

ITEM 11
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

Education Code Section 48915, subdivisions (a) and (b)
Statutes 1993, Chapters 1255 and 1256
Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302;
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134;
Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

*Pupil Expulsions from School: Additional Hearing Costs for
Mandated Recommendations of Expulsion for Specified Offenses*

05-PGA-04 (CSM-4455)

EXECUTIVE SUMMARY

The proposed statewide cost estimate includes 15 fiscal years for a total of **\$36,861,072** for the *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses* program. Following is a breakdown of estimated total costs per fiscal year:

| Fiscal Year | Number of Claims Filed with State Controller's Office | Estimated Costs |
|--------------------|--|------------------------|
| 1993-1994 | 82 | \$1,216,367 |
| 1994-1995 | 95 | \$1,394,717 |
| 1995-1996 | 105 | \$1,505,054 |
| 1996-1997 | 116 | \$1,474,140 |
| 1997-1998 | 132 | \$1,554,418 |
| 1998-1999 | 168 | \$1,996,485 |
| 1999-2000 | 165 | \$1,764,629 |
| 2000-2001 | 210 | \$2,328,868 |
| 2001-2002 | 253 | \$2,441,052 |
| 2002-2003 | 255 | \$2,711,305 |
| 2003-2004 | 302 | \$3,544,682 |
| 2004-2005 | 284 | \$3,862,106 |
| 2005-2006 | 314 | \$4,310,781 |
| 2006-2007 | 423 | \$3,903,142 |
| 2007-2008 | 454 | \$4,068,477 |
| Total | | \$ 36,861,072 |

Summary of the Mandate

In March 1994, San Diego Unified School District (claimant) filed a test claim with the Commission on State Mandates (Commission). The Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion since the hearing procedures were required by federal due process law.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of service’ under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law....”

(*San Diego Unified School District, supra*, 33 Cal.4th 859, 867)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*. The Supreme Court decision required the state to reimburse school districts for “all resulting hearing costs —even those costs attributable to procedures required by federal law” for mandated “recommendations of expulsion for certain offenses,” back to the initial reimbursement period for the *Expulsions* test claim (1993).

On May 26, 2005, the Commission adopted its Amended Statement of Decision consistent with the Supreme Court's ruling in *San Diego Unified School District*.

On July 28, 2006, the Commission on State Mandates adopted two sets of parameters and guidelines to implement the Supreme Court Decision in the *Pupil Expulsions* case and to provide a more efficient process for school districts to claim additional hearing costs for mandated recommendations of expulsion. The first set of parameters and guidelines allow school districts to claim costs of the new activities based on a reasonable reimbursement methodology, and the second set amended the new activities and claiming methodology into existing parameters and guidelines, beginning fiscal year 2006-2007.¹

The reasonable reimbursement methodology is a cost allowance based on claimant and Los Angeles Unified School District's actual expulsion hearing costs for 2005-2006. To determine cost allowances for the prior years, the 2005-2006 cost allowances were adjusted back to fiscal year 1993-1994 by the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance.² Adoption of this reasonable reimbursement methodology allowed school districts to claim and be reimbursed for additional hearing costs for mandated recommendations of expulsion.

¹ See Exhibit A.

² Government Code section 17523.

Statewide Cost Estimate

Staff reviewed the claims data compiled by the State Controller's Office (SCO). The actual claims data showed that 2,489 claims were filed by school districts for fiscal years 1993-1994 through 2007-2008 for a total of \$30,335,839.³

Assumptions

Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program:

1. Non-claiming school districts did not file claims for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsions for Specified Offenses* program (expulsion hearings) because they did not incur more than \$1000 in increased costs for this program or did not have supporting documentation to file a reimbursement claim.
2. The total amount of reimbursement for expulsion hearings may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.
3. The total amount of reimbursement for this program may increase if there is an increase in the number of mandated recommendations for expulsion and expulsion hearings, and number of school districts filing claims.
4. Claims filed for fiscal years 1993-1994 through 2006-2007 will not increase because the filing period has ended.
5. More school districts filed claims for fiscal years 2006-2007 and 2007-2008 on the revised consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals* which now includes this program.
6. Costs claimed for the activities in the original consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals* will remain the same for 2006-2007 and 2007-2008.
7. The additional school districts that filed claims on the revised consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals*, claimed costs for expulsion hearings.

Methodology

Fiscal Years 1993-1994 through 2005-2006

The proposed statewide cost estimate for fiscal years 1993-1994 through 2005-2006 is based on 2481 unaudited actual reimbursement claims filed with the SCO for these years.

