

COMMISSION ON STATE MANDATES

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April 11, 2013

Ms. Lora Duzyk
San Diego County
Office of Education
Business Services Division
6401 Linda Vista Road Rm. 609
San Diego, CA 92111

Ms. Dianne L. Russo
Sweetwater Union High
School District
1130 Fifth Ave.
Chula Vista, CA 91911-2896

Mr. Arthur Palkowitz
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road,
Suite 200
San Diego, CA 92106

And Interested Parties and Affected State Agencies (See Mailing List)

Re: **Second Revised Proposed Parameters and Guidelines and Statement of Decision and Notice of Hearing**

Williams Case Implementation I, II, III, 05-TC-04, 07-TC-06, and 08-TC-01

Education Code sections 14501 et al.

San Diego County Office of Education and Sweetwater Union High School District,
Claimants

Dear Ms. Duzyk, Ms. Russo, and Mr. Palkowitz:

The second revised proposed parameters and guidelines and statement of decision for the above-named matter are enclosed.

Hearing

This matter is set for hearing on **Friday, April 19, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 7
SECOND REVISED PROPOSED PARAMETERS AND GUIDELINES
AND
STATEMENT OF DECISION

Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6

Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

Williams Case Implementation I, II, and III
05-TC-04, 07-TC-06, and 08-TC-01

San Diego County Office of Education and Sweetwater Union High School District, Claimants

Executive Summary

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission's regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.¹ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.² Oral or written testimony is offered under oath or affirmation in article 7 hearings.³

Revised Analysis

On April 5, 2013, a revised analysis was issued regarding Education Code section 42127.6, following the late comments filed by the Department of Finance on April 4, 2013. Education Code section 42127.6 requires school districts, *under specified situations*, to provide to the county superintendent of schools a copy of a study, report, evaluation, or audit that contains evidence that the district is showing fiscal distress. The analysis clarifies that activity.

On April 8, 2012, after the first revised analysis was issued, the Commission received an email from mandates consultant Sandra Reynolds of Reynolds Consulting Group, Inc., asking whether reimbursement for remedying complaints received under the *Williams* complaint process includes reimbursement for the underlying activities and costs required, for example, to remedy a facilities complaint within 30 working days. That email raised an important question regarding

¹ California Code of Regulations, Title 2, section 1187.

² Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

³ *Ibid.*

the scope of “remedying a valid complaint,” and is being treated here as a late comment on the proposed parameters and guidelines and statement of decision.⁴ This second revised analysis clarifies the scope of reimbursement under section 35186, consistent with the analysis in the test claim statement of decision, including addressing specifically the issue identified by Ms. Reynolds. The procedural history has also been updated. No other changes have been made. This second revised analysis replaces the prior versions.

Summary of the Mandate

The proposed parameters and guidelines arise from the consolidated *Williams Case Implementation I, II, and III* test claim. The test claim alleged reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state’s settlement in *Eliezer Williams, et al. v. State of California (Williams)*. In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and qualified teachers.

Procedural History

On December 7, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6, as added or amended by the test claim statutes, impose a reimbursable state-mandated program for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities in the attached parameters and guidelines. On December 18, 2012, Commission staff issued draft expedited parameters and guidelines. On December 28, 2012, the State Controller’s Office (SCO) filed comments stating that they recommended no changes. On January 4, 2013, the Department of Finance (Finance) filed comments concerning reimbursable activities and offsetting revenues and reimbursements. On March 27, 2013, Commission staff issued a final staff analysis and proposed parameters and guidelines.

On April 4, 2013, Finance submitted late comments on the final staff analysis, triggering the preparation of a revised proposed parameters and guidelines and statement of decision. On April 5, 2013, the revised proposed statement of decision and parameters and guidelines were issued for the April 19 hearing. On April 8, 2013, Ms. Sandra Reynolds of Reynolds Consulting Group submitted an email question, which is being treated as late comments on the proposed statement of decision, raising a question regarding the scope of reimbursement for activities relating to the *Williams* complaint process. That question triggered this second revised proposed parameters and guidelines and statement of decision.

⁴ Exhibit F, Reynolds Consulting Group Comments on Revised Proposed Parameters and Guidelines, April 8, 2013.

Staff Analysis

Commission staff analyzed the comments received from Finance and has recommended clarifying changes to the parameters and guidelines, as outlined below. Finance recommended clarifying changes to the reimbursable activities, including stating activities separately, and clarifying the requirements of prior law that are not reimbursable. Many of these changes are recommended and are included in the proposed parameters and guidelines. However, Finance has also, in several instances, recommended language for the parameters and guidelines that is redundant and unnecessary, and invites the Controller to revisit the Commission's mandate finding. Those proposed changes are not recommended and were excluded from the proposed parameters and guidelines.

Additionally, Finance has requested identifying offsetting revenues in the parameters and guidelines, asserting that funding under the Pupil Textbook and Instructional Materials Incentive Program (Education Code section 60117 et seq.) can be applied to reporting the availability of textbooks and instructional materials in the School Accountability Report Card (SARC). Staff finds that the funding which Finance cites cannot be applied broadly enough to fund SARC activities. However, to the extent the activities required under SARC are conducted under the Pupil Textbook and Instructional Materials Incentive Program, a discretionary program, those same activities may not be claimed for reimbursement under the SARC mandated activities. This limitation is reflected in Section IV, Reimbursable Activities.

In late comments filed April 4, 2013, Finance expressed concerns with the language proposed for reimbursement under Education Code section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001). The language proposed in the final staff analysis had provided for reimbursement as follows:

Providing to the county superintendent of schools, pursuant to Education Code sections 14501⁵ and 41020:⁶

A copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127, unless commissioned by the district or the county office of education.

Finance argued, in its comments, that staff's analysis of this test claim statute was incorrect, and that the reimbursable activity should instead provide:

⁵ In its January 4, 2013 comments (Exhibit D), Finance references Education Code 14051. Commission staff has interpreted this to be a typo because the relevant code section in the test claim is 14501.

⁶ In both its January 4, 2013 comments, and its April 4, 2013 comments, Finance references sections 14501 and 41020 regarding the activity of providing a copy of reports or audits to the county superintendent. This requirement in fact arises from section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001). Finance's reference to sections 14501 and 41020 was inadvertently reproduced in the draft proposed statement of decision, but is now corrected.

*Providing the county superintendent of schools, pursuant to Education Code sections 14051 and 41020:*⁷

- i. *A copy of a study, report, evaluation, or audit that was commissioned by the Superintendent of Public Instruction or a state control agency and contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code section 33127.*
- ii. *A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.*

Reimbursement for this activity is not required to the extent the study, report, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.

As explained below, staff finds that the language proposed in the final staff analysis does not accurately reflect the plain language of the test claim statute, in that only reports or audits commissioned by one of four entities (the district, the county superintendent, the Superintendent of Public Instruction, or a state control agency) *and* which contain evidence of fiscal distress, are subject to the reporting requirement imposed by the test claim statute. As explained in the test claim statement of decision, where a report or audit is commissioned *at the discretion of* either the district or the county office of education, the reporting requirement is not subject to reimbursement under *Kern*⁸, because the requirement is triggered by discretionary or voluntary action at the local level, and is therefore not state-mandated. The last sentence of Finance’s proposed language reflects this limitation accurately: “Reimbursement for this activity is not required to the extent the study, report, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.” However, the language proposed by Finance does not address the situation in which a report or audit is “commissioned by” the district or the county superintendent, but is not discretionary. In that respect, Finance’s proposed language reads the test claim statute too narrowly. Staff finds that the parameters and guidelines must reflect the criteria for reporting to the county superintendent under section 42127.6, but also must reflect the limitation under *Kern*, *supra*, for a report commissioned at the discretion of the local educational agency. The analysis below reflects the revised language, and incorporates Finance’s suggested changes to the extent they are consistent with the test claim statement of decision.

