i.e., that the claimant was notified of a reduction before the time expired to initiate an audit) and is considered unreliable hearsay.<sup>109</sup> And, as explained in the section above, there is no evidence in the record that the claimant received this letter. Unlike the letter dated April 29, 2009, which the claimant states is the first notice received,<sup>110</sup> the January 15, 2002 letter is not date stamped "received" by the claimant. Moreover, the April 29, 2009 letter does not provide any information to indicate when the Controller initiated the audit.<sup>111</sup> Thus, there is nothing in this record to verify when the Controller initiated the audit, or any evidence that the claimant was notified that it could not dispose of its supporting documents after the December 31, 2002 deadline.<sup>112</sup>

Therefore, based on this record, the Commission finds that the Controller did not timely initiate the audit pursuant to Government Code section 17558.5(a) and, therefore, the audit findings are void.

## **V. Conclusion**

For the reasons discussed above, the Commission approves this IRC. The Commission requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate to the claimant the \$25,081 incorrectly reduced, consistent with these findings.

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<sup>108</sup> California Code of Regulations, title 2, section 1187.5(b).

<sup>109</sup> *People v. Zunis* (2005) 134 Cal.App.4th Supp. 1, 5.

<sup>110</sup> Exhibit A, IRC, page 4.

<sup>111</sup> Exhibit A, IRC, page 18.

<sup>112</sup> The facts in this case are unlike a previous IRC decided by the Commission (*Health Fee Elimination*, 05-4206-I-06, March 27, 2015) where the record contained declarations and admissions from the claimant showing that it received actual notice that an audit was being initiated before the deadline imposed by Government Code section 17558.5(a), which was sufficient to verify that finding.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 18, 2016, I served the:

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

*School District of Choice: Transfers and Appeals, 11-4451-I-05*

Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14

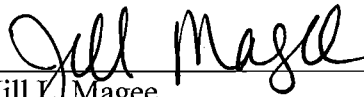
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)

Fiscal Years: 1997-1998

Chula Vista Elementary School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 18, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/14/16

**Claim Number:** 11-4451-I-05

**Matter:** School District of Choice: Transfer and Appeals

**Claimant:** Chula Vista Elementary School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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**BETTY T. YEE**  
California State Controller

**RECEIVED**  
May 02, 2016  
**Commission on  
State Mandates**

**LATE FILING**

**Exhibit D**

April 29, 2016

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing  
School District of Choice: Transfers and Appeals, 11-4451-I-05  
Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14  
Statutes 1993, Chapter 160 (AB19), Statutes 1994, Chapter 1262 (AB 2768)  
Fiscal Year: 1997-1998  
Chula Vista Elementary School District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) reviewed the Commission on State Mandates' (CSM) draft proposed decision related to the above incorrect reduction claim (IRC) filed by Chula Vista Elementary School District (Chula Vista). We do not concur with the conclusion and recommendation.

Pursuant to the California Code of Regulations, Title 2, section 1185.1(c), all IRCs shall be filed with the CSM no later than three (3) years following the date of the SCO's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction. The adjustment letter was sent to Chula Vista prior to the December 31, 2002 deadline, per the 1995 version of Government Code section 17558.5.

In our review, we found that the same adjustment letter, sent to Chula Vista on January 15, 2002, was also sent to 509 other school districts on that date for the same program and fiscal year. Furthermore, of the 509 other schools that received the adjustment letter, Chula Vista's and 42 other school districts' claims were reduced to zero as a result of adjustments for disallowed costs. The SCO was within the timeframe to initiate an audit of the claim filed and received by the SCO on January 6, 2000.

The second adjustment letter, dated April 29, 2009, was generated in error due to a system glitch while processing interest payments. This second adjustment letter was only sent to Chula Vista and the 42 other school districts whose claims were reduced to zero. Of these 43 claimants, Chula Vista was the only claimant contesting that they did not receive the original adjustment letter sent on January 15, 2002.

Heather Halsey  
April 29, 2016  
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The SCO's process, which has not changed for over a decade, with respect to sending adjustment letters non-certified by U.S. Postal Service has not resulted in any issues. Based on the first adjustment letter dated January 15, 2002, the claimant should not have been able to file an IRC after January 15, 2005.

If you have any questions, please contact Melma Dizon by telephone at (916) 327-3559, or by email at MDizon@sco.ca.gov.

Sincerely,



ANNE KATO, Chief  
Bureau of Payments

cc: Shawn Silva, Senior Staff Counsel, State Controller's Office

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 2, 2016, I served the:

**SCO Late Comments on Draft Proposed Decision**

*School District of Choice: Transfers and Appeals, 11-4451-I-05*

Education Code Sections 48209.1, 48209.7, 48209.9, 48209.10, 48209.13, and 48209.14

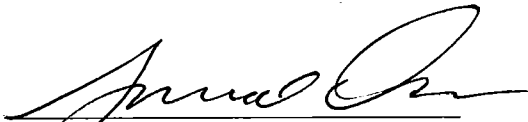
Statutes 1993, Chapter 160 (AB 19), Statutes 1994, Chapter 1262 (AB 2768)

Fiscal Year: 1997-1998

Chula Vista Elementary School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 2, 2016 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/24/16

**Claim Number:** 11-4451-I-05

**Matter:** School District of Choice: Transfer and Appeals

**Claimant:** Chula Vista Elementary School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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