Fiscal Years 2006-2007 through 2007-2008

For the final staff analysis, staff used a different methodology to estimate the expulsion hearing costs for fiscal years 2006-2007 and 2007-2008. This methodology is based on actual unaudited claims filed for the original and revised consolidated parameters and guidelines for *Pupil Suspensions, Expulsions, and Expulsion Appeals*.

Beginning in 2006-2007, the reasonable reimbursement methodology to claim expulsion hearing costs is included in the revised consolidated parameters and guidelines for *Suspensions, Expulsions and Expulsion Appeals* programs. For 2006-2007, 423 school districts filed

³ See Exhibit B.

reimbursement claims and for 2007-2008, 454 school districts filed claims. For 2006-2007, the number of school districts filing reimbursement increased by about 35%. Staff used the following methodology for estimating costs that may be attributed to the increased costs for expulsion hearings.

Staff calculated an average claim amount of \$3,243,337 (for the original parameters and guidelines) based on claims filed in 2003-2004, 2004-2005, and 2005-2006 for *Pupil Suspensions, Expulsions, and Expulsion Appeals*. These claims did not include costs for expulsion hearings.

The average claim amount (\$3,243,337) was multiplied by the implicit price deflator for 2006-2007 (4.5%), and 2007-08 (5.9%).

- $\$3,243,337 \times 1.045 = \$3,389,287$ (2006-2007)
- $\$3,389,287 \times 1.059 = \$3,589,255$ (2007-2008)

To estimate expulsion hearing costs, staff subtracted the average claim amount calculated above for each year from the total for the revised consolidated claims filed for 2006-2007 and 2007-2008.

The estimated expulsion hearing costs calculated for 2006-2007 and 2007-2008 were then adjusted by adding in the amounts claimed (\$152,334 and \$78,901) under the initial reimbursement claim forms and reported by the SCO.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$36,861,072** for fiscal years 1993-1994 through 2007-2008. The estimated average annual cost to the state is \$2,457,405 for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses* program.

STAFF ANALYSIS

Background

In March 1994, claimant San Diego Unified School District (Claimant) filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. The Commission determined that Education Code section 48915 mandated immediate suspensions, recommendations for expulsion, and expulsions for specified offenses. However, the Commission did not approve reimbursement for the due process hearing costs resulting from the state-mandated recommendations for expulsion since the hearing procedures were required by federal due process law.

The claimant challenged the Commission's decision, and in October 1999, filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of service’ under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

“We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis in original.)

(*San Diego Unified School District, supra*, 33 Cal.4th 859, 867)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*. The Supreme Court decision requires the state to reimburse school districts for “all resulting hearing costs —even those costs attributable to procedures required by federal law” for mandated “recommendations of expulsion for certain offenses,” back to the initial reimbursement period for the *Expulsions* test claim (1993).

On May 26, 2005, the Commission adopted its Amended Statement of Decision consistent with the Supreme Court's ruling in *San Diego Unified School District*. (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (San Diego Unified School District)).

Reimbursable Activities (Parameters and Guidelines)

On July 28, 2006, the Commission on State Mandates adopted two sets of parameters and guidelines to implement the Supreme Court Decision in the *Pupil Expulsions* case and to provide a more efficient process for school districts to claim additional hearing costs for mandated recommendations of expulsion. The first set of parameters and guidelines allow school districts to claim costs of the new activities based on a reasonable reimbursement methodology and the second set amended the new activities and claiming methodology into existing parameters and guidelines, beginning fiscal year 2006-2007.⁴

The reasonable reimbursement methodology is a cost allowance based on claimant and Los Angeles Unified School District's actual expulsion hearing costs for 2005-2006. To determine cost allowances for the prior years, the 2005-2006 cost allowances were adjusted back to fiscal year 1993-1994 by the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as determined by the Department of Finance.⁵ Adoption of this reasonable reimbursement methodology allowed school districts to claim and be reimbursed for additional hearing costs for mandated recommendations of expulsion.

The Commission found that these activities are state-mandated and reasonably necessary to comply with the state-mandated expulsion hearings pursuant to Education Code section 48918. Therefore, these are the reimbursable activities:

A. Expulsion Hearings

If the expulsion hearing is for one of the following offenses:

- causing serious physical injury to another person, except in self defense;⁶
- possession of any firearm,⁷ knife,⁸ explosive,⁹ or other dangerous object¹⁰ of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code,¹¹ except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or

⁴ See Exhibit A.