Finally, on April 8, 2013, Ms. Sandra Reynolds submitted a question to Commission staff via email regarding the scope of reimbursement for the approved activity of “remedying a valid complaint within 30 working days,” as required under section 35186(b).⁹ The question raised is

⁷ See Fn 5.

⁸ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727.

⁹ Exhibit F, Reynolds Consulting Group Comments on Revised Proposed Parameters and Guidelines, April 8, 2013.

treated as a late comment, and this second revised proposed statement of decision addresses that comment. Staff concludes, in the analysis below, that “remedying a valid complaint within 30 working days,” as approved in the test claim statement of decision, includes administrative costs and efforts to remedy the complaint, but does not include the costs of repair to facilities, providing textbooks or instructional materials, teacher salaries, or intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination as of the end of grade 12. Finally, staff finds that the activity as approved in the test claim statement of decision is better analyzed when separated into its component parts; reporting to the complainant within 45 days on the resolution or remedy of the complaint is unaffected by the analysis herein. Staff has therefore added the following language to the proposed parameters and guidelines:

- v. *Remedying a valid complaint within a reasonable time period but not to exceed 30 working days. The eligible reimbursement period for this activity begins September 29, 2004.*¹⁰

The activity of remedying a valid complaint includes costs incurred, where applicable, for the administrative activities of (1) arranging for the maintenance or repair required to remedy complaints related to facility conditions that pose an emergency or urgent threat to the health and safety of pupils or staff (2) procuring sufficient textbooks or instructional materials, but only in the case that the district is not participating in the Pupil Textbook and Instructional Materials Incentive Program pursuant to Education Code section 60117 et seq.; (2) locating suitable teachers to fill vacancies, or reallocating staff to remedy misassignments, as identified by the complaint process; and (3) remedying a failure to provide intensive instruction and services to a pupil who has not passed one or both parts of the high school exit examination by the end of grade 12.

*Reimbursement is **not required** for the costs of any maintenance or repair required to remedy complaints related to facilities conditions that pose an emergency or urgent threat to the health and safety of pupils or staff; the costs of textbooks or instructional materials; teacher salaries and benefits; or the salaries and other direct costs of intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination by the end of grade 12.*

- vi. *Reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.*¹¹

¹⁰ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹¹ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

Staff Recommendation

Staff recommends that the Commission:

- Adopt the attached proposed statement of decision and proposed parameters and guidelines; and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Education Code Sections 14501, 33126(b),
35186, 41020, and 42127.6

Statutes 2004, Chapter 900 (SB 550); Statutes
2004, Chapter 902 (AB 3001); Statutes 2004,
Chapter 903 (AB 2727); Statutes 2005,
Chapter 118 (AB 831); Statutes 2006, Chapter
704 (AB 607); and Statutes 2007, Chapter 526
(AB 347)

Period of reimbursement begins
September 29, 2004, or later for specified
activities added by subsequent statutes.

Case No.: 05-TC-04; 07-TC-06; 08-TC-01

Williams Case Implementation I, II, and III

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted April 19, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on April 19, 2013. [Witness list will be included in the final statement of 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 the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

I. Summary of the Mandate

These parameters and guidelines arise from the consolidated *Williams Case Implementation I, II and III* test claim. The test claim alleged reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state's settlement in *Eliezer Williams, et al. v. State of California (Williams)*. In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and qualified teachers.

The test claim statutes were adopted to ensure that students would be provided with sufficient instructional materials, qualified teachers, and clean and safe facilities and instructional spaces. Specifically, the test claim statutes added or made changes to the following eight programs:

- The School Facilities Needs Assessment Grant Program. This grant program funds a one-time Comprehensive Needs Assessment to assess the needs of schools ranked in deciles 1 to 3 of the Academic Performance Index (API).
- The School Facilities Emergency Repair Program. An account was established to fund urgent repairs or replacements of building systems of facilities at deciles 1 to 3 schools, first on a reimbursement basis, later amended to provide funding on a grant basis.
- County Office of Education Oversight. The statutes expanded fiscal and operational oversight of schools and school districts by county superintendents with respect to the condition of facilities, teacher vacancies and misassignments, accuracy of the School Accountability Report Cards (SARCs), and availability of intensive instruction to aid students in passing the high school exit examination
- School Facilities Funding (Good Repair). The statutes clarified the definition of “good repair,” and added a Facilities Inspection System to ensure the good repair of school facilities.
- School Accountability Report Card. The statutes expanded the scope of the SARC.
- *Williams* Complaint Process. A new *Williams*-specific Uniform Complaint Process was added (*Williams* complaint process).
- Fiscal and Compliance Audits. The statutes expanded the scope of fiscal and compliance audits.
- Pupil Textbook and Instructional Materials Incentive Program. New benchmarks for provision of sufficient textbooks and instructional materials were provided, and a process of making information available to the public.

The Commission denied many of the activities alleged to be added or amended by the test claim statutes on the grounds that they either are triggered by a school district’s voluntary compliance with a grant program; are not new, but simply clarify existing law; or, are fully funded by specific appropriations made to local educational agencies (LEAs) in amounts that are sufficient to fund the cost of any new required activity.

However, the Commission found that Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6 impose reimbursable state-mandated programs or higher levels of service for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the following activities:

1. Education Code section 33126(b), enacted in Statutes of 2004, chapter 900, imposes a reimbursable state-mandated program upon school districts, beginning September 29, 2004, for the following activities:

- Reporting teacher misassignments and vacancies within the School Accountability Report Card.
 - Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
 - Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.
2. Education Code section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:
- Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.¹²
 - Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.¹³
 - Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.¹⁴
 - Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.¹⁵
 - Remedying a valid complaint within a reasonable time period by not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.¹⁶

¹² Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550).

¹³ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550).

¹⁴ Education Code section 35186(a)(3) (2004, ch. 900 § 12 (SB 550).

¹⁵ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

¹⁶ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

- Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹⁷
 - Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹⁸
 - Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.¹⁹
 - Adding to the posted notice in each classroom that “[t]here should be no teacher vacancies or misassignments.” The eligible reimbursement period for this activity begins July 25, 2005.²⁰
 - Receiving complaints regarding “any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.” The eligible reimbursement period for this activity begins October 12, 2007.²¹
 - Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that “[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.” The eligible reimbursement period for this activity begins October 12, 2007.²²
3. Education Code sections 14501 and 41020, as amended by Statutes 2004, chapter 900 (SB 550), impose a reimbursable state-mandated program for the following activities:

¹⁷ Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁸ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁹ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

²⁰ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

²¹ Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

²² Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

- School districts are required to include within their compliance audit verification of reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.²³
 - County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.²⁴
4. Education Code section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001), imposes a reimbursable state-mandated program upon school districts, beginning, for purposes of reimbursement eligibility, on September 29, 2004:
- For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.²⁵

II. Procedural History

On December 7, 2012, the Commission adopted a statement of decision on the test claim finding that Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6, as added or amended by the test claim statutes, impose a reimbursable state-mandated program for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.²⁶

The claimant requested that the Commission issue expedited draft proposed parameters and guidelines, which Commission staff issued for comment on December 18, 2012.²⁷ On December 28, 2012, the State Controller's Office (SCO) filed comments recommending no changes.²⁸ On January 4, 2013, the Department of Finance (Finance) filed comments requesting language be added to *Section IV. Reimbursable Activities* and to *Section VII. Offsetting Revenues*

²³ Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

²⁴ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

²⁵ Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

²⁶ Exhibit A, Test Claim Statement of Decision.

²⁷ Exhibit B, Draft Expedited Parameters and Guidelines.

²⁸ Exhibit C, SCO Comments dated December 28, 2012.

and Reimbursements of the parameters and guidelines, as discussed below.²⁹ Claimant did not submit comments on the expedited draft parameters and guidelines. On March 27, 2013, Commission staff issued a proposed statement of decision and proposed parameters and guidelines. On April 4, 2013, Finance submitted late comments on the proposed statement of decision, which were considered by the Commission as discussed below. On April 5, 2012, staff issued a revised proposed statement of decision, answering Finance’s late comments. On April 8, 2013, Ms. Sandra Reynolds of Reynolds Consulting Group submitted late comments, which were also considered as discussed below. On April 11, 2013, a second revised proposed statement of decision was issued.

III. Commission Findings

The test claim statement of decision, the draft parameters and guidelines, and the comments filed by Finance and the SCO were reviewed and considered by the Commission as discussed below. Non-substantive, technical corrections were also made.

In comments submitted in response to the draft expedited parameters and guidelines, Finance requested: 1) a technical amendment to replace the phrase “capable teachers” with “qualified teachers” in the *Summary of the Mandate* section; 2) various clarifying changes to the activities under *Section IV. Reimbursable Activities*, intended to more accurately reflect the higher level of service imposed by the test claim statute and exclude reimbursement for any activities conducted under prior law; 3) language limiting reimbursement to costs that would not have been incurred in the absence of the test claim statute; and 4) that *Section VII. Offsetting Revenues and Reimbursements* identify funding available for textbooks and instructional materials as an available potential offset for reporting on textbook availability in the School Accountability Report Card. The technical amendment to replace the phrase “capable teachers” with “qualified teachers” in the *Summary of the Mandate* section is adopted without analysis, since this language tracks the language of the settlement agreement.³⁰ The remaining proposed changes are discussed in greater detail below.

IV. Reimbursable Activities

A. School Accountability Report Cards, Education Code section 33126(b)

Education Code section 33126 was amended by the test claim statutes to add new reporting requirements to the School Accountability Report Card program (SARC). In the test claim statement of decision, the Commission approved the following SARC-related activities:

1. *Education Code section 33126(b), enacted in Statutes of 2004, chapter 900, imposes a reimbursable state-mandated program upon school districts, beginning September 29, 2004, for the following activities:*
 - *Reporting teacher misassignments and vacancies within the School Accountability Report Card.*

²⁹ Exhibit D, Finance Comments dated January 4, 2013.

³⁰ Exhibit G, Notice of Proposed Settlement, at p. 1.

- *Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.*
- *Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.*³¹

These activities are reproduced in the parameters and guidelines as items i, ii, and iii under section 1. a. of the reimbursable activities.³² Finance contends that the parameters and guidelines should “make clear that reimbursement is required only for the incremental costs of the three activities,” and should clarify that reimbursement is not required for the SARC requirements under prior law. Finance further states that “reimbursement is not required for the costs of other statutory requirements related to the SARC, including the costs of producing the report card.”³³ To that end, Finance suggests the following language be added to section 1. a., applicable to the three new reporting requirements that the Commission found to be reimbursable:

*Reimbursement for this activity is required only to the extent that school districts can document that claimed costs would not have been incurred in the absence of these reporting requirements. Reimbursement for this activity is required only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Education Code section 41020. If the information is determined to be inaccurate, reimbursement is required if the information is corrected by May 15 following the audit.*³⁴

With respect to the first part of Finance’s requested language (requiring proof in each claim that a district incurred increased costs as a result of the test claim statutes), the Commission has already made a final binding decision that these portions of the SARC are new and impose a higher level of service. Therefore, the cost of reporting on these specified subjects is reimbursable and the Commission declines to add language to the parameters and guidelines that would permit the SCO to revisit the mandates finding on a claim-by-claim basis, as proposed here.

With respect to the second and third sentences proposed by Finance, that language is consistent with the test claim statement of decision and section 33126(c) of the Education Code, as amended by the 2004 test claim statute, and is therefore reflected in the proposed parameters and guidelines.

The test claim statement of decision makes clear that reimbursement is only required for the higher level of service for the incremental costs of reporting on these three specified new subjects. However, to avoid confusion in claiming and resultant incorrect reduction claims, the

³¹ Exhibit A, Test Claim Statement of Decision, at p. 80.

³² Exhibit B, Draft Proposed Parameters and Guidelines, at pp. 3-4.

³³ Exhibit D, Finance Comments on Draft Proposed Parameters and Guidelines, at p. 1.

³⁴ Exhibit D, Finance Comments on Draft Proposed Parameters and Guidelines, at p. 1.

Commission has further clarified the scope of these activities in the parameters and guidelines. With respect to the activity of reporting teacher misassignments and vacancies in the SARC, the parameters and guidelines expressly prohibit reimbursement for reporting *assignment of teachers outside their core areas of competence*, which was required under prior law. With respect to reporting in the SARC on the availability of textbooks and instructional materials, the parameters and guidelines are structured to prohibit reimbursement for reporting on the *quality and currency of textbooks*, which was a requirement of prior law. And with respect to reporting in the SARC any maintenance needed to ensure good repair, the parameters and guidelines expressly prohibit reimbursement for reporting on the *safety, cleanliness, and adequacy of facilities*, which also was required under prior law. These limitations are consistent with the test claim statement of decision, and are included so that the parameters and guidelines may accurately reflect the higher level of service imposed by the test claim statutes, and exclude the prior law requirements that are not subject to reimbursement.

Additionally, Finance argues, with respect to the activity of reporting the availability of textbooks and other instructional materials within the SARC, that funding available under Education Code section 60119(a)(2)(B) should be considered offsetting revenue.³⁵ As discussed below, that funding is restricted to activities under the Pupil Textbook and Instructional Materials Incentive Program, which is a grant program, and is not mandated, as was found by the Commission in the test claim statement of decision.³⁶ Therefore, not only is that funding not available to cover costs of the SARC program, but also it is not, as a matter of law, available in every fiscal year.

However, to clarify the scope of the mandated activity to report on the availability of textbooks and other instructional materials in the SARC and the Commission's denial of reimbursement to comply with the activities required by the Pupil Textbook and Instructional Materials Incentive Program in section 60119, the parameters and guidelines contain the following limitation: "Additionally, reimbursement is not required to determine whether each student in the district has sufficient textbooks or instructional materials; that activity is required as a condition of seeking funds under the Pupil Textbook and Instructional Materials Incentive grant program pursuant to Education Code section 60119, and was denied by the Commission."

Based on the foregoing, the Commission finds that the proposed parameters and guidelines, consistent with the test claim statement of decision, and in an effort to distinguish the higher level of service required by the test claim statutes from the requirements of prior law, shall provide as follows:

- a. *Beginning September 29, 2004, reporting the following information on the School Accountability Report Card, pursuant to Education Code section 33126(b):*³⁷

³⁵ Exhibit D, Finance Comments on Draft Proposed Parameters and Guidelines.

³⁶ Exhibit A, Test Claim Statement of Decision, at p. 77.

³⁷ Statutes 2004, chapter 900.