⁵ Government Code section 17523.

⁶ Education Code section 48915, subdivision (a)(1).

⁷ Education Code section 48915, subdivision (c)(1).

⁸ Education Code section 48915, subdivision (a)(2).

⁹ Education Code section 48915, subdivision (c)(5).

¹⁰ Education Code section 48915, subdivision (a)(2); the word "device" is replaced with "object" to conform with text of this section.

¹¹ Education Code section 48915, subdivision (c)(3).

- robbery or extortion.¹²

Then the following additional activities are reimbursable:

1. Preparation for Expulsion Hearing

- Preparing and reviewing documents to be used during the expulsion hearing.
- Arranging hearing dates and assigning panel members and translators as needed.

2. Conducting Expulsion Hearing

- Attendance of the hearing officer or review panel and other district employees required to attend the expulsion hearing.

3. Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board

- Preparation and submission of the hearing officer or panel’s findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board.

4. Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceeding to be made.

Reasonable Reimbursement Methodology

The Commission adopted a reasonable reimbursement methodology to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), in lieu of payment of total actual costs incurred for the reimbursable activities.

Uniform cost allowances for Fiscal Years 1993-94 through 2004-2005, are determined by adjusting the uniform cost allowance for Fiscal Year 2005-2006 by the Implicit Price Deflator referenced in Government Code section 17523. See attachment to the parameters and guidelines for the uniform cost allowances for Fiscal Years 1993-94 through 2004-2005.

The uniform cost allowances for reimbursement of activities identified above are as follows:

| Reimbursable Component | Uniform Cost Allowances Fiscal Year 2005-2006 |
|--|--|
| A.1 Preparation for Expulsion Hearing | \$157.00 |
| A.2. Conducting Expulsion Hearing | \$196.16 |
| A.3 Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board | \$232.00 |
| A.4 Record of Hearing | \$2.00 |
| Total | \$587.16 |

¹² Education Code section 48915, subdivision (a)(4).

Reimbursement is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may still claim increased costs incurred to prepare for expulsion hearing.

Reimbursement Claims Filed with the State Controller’s Office

The original claiming instructions set February 5, 2007 as the due date for initial reimbursement claims for actual costs incurred for expulsion hearings. Actual claims for the 2006-2007 fiscal year and estimated claims for the 2007-2008 fiscal year were filed on or before January 15, 2008.

Staff reviewed the claims data submitted by school districts, and compiled by the SCO. The actual claims data showed that 2,498 claims were filed for fiscal years 1993-1994 through 2007-2008 for a total of \$30,335,839.¹³ This actual claims data does not include 2006-2007 and 2007-2008 claiming data for expulsion hearing costs claimed under the consolidated parameters and guidelines for *Pupil Suspensions, Expulsions, and Expulsion Appeals*.

According to the SCO, *Pupil Suspensions, Expulsions, and Expulsion Appeals* programs, school districts claimed \$3,241,474 in 2005-2006. For 2006-2007 (the first year with the additional hearing costs included) school districts claimed \$7,140,095; and for 2007-2008, they claimed \$7,578,831. The additional hearing costs claimed are not separately reported by the SCO.

Table 1. Claims Data Reported by the State Controller’s Office As of May 16, 2008¹⁴

| Fiscal Year | Number of Claims Filed | Amount Claimed |
|--------------------|-------------------------------|---------------------------|
| 1993-1994 | 82 | \$1,216,367 |
| 1994-1995 | 95 | \$1,394,717 |
| 1995-1996 | 105 | \$1,505,054 |
| 1996-1997 | 116 | \$1,474,140 |
| 1997-1998 | 132 | \$1,554,418 |
| 1998-1999 | 168 | \$1,996,485 |
| 1999-2000 | 165 | \$1,764,629 |
| 2000-2001 | 210 | \$2,328,868 |
| 2001-2002 | 253 | \$2,441,052 |
| 2002-2003 | 255 | \$2,711,305 |
| 2003-2004 | 302 | \$3,544,682 |
| 2004-2005 | 284 | \$3,862,106 ¹⁵ |
| 2005-2006 | 314 | \$4,310,781 ¹⁶ |

¹³ See Exhibit B, Claims Data reported by State Controller’s Office, March 4, 2009.

¹⁴ Ibid.

¹⁵ Staff adjusted the total by deducting amounts claimed by charter schools which are ineligible claimants pursuant to parameters and guidelines, Section II.

¹⁶ Ibid.

| | | |
|---------------|--------------|----------------------|
| 2006-2007 | 12 | \$152,334 |
| 2007-2008 | 5 | \$78,901 |
| Totals | 2,498 | \$ 30,335,839 |

Program costs for 2006-2007 and 2007-2008 that are reported by the SCO should have been claimed as part of the revised consolidated parameters and guidelines and reimbursement claims filed for *Pupil Suspensions, Expulsions, and Expulsion Appeals*.

Assumptions

Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for the expulsion hearings program:

1. Non-claiming school districts did not file claims for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsions for Specified Offenses* program (expulsion hearings) because they did not incur more than \$1000 in increased costs for this program or did not have supporting documentation to file a reimbursement claim.
2. The total amount of reimbursement for expulsion hearings may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.
3. The total amount of reimbursement for this program may increase if there is an increase in the number of mandated recommendations for expulsion and expulsion hearings, and number of school districts filing claims.
4. Claims filed for fiscal years 1993-1994 through 2006-2007 will not increase because the filing period has ended.
5. More school districts filed claims for fiscal years 2006-2007 and 2007-2008 on the revised consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals* which now includes this program.
6. Costs claimed for the activities in the original consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals* will remain the same for 2006-2007 and 2007-2008.
7. The additional school districts that filed claims on the revised consolidated claim for *Pupil Suspensions, Expulsions, and Expulsion Appeals*, claimed costs for expulsion hearings.

Methodology

Fiscal Years 1993-1994 through 2005-2006

The proposed statewide cost estimate for fiscal years 1993-1994 through 2005-2006 was developed by totaling the 2,481 unaudited actual reimbursement claims filed with the SCO for these years.

Fiscal Years 2006-2007 – 2007-2008

The DOF disagreed with the methodology in the draft staff analysis for estimating the statewide cost estimate for fiscal years 2006-2007 and 2007-2008. This methodology was based on the same number of claimants and unaudited amounts from 2005-2006. DOF believes that this estimate should be derived using actual, audited claims.

For the final staff analysis, staff used a different methodology to estimate the costs claimed for expulsion hearings for fiscal years 2006-2007 and 2007-2008. This methodology is based on actual unaudited claims filed for the original and revised consolidated parameters and guidelines for *Pupil Suspensions, Expulsions, and Expulsion Appeals*.

Beginning in 2006-2007, the reasonable reimbursement methodology to claim expulsion hearing costs is included in the consolidated parameters and guidelines for *Suspensions, Expulsions and Expulsion Appeals* programs. For 2006-2007, 423 school districts filed reimbursement claims on the consolidated claim, and for 2007-2008, 454 school districts filed claims. For 2006-2007, the number of school districts filing reimbursement increased by about 35%. Staff used the following methodology for estimating costs that may be attributed to the increased costs for expulsion hearings.

Staff calculated an average claim amount (for the original parameters and guidelines) based on claims filed in 2003-2004, 2004-2005, and 2005-2006 for *Pupil Suspensions, Expulsions, and Expulsion Appeals*. These claims did not include costs for expulsion hearings.

Table 2. Calculation of Average Claim Amount
Original Mandate: *Pupil Suspensions, Expulsions, and Expulsion Appeals*
2003-2004 through 2005-2006

| Fiscal Year | Number of Claims | Original Consolidated Claim Amount |
|-------------|----------------------|------------------------------------|
| 2003-2004 | 377 | \$ 4,119,873 |
| 2004-2005 | 366 | \$ 2,368,664 |
| 2005-2006 | 360 | \$ 3,241,474 |
| | Average Claim Amount | \$ 3,243,337 |

The average claim amount (\$3,243,337) was multiplied by the implicit price deflator for 2006-2007 (4.5%), and 2007-2008 (5.9%).

- $\$3,243,337 \times 1.045 = \$3,389,287$ (2006-2007)
- $\$3,389,287 \times 1.059 = \$3,589,255$ (2007-2008)

To estimate expulsion hearing costs, staff subtracted the average claim amount calculated above from the total for the revised consolidated claims filed for 2006-2007 and 2007-2008.¹⁷

The estimated expulsion hearing costs calculated for 2006-2007 and 2007-2008 were then adjusted by adding in the amounts that were erroneously claimed for expulsion hearings (\$152,334 and \$78,901) under the initial reimbursement claim forms and reported by the SCO.¹⁸

The resulting total estimated hearing costs were then added to the proposed statewide cost estimate for fiscal years 2006-2007 and 2007-2008. The proposed statewide cost estimate, calculated as described above, is displayed in Table 4.