- i. *Misassignments of teachers, including teachers of English learners, and the number of vacant teacher positions for the most recent three-year period. Reimbursement is not required for reporting the assignment of teachers outside their areas of competence, as was required by Proposition 98 and is not new.*
- ii. *Availability of textbooks and other instructional materials. Reimbursement is not required for reporting on the quality and currency of textbooks and other instructional materials; those reporting requirements were required by Proposition 98 and are not new. Additionally, reimbursement is not required to determine whether each student in the district has sufficient textbooks or instructional materials; that activity is required as a condition of seeking funds under the Pupil Textbook and Instructional Materials Incentive grant program pursuant to Education Code section 60119, and was denied by the Commission.*
- iii. *Any needed maintenance to ensure good repair. Reimbursement is not required for reporting on the safety, cleanliness, and adequacy of school facilities, since that was required by Proposition 98 and is not new.*

Reimbursement for this activity is required only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Education Code section 41020. If the information is determined to be inaccurate, reimbursement for reporting the information required by 1.a. i, ii. or iii above, is required if the information is corrected by May 15 following the audit.³⁸

B. Uniform Complaint Procedures, Education Code section 35186

The Commission approved the following in the test claim statement of decision:

Education Code section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:

- *Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.³⁹*

³⁸ Education Code section 33126(c) (Stats. 2004, ch. 900 (SB 550)).

³⁹ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

- *Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.*⁴⁰
- *Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.*⁴¹
- *Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.*⁴²
- *Remedying a valid complaint within a reasonable time period but not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.*⁴³
- *Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.*⁴⁴
- *Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.*⁴⁵
- *Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.*⁴⁶
- *Adding to the posted notice in each classroom that "[t]here should be no teacher vacancies or misassignments." The eligible reimbursement period for this activity begins July 25, 2005.*⁴⁷

⁴⁰ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴¹ Education Code section 35186(a)(3) (2004, ch. 900 § 12 (SB 550)).

⁴² Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴³ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴⁴ Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴⁵ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴⁶ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁴⁷ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

- *Receiving complaints regarding “any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.” The eligible reimbursement period for this activity begins October 12, 2007.*⁴⁸
- *Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that “[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.” The eligible reimbursement period for this activity begins October 12, 2007.*⁴⁹

The activities of “adding to the posted notice in each classroom that ‘there should be no teacher vacancies or misassignments’” and “adding to the posted notice in each classroom in schools that serve grades 10 to 12, that ‘pupils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services...’” are one-time activities, by definition. The notice required by section 35186(f), as added by Statutes 2004, chapter 900 (SB 550), once posted, is only required to be updated as a result of subsequent amendments to section 35186(f). Statutes 2005, chapter 118, and Statutes 2007, chapter 526 impose such requirements, and therefore the one-time activity of adding to the notice is included in the parameters and guidelines, pursuant to these amendments.

The activity cited above, “[r]emedying a valid complaint within a reasonable time period but not to exceed 30 working days; reporting the resolution to the complainant within 45 working days,” was approved in the test claim statement of decision in essentially the same form in which the requirement is found in section 35186(b). On April 8, 2013, Ms. Sandra Reynolds of Reynolds Consulting Group submitted late comments on the proposed parameters and guidelines and statement of decision, in which she asked for clarification regarding the scope of this activity. Specifically, Ms. Reynolds posed the question whether remedying a valid complaint means “all actual costs related to fixing the problem identified i.e. fixing a sink in the bathroom, replacing a hand dryer in the bathroom, etc.”⁵⁰ The Commission treats this question as a comment, for purposes of the following analysis.

Section 35186, as amended by the test claim statutes,⁵¹ provides for a complaint process “to help identify and resolve any deficiencies related to instructional materials, emergency or urgent

⁴⁸ Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

⁴⁹ Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

⁵⁰ Exhibit F, Reynolds Consulting Group Comments on Revised Proposed Parameters and Guidelines, April 8, 2013.

⁵¹ Statutes 2004, chapter 900 (SB 550); Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); Statutes 2007, chapter 526 (AB 347).

facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.” Section 35186(b) requires the principal or district designee receiving such complaints to “make all reasonable efforts to investigate any problem within his or her authority,” and to “remedy a valid complaint within a reasonable time period but not to exceed 30 working days.” The same subdivision also requires reporting back to the complainant regarding the resolution or remedy of the complaint within 45 working days.⁵² This additional analysis will address only the activity of “remediating a valid complaint;” the other activity cited, reporting back to a complainant within 45 working days, remains a required reimbursable activity in spite of the following analysis, and the two activities will be separated in the parameters and guidelines, for purposes of clarity.

The Commission found, in the test claim statement of decision, that section 35186 imposed a new program upon school districts, and approved reimbursement for the activities cited above. Ms. Reynolds hypothesized a facilities complaint related to sinks or hand dryers in a restroom, and asked whether the repair of those items would be reimbursable under the activity as approved in the statement of decision and included in the proposed parameters and guidelines.⁵³

While the test claim statute does not explicitly define what it means to “remedy” a complaint, the Commission found in the test claim statement of decision that maintaining good repair of school facilities was an existing requirement of prior law, that the statutes emphasize minimizing teacher misassignments and vacancies, and that school districts are required to provide sufficient textbooks under the Pupil Textbook and Instructional Materials Incentive Program. Therefore, the direct costs incurred to remedy a complaint related to these subjects are not reimbursable, as discussed below. Those direct costs are beyond the scope of the activity approved under the *Williams* complaint process. However, the administrative costs, and the efforts necessary for a principal or district designee to arrange for the remedy, are new, and are within the scope of the approved activity.

With respect to complaints related to facilities conditions that pose an emergency or urgent threat to the health and safety of pupils or staff, the direct costs of making repairs are beyond the scope of the approved activity under the *Williams* complaint process. In addition, the test claim statement of decision found that maintaining good repair was a requirement of prior law, and therefore the requirement to make repairs, and any costs incurred to make repairs, is not new. Moreover, the *Williams* complaint process only provides for facilities complaints relating to conditions that pose an *emergency or urgent threat* to health and safety of pupils or staff; any such condition would fall within a district’s existing responsibility to maintain its facilities, as

⁵² Education Code section 35186(a-b) (Stats. 2004, ch. 900 (SB 550); Stats. 2004, ch. 903 (AB 2727); Stats. 2005, ch. 118 (AB 831); Stats. 2006, ch. 704 (AB 607); Stats. 2007 ch. 526 (AB 347)).

⁵³ Exhibit F, Reynolds Consulting Group Comments on Revised Proposed Parameters and Guidelines, April 8, 2013.

discussed in the test claim statement of decision.⁵⁴ However, section 35186 requires the principal or district designee to make the repairs, regarding emergency or urgent facilities conditions, within 30 working days, which was approved in the test claim statement of decision. Therefore, any administrative efforts and costs to arrange for repairs, but not the repairs themselves, are reimbursable under this mandate.

With respect to the requirement to remedy complaints relating to textbook sufficiency, as defined in section 60119, there are no costs associated with the activity or providing textbooks if a district is otherwise required under section 60119 to provide sufficient textbooks. The test claim statement of decision discussed at length the Pupil Textbook and Instructional Materials Incentive Program, of which Education Code section 60119 is a part, finding that the program is a voluntary grant program, and its requirements are therefore not reimbursable. Section 60119 provides new benchmarks and guidelines for providing sufficient textbooks and instructional materials, and the definition of sufficiency of materials is referenced in the School Accountability Report Cards, and the *Williams* complaint process, as discussed in the test claim statement of decision.⁵⁵ Here, section 35186(b) requires a principal or district designee to remedy a complaint related to sufficiency of textbooks or instructional materials, but the scope of that complaint, and of the remedy, are exactly that required under section 60119: to provide sufficient textbooks. Thus, there can be no costs for any district that is already participating in the Pupil Textbook and Instructional Materials Incentive Program, because that program imposes a requirement to provide “sufficient” textbooks and instructional materials, as defined. Therefore, a district would only claim reimbursement for the activity of remedying a complaint related to textbooks or instructional materials *if not participating in the grant program*.

With respect to remedying complaints relating to teacher misassignments and vacancies, any administrative efforts made to remedy a valid complaint under section 35186(a&b) are reimbursable. This would include administrative efforts to locate a suitable teacher to fill a vacancy, or to reallocate teachers to correct a misassignment discovered through the *Williams* complaint process. Reimbursement for teacher salaries is not authorized in the statement of decision and goes beyond the scope of the mandate here. The voluminous laws and regulations that impose the state’s complex credentialing regime for teachers presume that teacher misassignments are to be avoided;⁵⁶ and, school districts are expected to hire a sufficient number of permanent teachers to conduct the required courses. Remedying a complaint related to misassignments or vacancies cannot reasonably involve or mandate increased staffing costs.

And finally, with respect to provision of intensive instruction services to aid students who have not passed one or both parts of the exit examination by the end of grade 12, beginning October 12, 2007, reimbursement is required only for administrative efforts made by a principal or district designee to remedy a valid complaint related to the provision of (or the failure to provide) intensive instruction and services to such students. Reimbursement is not required for

⁵⁴ Exhibit A, Test Claim Statement of Decision, at pp. 77-78

⁵⁵ Exhibit A, Test Claim Statement of Decision, at pp. 105-107.

⁵⁶ See Education Code sections 44258.9; 14501; 41020.

the actual costs of intensive instruction and services required under section 37254. Similar to the analysis above, the costs incurred in the provision of instruction, including salaries and other costs, are required by other provisions of the code, and are beyond the scope of the *Williams* complaint process. Section 37254, in particular, is the subject of another pending test claim,⁵⁷ and is not pled here. That statute describes the intensive instruction and services that may be provided and authorizes the appropriation of funds for such purposes. The activity of remedying a valid complaint is not the same in scope as the activity of actually providing intensive instruction and services pursuant to section 37254.⁵⁸

Reimbursement under the *Williams* complaint process is limited to administrative efforts and costs, except for complaints regarding textbooks and instructional materials, for which no costs can be alleged if a district is participating in the Pupil Textbook and Instructional Materials Incentive Program. This finding is consistent with the test claim statement of decision, which denied reimbursement for provision of sufficient textbooks and instructional materials; maintaining good repair of school facilities and instructional spaces; and activities relating to teacher misassignments and vacancies. The Commission does not have jurisdiction in this test claim, or these parameters and guidelines, to analyze whether the statutes pertaining to intensive instruction and services for pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 impose any reimbursable mandated activities.

Based on the foregoing, the Commission adds to the language of the parameters and guidelines the following:

- v. *Remedying a valid complaint within a reasonable time period but not to exceed 30 working days. The eligible reimbursement period for this activity begins September 29, 2004.*⁵⁹

The activity of remedying a valid complaint includes costs incurred, where applicable, for the administrative activities of (1) arranging for the maintenance or repair required to remedy complaints related to facility conditions that pose an emergency or urgent threat to the health and safety of pupils or staff (2) procuring sufficient textbooks or instructional materials, but only in the case that the district is not participating in the Pupil Textbook and Instructional Materials Incentive Program pursuant to Education Code section 60117 et seq.; (2) locating suitable teachers to fill vacancies, or reallocating staff to remedy misassignments, as identified by the complaint process; and (3) remedying a failure to provide intensive instruction and

⁵⁷ *High School Exit Exam II* (08-TC-02).

⁵⁸ Statutes 2007, chapter 526 (AB 347) amended both section 35186, adding complaints regarding intensive instruction and services to the *Williams* complaint process; and section 37254, outlining

⁵⁹ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

services to a pupil who has not passed one or both parts of the high school exit examination by the end of grade 12.

*Reimbursement is **not required** for the costs of any maintenance or repair required to remedy complaints related to facilities conditions that pose an emergency or urgent threat to the health and safety of pupils or staff; teacher salaries and benefits; or the salaries and other direct costs of intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination by the end of grade 12.*

- vi. *Reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.*⁶⁰

The remaining activities cited above are approved in the parameters and guidelines without substantive alteration or analysis, as ongoing activities.

C. Compliance Audit Requirements, Education Code sections 14501 and 41020

In the test claim statement of decision, the Commission approved the following activity related to a school district's annual compliance audit:

- *School districts are required to include within their compliance audit verification of each of the following: reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The eligible reimbursement period for these activities begins September 29, 2004.*⁶¹

The Commission determined, in the test claim statement of decision, that sections 14501 and 41020, as amended by Statutes 2004, chapter 900, imposed a new program or higher level of service, by increasing the scope of the annual compliance audit. Prior section 14501 provided as follows:

As used in this chapter, “compliance audit” means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.⁶²

The test claim statute (Stats. 2004, ch. 900 (SB 550)) added the following:

...an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both *and includes the verification of each of the following:*

⁶⁰ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁶¹ Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

⁶² Education Code section 14501 (Stats. 2002, ch. 1128 (AB 2834)).

- (1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.
- (2) Teacher misassignments pursuant to Section 44258.9.
- (3) The accuracy of information reported on the School Accountability Report Card required by Section 33126.

The issue for these parameters and guidelines is what is meant by “verification of each of the following...” Because a compliance audit is aimed at whether funds are properly disbursed and expended, reference in the test claim statute to these three programs must mean that the compliance audit is expanded to verify that funds are properly disbursed and expended under these programs, and the requirements of these programs are met. The Audit Guide published by the Education Audit Appeals Panel, much of which is adopted in title 5 of the Code of Regulations, supports that conclusion; the Audit Guide suggests that sections 14501 and 41020 impose a requirement to verify that the activities described under sections 60119, 44258.9, and 33126 are performed in accordance with the law.⁶³

As discussed above, section 60119 is a part of the Pupil Textbook and Instructional Materials Incentive Program; a grant program.⁶⁴ Section 14501, in turn, focuses on whether funds are properly disbursed and expended, and includes verification of the reporting requirements under section 60119.⁶⁵ The Audit Guide provides that the audit should include a determination “whether the school district governing board or county board of education, prior to making a determination through a resolution as to the sufficiency of textbooks or other instructional materials, held the public hearing or hearings required by the provisions of Education Code Section 60119 on or before the end of the eighth week...”⁶⁶ The Audit Guide goes on to require that auditors verify whether the school district governing board or county board of education provided 10-day notice of the required public hearing or hearings; whether each notice included the time, place, and purpose of the hearing; whether the resolution adopted by the district stated that each pupil in each school had sufficient textbooks or instructional materials aligned to the content standards adopted by the State Board of Education; whether the governing board made a written determination as to whether each pupil enrolled in a foreign language or health course had sufficient textbooks or instructional materials; and whether the governing board determined the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12. The Audit Guide also notes that “[i]f the school district or county office of education was not in compliance with any of the requirements set forth in audit procedures 1 through 5 of subparagraph (a) of this section, the school district or county office of

⁶³ Exhibit G, Audit Guide 2011-2012.

⁶⁴ Exhibit A, Test Claim Statement of Decision, at pp. 76-77.

⁶⁵ Exhibit A, Test Claim Statement of Decision, at p. 70.