¹⁷ See Table 3.

¹⁸ Ibid.

**Table 3. Calculation of Estimated Hearing Costs
Fiscal Years 2006-2007 and 2007-2008**

| Fiscal Years | Number of Claims | Total Claimed Revised Consolidated Claim | Original Consolidated Claim (No Hearing Costs) | Estimated Hearing Costs | Adjustment Initial Claims | Total Estimated Hearing Costs |
|--------------|------------------|--|--|-------------------------|---------------------------|-------------------------------|
| 2006-2007 | 423 | \$7,140,095 | \$3,389,287 | 3,750,808 | | \$3,903,142 |
| | 12 | | (4.5%) | | \$152,334 | |
| 2007-2008 | 454 | \$7,578,831 | 3,589,255 | \$3,989,576 | | \$4,068,477 |
| | 5 | | (5.9%) | | \$78,901 | |

Table 4. Proposed Statewide Cost Estimate

| Fiscal Year | Number of Claims Filed | Amount Claimed/Estimated Costs* |
|--|------------------------|---------------------------------|
| 1993-1994 | 82 | \$1,216,367 |
| 1994-1995 | 95 | \$1,394,717 |
| 1995-1996 | 105 | \$1,505,054 |
| 1996-1997 | 116 | \$1,474,140 |
| 1997-1998 | 132 | \$1,554,418 |
| 1998-1999 | 168 | \$1,996,485 |
| 1999-2000 | 165 | \$1,764,629 |
| 2000-2001 | 210 | \$2,328,868 |
| 2001-2002 | 253 | \$2,441,052 |
| 2002-2003 | 255 | \$2,711,305 |
| 2003-2004 | 302 | \$3,544,682 |
| 2004-2005 | 284 | \$3,862,106 |
| 2005-2006 | 314 | \$4,310,781 |
| 2006-2007 | 423 | \$ 3,903,142 |
| 2007-2008 | 454 | \$ 4,068,477 |
| Total | | \$ 36,861,072 |
| *Estimates calculated as described above | | |

Department of Finance Comments

DOF submitted comments on the draft staff analysis on February 24, 2009. DOF concluded that it is not possible to accurately estimate the statewide cost until claims are audited, because the State Controller's Office may deem any reimbursement claim to be excessive or unreasonable, and reduce the total costs of filed claims. DOF believes that development of a proposed statewide cost estimate would be premature at this time.

Staff disagrees that the cost estimate can be delayed until reimbursement claims are audited.

Government Code section 17551 requires the Commission, if it determines there are costs mandated by the state, to determine the amount to be subvended to local agencies and school districts for reimbursement. Government Code section 17553 requires the Commission, when a determination is made that a mandate exists, to adopt regulations to ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim. Therefore, state law does not allow the Commission to delay adoption of the statewide cost estimate until the claims are audited by the SCO.

Moreover, DOF's recommendation to delay the adoption of the statewide cost estimate is inconsistent with the statutory scheme in Government Code section 17500 et seq. The adoption of a statewide cost estimate triggers other functions that can lead to an appropriation of funds for the mandated program. Government Code section 17600 requires the Commission to report the statewide cost estimate to the Legislature. Once the Commission reports the statewide cost estimates to the Legislature, Government Code section 17562 requires the Legislative Analyst's Office to review the new mandate(s) and make recommendations to the Legislature as to whether the mandate should be repealed, funded, suspended, or modified. The Legislature then has the authority under Government Code section 17612 to amend, modify, or supplement parameters and guidelines, reasonable reimbursement methodologies, and/or the statewide cost estimates of the mandated programs; or can fund the program for costs incurred in prior years in the subsequent Budget Act. Thus, the adoption of the statewide cost estimate is necessary for the Legislature to appropriate funds. Furthermore, a delay in the appropriation of funds can lengthen the audit period of the State Controller's Office. Government Code section 17558.5 provides that a reimbursement claim is subject to the initiation of an audit by the Controller no later than three years after the date that the reimbursement claim is filed or last amended, whichever is later, unless there has been no appropriation or payment to a claimant. "[I]f no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim." Accordingly, a delay in adopting a statewide cost estimate is not consistent with the way the Legislature established the mandate reimbursement process.

Therefore, staff finds that the Commission should not delay adoption of this statewide cost estimate.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$36,861,072** for fiscal years 1993-1994 through 2007-2008. The estimated average annual cost to the state is \$2,457,405 for *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses* program.