⁶⁶ Exhibit G, Audit Guide 2011-2012, at p. 53. See also Code of Regulations, title 5, section 19828.4 (Register 2009, No. 27). See earlier Audit Guide 2004-2005, at pp. 36-39.

education was not eligible to receive an Instructional Materials Funding Realignment Program allowance for the fiscal year audited.”⁶⁷

The items discussed above that must be verified are all requirements taken directly from section 60119. Section 60119, as discussed above, was denied in the test claim statement of decision, because it was held to be a grant program, entered into on a voluntary basis. Here, the Audit Guide states that auditors should examine whether local educational agencies executed the requirements of section 60119, and notifies an auditor that an LEA that did not execute these requirements is not entitled to funds for the year audited. Therefore, to include verification of the reporting requirements for sufficiency of textbooks or instructional materials, “as defined in section 60119,” necessarily means verifying that the funds were “properly disbursed and expended,” in accordance with section 60119, and that *to the extent a district participates* in the grant program, the funds associated with that program were applied to complete the findings and determinations required under section 60119. Section 60252, also discussed in the test claim statement of decision, but denied, states that instructional materials funds “shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that...[among other criteria]...provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.” The parameters and guidelines, therefore, will reflect the activity of verifying that the reporting and hearing requirements of section 60119 were completed, for schools receiving instructional materials funds.

Similarly, section 44258.9, as discussed in the test claim statement of decision, outlines a program of monitoring and review of district certificated employee assignment practices, with the intention to limit or eliminate teacher vacancies and teacher misassignments. Section 44258.9, as amended by the test claim statutes, was denied in the statement of decision because the Commission found that activities under section 44258.9 are funded, and are only required “to the extent possible and with funds provided for that purpose.”⁶⁸ In the Audit Guide, auditors are instructed to determine whether a representative sample of teachers possessed valid certificates for the classes to which they were assigned, including teachers assigned to classes of more than 20% English learners. If any teacher within this representative sample “was assigned to teach in a position for which he or she was not authorized, [the auditor is directed to] include a finding in the Findings and Recommendations section of the audit report.”⁶⁹ This comports with the definition of teacher misassignment found in section 33126(b)(5), which is, “the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is *not otherwise authorized by statute to hold.*”⁷⁰ And it comports with section 44258.9, in which a county superintendent’s report on

⁶⁷ Exhibit G, Audit Guide 2004-2005, at pp. 37-38; Audit Guide 2011-2012, at p. 54.

⁶⁸ Exhibit A, Test Claim Statement of Decision, at p. 41.

⁶⁹ Exhibit G, Audit Guide 2004-2005, at pp. 11-12; Audit Guide 2011-2012, at pp. 26-28.

⁷⁰ Education Code section 33126 (Stats. 2004, ch. 900 (SB 550)).

misassignments is required to identify information on assignment practices at deciles 1 to 3 schools, “to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners, the assigned teacher possesses [the appropriate] certificate.”⁷¹ Therefore, to include verification, in a compliance audit, of “teacher misassignments pursuant to Section 44258.9,” means to examine a representative sample of teachers to determine whether any of the teachers sampled are assigned to teach courses for which they do not hold a legally required certificate.⁷²

And finally, verification of the “accuracy of the information reported on the School Accountability Report Card,” as required by section 14501, requires just that: verification, in the form of an audit, that the information reported is accurate. This activity constitutes a new program or higher level of service not only for the three new elements of the SARC discussed above (sufficiency of textbooks, teacher misassignments and vacancies, and needed maintenance of facilities), but also because it requires verification of all information reported in the SARC. Accuracy of the SARC, for its own sake, would reasonably be considered an existing expectation, and is a condition of reimbursement, according to section 33126(c),⁷³ but here sections 14501 and 41020 impose an independent requirement to verify accuracy, and thus impose a new program or higher level of service, as discussed in the test claim statement of decision.⁷⁴ The Audit Guide addresses this verification requirement in the context of the same three elements (textbooks, misassignments, and maintenance).

With respect to the sufficiency of textbooks, the Audit Guide directs an auditor to “compare the information on the availability of sufficient textbooks and other instructional materials [reported in the SARC] with the information in the resolution reviewed pursuant to Section 19828.4(a)(5) and the information in the determinations reviewed pursuant to Section 19828.4(a)(6) and Section 19828.4(a)(7).” Section 19828.4, as discussed above, requires an auditor to verify that the requirements of section 60119, to hold a hearing and make a sufficiency determination, have been completed. If the information in the School Accountability Report Card is inconsistent with the information in the resolution or the determinations, an auditor is directed to “interview management to determine the basis of the inconsistency.” And if the School Accountability Report Card was inaccurate, the auditor must “include a finding in the Findings and Recommendations section of the audit report.”

With respect to misassignments of teachers, as reported in the SARC, the Audit Guide directs an auditor to compare the information reported in the SARC with the quarterly report of summarized complaint data compiled pursuant to the provisions of the Williams Complaint Process. The auditor is instructed to “[i]dentify any complaints related to teacher misassignment or vacancies included in the summarized data and compare each such complaint to the

⁷¹ Education Code section 44258.9 (Stats. 2004, ch. 902 (AB 3001)).

⁷² Code of Regulations, Title 5, sections 19817.2; 19817.5 (Register 2011, No. 18). See earlier provisions of similar operation in Audit Guide, 2004-2005, at pp.11-12.

⁷³ Exhibit A, Test Claim Statement of Decision, at p. 54.

⁷⁴ Exhibit A, Test Claim Statement of Decision, at pp. 69-73.

information on teacher misassignment or vacancies stated in the School Accountability Report Card for the school identified in the complaint.” Then, “[i]f the School Accountability Report Card was inaccurate, include a finding in the Findings and Recommendations section of the audit report.”

With respect to “needed maintenance to ensure good repair,” an auditor is directed to obtain, for a sample of schools, “the school district’s or county office of education’s copy of its most recently completed ‘Facility Inspection Tool (FIT),” and “compare the information contained in the FIT to the information on safety, cleanliness, and adequacy of school facilities contained in the School Accountability Report Card for that school as required by the provisions of subdivision (b)(9) of Education Code Section 33126.”⁷⁵

These elements, as discussed in the test claim statement of decision, expand the scope of the compliance audit required under section 14501⁷⁶ and the review of audit exceptions under section 41020.⁷⁷

Finance suggests rewriting activities related to the compliance audits follows:

- c. *Including verification of each of the following in compliance audits, pursuant to Education Code sections 14501⁷⁸ and 41020:*
 - i. *Reporting requirements for sufficiency of textbooks and instructional materials.*
 - ii. *Teacher misassignments.*
 - iii. *The accuracy of the information reported on the School Accountability Report Card.*

The eligible reimbursement period for these activities begins September 29, 2004.

The changes suggested by Finance enhance the clarity of the approved activity, by separating the three new elements of the compliance audit. However, they also omit the statutory cross-references to the Pupil Textbook and Instructional Materials Incentive Program, the monitoring and review of certificated employee assignment practices, and the requirements of the SARC, which provide guidance to district-level auditors on the requirements of a compliance audit, and to the controller regarding what auditing duties are reimbursable. The proposed changes are therefore partially incorporated within the parameters and guidelines.

⁷⁵ Exhibit G, Audit Guide 2011-2012, at pp. 57-59; Code of Regulations, title 5, section 19837.3 (Register 2009, No. 27).

⁷⁶ Exhibit A, Test Claim Statement of Decision, at pp. 70-71.

⁷⁷ Exhibit A, Test Claim Statement of Decision, at p. 72.

⁷⁸ In its January 4, 2013 comments (Exhibit D), Finance references Education Code 14051. Commission staff has interpreted this to be a typo because the relevant code section in the test claim is 14501.

Additionally, Finance has requested the following language be included for this activity:

Reimbursement for this activity is required only to the extent that school districts can document that claimed costs would not have been incurred in the absence of a requirement to include verification of compliance with these requirements.

The Commission has already made a final binding decision that this verification of compliance requirement imposes a reimbursable higher level of service. Therefore, the cost of including verification of compliance for the above-specified criteria is reimbursable and the Commission declines to add language to the parameters and guidelines that would require the Controller to revisit the mandates finding on a claim-by-claim basis, as proposed here. Moreover, every reimbursement claim is submitted under penalty of perjury, is by definition only for the increased costs imposed by the mandate, and is subject to audit by the State Controller; the proposed language is therefore redundant and unnecessary.

The Commission finds that based on the foregoing analysis, and incorporating the changes suggested by Finance, as appropriate, the parameters and guidelines shall provide as follows:

Beginning September 29, 2004, including verification of the following in annual compliance audits, pursuant to Education Code sections 14501 and 41020:

- i. That the reporting requirements and the hearings required to establish sufficiency of textbooks or instructional materials, or both, as outlined in section 60119, have been completed, for schools that receive instructional materials funds.⁷⁹*
- ii. Whether any of a representative sample of teachers are misassigned, within the meaning of sections 33126(b) and 44258.9.⁸⁰*
- iii. That the information reported on the School Accountability Report Card required by section 33126 is accurate based on the tests and criteria provided for in the Audit Guide.⁸¹*

D. Provision of Copies of Reports or Audits Not Commissioned by the District or the County Office of Education, Education Code section 42127.6

In the test claim statement of decision, the Commission approved the following activity:

For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created

⁷⁹ Education Code sections 14501; 41020; 60119; 60252 (Stats. 2004, ch. 900 (SB 550)).

⁸⁰ Education Code sections 14501; 41020; 44258.9 (Stats. 2004, ch. 900 (SB 550)). See also Code of Regulations, title 5, section 19817.5 (Register 2011, No. 18).

⁸¹ Education Code sections 14501; 41020; 33126(b) (Stats. 2004, ch. 900 (SB550)). See also Code of Regulations, title 5, section 19837.3 (Register 2009, No. 27).

*pursuant to subdivision (i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.*⁸²

The Commission found, in the test claim statement of decision, that while the test claim statute requires a school district to provide a copy of any study, report, evaluation, or audit that contains evidence of fiscal distress, providing a copy of a report commissioned by either the district itself or by the county office of education, while required under the statute, was not state-mandated, and therefore not reimbursable. Finance requests that the language describing this activity be further altered to “more accurately reflect the activities determined to be reimbursable.” Finance suggests the following changes:

Providing the county superintendent of schools, pursuant to Education Code sections 14501⁸³ and 41020:⁸⁴

- i. A copy of a study, report, evaluation, or audit that was commissioned by the Superintendent of Public Instruction or a state control agency and contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127.*
- ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.*

Reimbursement for this activity is not required where the study, report, evaluation, or audit was commissioned at the discretion of the district or of the county office of education.

The eligible reimbursement period for these activities begins September 29, 2004.

The suggested change enhances the clarity of the approved activity, by adding the statutory cross-reference to section 33127 for the standards and criteria that define fiscal distress; and by separating reports that show fiscal distress from reports by the County Office Fiscal Crisis and Management Assistance Team, which are required to be provided to the county superintendent regardless of whether such reports betray signs of fiscal distress. The suggested change, however, is written too narrowly to encompass all studies, reports, evaluations, or audits that might implicate the requirement of the test claim statute to forward a report to the county. The

⁸² Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

⁸³ In its January 4, 2013 comments (Exhibit D), Finance references Education Code 14051. Commission staff has interpreted this to be a typo because the relevant code section in the test claim is 14501.

⁸⁴ In both its January 4, 2013 comments, and its April 4, 2013 comments, Finance references sections 14501 and 41020 regarding the activity of providing a copy of reports or audits to the county superintendent. This requirement in fact arises from section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001). Finance’s reference to sections 14501 and 41020 was inadvertently reproduced in the draft proposed statement of decision, but is now corrected.

limitation approved in the test claim statement of decision was intended to address the situation in which the audit or report that must be forwarded to the county superintendent was either mandated by the county; in which case costs would be incurred as a result of activities mandated by another local government, and not by the state;⁸⁵ or an audit or report commissioned by the district itself, in which case the requirement to provide a copy to the county superintendent was implicated by the voluntary or discretionary actions of the district, and therefore not reimbursable.⁸⁶ No findings were made in the test claim statement of decision, nor can it be inferred from the plain language of the statute, that the *only other* studies, reports, evaluations, or audits that would trigger the requirement to provide a copy to the county superintendent are those commissioned by the *Superintendent of Public Instruction or a state control agency*. Finance’s proposed language suggests that no other reports implicating the requirements of the test claim statute are possible. There may be reports or audits that are required by other laws or regulations that are not encompassed by the suggested language, but that should, based on the plain language of the test claim statute, be required to be provided to the county. Such reports, in turn, should be reimbursable under the finding made in the test claim statement of decision.

Therefore, Commission staff proposed, in the final staff analysis and proposed statement of decision, that in paragraph d. i., rather than approving the activity of providing a copy of a report “that was commissioned by the Superintendent of Public Instruction or a state control agency...” the activity should be phrased to require provision of a copy of *any* report or audit “*unless commissioned by the district or the county office of education.*” The following language was originally proposed:

Providing to the county superintendent of schools, pursuant to Education Code sections 14501⁸⁷ and 41020:

- i. A copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127, unless commissioned by the district or the county office of education.*
- ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.*

In late comments filed April 4, 2013, Finance continued to argue that the above reasoning, and the language proposed, is “not an accurate analysis of the test claim statute.” Finance again offered its proposed language for the parameters and guidelines, excerpted above. Finance argued the text of the test claim statute, as follows:

⁸⁵ See *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

⁸⁶ See *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727.

⁸⁷ In its January 4, 2013 comments (Exhibit D), Finance references Education Code 14051. Commission staff has interpreted this to be a typo because the relevant code section in the test claim is 14501.

The statute requires that a school district provide the county superintendent of schools with a copy of a study, report, evaluation, or audit **only** if that study, report, evaluation, or audit meets both of two conditions (excluding reports on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8, which are addressed separately in the proposed parameters and guidelines):

1. The study, report, evaluation or audit was commissioned by one of four entities or groups of entities: (1) the school district, (2) the county superintendent, (3) the Superintendent of Public Instruction, or (4) state control agencies, **and**
2. The study, report, evaluation, or audit contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code section 33127.⁸⁸

While Finance’s extrication of the statute is legally correct, its proposed language is not because it is too narrowly drawn. Finance’s proposed language would provide reimbursement for providing to the county superintendent:

A copy of a study, report, evaluation, or audit that was commissioned by the Superintendent of Public Instruction or a state control agency and contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127.⁸⁹

This would prohibit reimbursement for providing copies of annual audits, or other possible reports, that may be “commissioned” by a district or county office of education, but which are not discretionary. This conflicts with the test claim statement of decision, which found that reimbursement is required except where the study, report, evaluation or audit that triggers the reporting requirement is “commissioned” by a district or county office of education *at its own discretion*. A limitation in this manner is consistent with the *Kern* case⁹⁰, in which school districts were not reimbursed for costs incurred complying with open meeting requirements triggered by their voluntary maintenance of school site councils under a separate program. Here, similarly, where a county office of education or a school district commissions a study or audit at its own discretion, that activity is not subject to reimbursement. However, providing a copy of a study, report, evaluation or audit that is commissioned other than at the discretion of the school district or county office of education is a reimbursable state mandate.

The Commission therefore adopts a portion of Finance’s suggested changes, and provides for reimbursement in the parameters and guidelines as follows:

⁸⁸ Exhibit E, Finance Comments on Proposed Statement of Decision, dated April 4, 2013.

⁸⁹ Ibid.

⁹⁰ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727.

Providing to the county superintendent of schools, pursuant to Education Code section 42127.6:

- i. A copy of a study, report, evaluation, or audit commissioned by the school district, the county superintendent, the Superintendent of Public Instruction, or a state control agency, which contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127, unless commissioned by the district or the county office of education.*
- ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.*

*Reimbursement is not required to provide a copy of a study, report, evaluation, or audit commissioned **at the discretion** of the district or of the county office of education.*

E. For County Offices of Education: Review of Audit Exceptions, Education Code section 41020

In the test claim statement of decision, the Commission approved the following activity related to reviewing audit exceptions:

County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card. The eligible reimbursement period for these activities begins September 29, 2004.⁹¹

Finance has suggested this activity be rewritten, to read:

- a. Reviewing audit exceptions related to the following, pursuant to Education Code sections 14501⁹² and 41020:*
 - i. Sufficiency of textbooks and instructional materials.*
 - ii. Teacher misassignments.*
 - iii. Accuracy of information reported on the School Accountability Report Card.*

⁹¹ Exhibit A, Test Claim Statement of Decision, at p. 82. Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

⁹² In its January 4, 2013 comments (Exhibit D), Finance references Education Code 14051. Commission staff has interpreted this to be a typo because the relevant code section in the test claim is 14501.

The language proposed by Finance is clarifying, and is consistent with the test claim statement of decision. However, the proposed parameters and guidelines have been further amended to achieve consistency with the analysis of this section in the test claim statement of decision, and the analysis above with respect to section 14501. The statutory cross-references to sections 60119, 44258.9, and 33126 must be included, so that the audit requirements may be better understood. Additionally, the test claim statement of decision noted that the review of audit exceptions also includes a determination that the exceptions are corrected or an acceptable plan of correction is put in place.⁹³ This additional requirement was discussed in the analysis, but was not cited in the conclusion; this requirement is re-inserted in the parameters and guidelines, consistent with the test claim analysis.⁹⁴

Finally, Finance has also requested the following language:

Reimbursement for this activity is required only to the extent that county offices of education can document that claimed costs would not have been incurred in the absence of a requirement to review audit exceptions related to these requirements.

The Commission has already made a final binding decision that review of audit exceptions imposes a reimbursable higher level of service. Therefore, the cost of reviewing audit exceptions for the above specified subjects is reimbursable and the Commission declines to add language to the parameters and guidelines that would require the Controller to redetermine the mandates finding on a claim by claim basis, as proposed here. Moreover, every reimbursement claim is submitted under penalty of perjury, is by definition only for the increased costs imposed by the mandate, and is subject to audit by the State Controller.

The activity of reviewing audit exceptions is therefore approved as follows:

Beginning September 29, 2004, reviewing audit exceptions related to the following, pursuant to Education Code sections 14501 and 41020, and determining whether the exceptions are either corrected or an acceptable plan of correction has been developed:

- i. Reporting and hearing requirements for sufficiency of textbooks or instructional materials, or both, as defined in section 60119.*
- ii. Teacher misassignments pursuant to Education Code section 44258.9.*
- iii. The accuracy of the information reported on the School Accountability Report Card required by section 33126.⁹⁵*

⁹³ Education Code section 41020(i)(2) (Stats. 2004, ch. 900 (SB 550)).

⁹⁴ Exhibit A, Test Claim Statement of Decision, at p. 71.

⁹⁵ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

VII. Offsetting Revenues and Reimbursements

Finance requests that language be added to section VII. requiring school districts to “reduce costs claimed for reporting on the School Accountability Report Card the availability of text books and instructional materials (activity 1.a.ii) by the amount of funding available to the district that is required to be used to report to the public about the sufficiency of instructional materials.” In its comments, Finance discusses funding available to districts as authorized by Education Code section 60119(a)(2)(B). Finance alleges that the same code section requires a school district governing board to provide information to the public if the board determines there are insufficient textbooks or instructional materials. Finance further states that this is the same information reported on the School Accountability Report Card.

However, the Commission found, in the test claim statement of decision, that the Pupil Textbook and Instructional Material Incentive Program Act (Education Code sections 60017-69119) does not impose a state-mandated local program because it is a grant program and its requirements are triggered by a school district’s discretionary decision to participate in that program. Moreover, the funding which may be available pursuant to Education Code section 60119(a)(2)(b) is specifically restricted to use for activities to carry out Education Code section 60119(a)(2)(A), which requires grant program participants to provide “information to classroom teachers, and to the public setting forth, *in the resolution*, for each school in which an insufficiency exists...” whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both.⁹⁶ Finance argues that the determination of sufficiency is the same as the reporting requirement, but based on the plain language of the code section, the funding available under section 60119 is authorized to prepare a resolution, *not* to prepare the SARC. For this reason, the Commission finds that this funding is *not offsetting* for the SARC requirements.

No other offsetting revenue is identified with respect to any of the reimbursable activities approved by the Commission.

IV. Conclusion

The Commission adopts the parameters and guidelines and statement of decision for the *Williams Case Implementation I, II, III*, 05-TC-04, 07-TC-06, and 08-TC-01, with the various periods of reimbursement as noted by activity.

⁹⁶ Education Code section 60119 (Stats. 2004, ch. 900 (SB 550)).

SECOND REVISED PROPOSED PARAMETERS AND GUIDELINES

Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6, as Added or Amended by Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

Williams Case Implementation I, II, and III
05-TC-04, 07-TC-06, and 08-TC-01

I. SUMMARY OF THE MANDATE

These parameters and guidelines arise from the consolidated *Williams* case implementation test claim. The test claim alleged reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state's settlement in *Eliezer Williams, et al. v. State of California (Williams)*. In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and qualified teachers.

The case was settled under the Schwarzenegger administration, and the settlement agreement called for legislative action to ensure that students would be provided with sufficient instructional materials, qualified teachers, and clean and safe facilities and instructional spaces. The resulting legislation made a number of changes to the Education Code, addressing deficiencies in the provision of instructional materials, assignment and retention of qualified teachers, and the maintenance of clean and safe facilities and instructional spaces.

On December 7, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6, as added or amended by the test claim statutes, impose reimbursable state-mandated new programs or higher levels of service for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim with respect to the reimbursable activities found in Section IV, Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

This consolidated test claim consists of three initial test claim filings. The claimants, San Diego County Office of Education and Sweetwater High School District, filed the first test claim (*Williams I*, 05-TC-04) on September 21, 2005¹. The claimants filed the second test claim

¹ Based on the September 21, 2005 filing date, the potential period of reimbursement for the *Williams I* test claim would begin July 1, 2004. However, the test claim statutes alleged in *Williams I* were enacted as urgency legislation and became effective on September 29, 2004, and

(Williams II, 07-TC-06) on December 14, 2007². The claimants filed the third test claim (Williams III, 08-TC-01) on July 2, 2008³. Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. However, given the various test claim filing dates and various effective dates of statutes, the beginning of the reimbursement periods differ by approved activity, but range from September 29, 2004 to October 12, 2007. The beginning reimbursement periods for each approved activity are included in Section IV, Reimbursable Activities.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for

July 25, 2005, respectively, and therefore the date of enactment marks the potential period of reimbursement for those activities.

² Based on the December 14, 2007 filing date, the potential period of reimbursement for the *Williams II* test claim would begin July 1, 2006. However the test claim statutes alleged in *Williams II* were enacted September 29, 2006, became effective January 1, 2007, and therefore the period of reimbursement begins on the later effective date of January 1, 2007.

³ Based on the July 2, 2008 filing date, the potential period of reimbursement for the *Williams III* test claim would begin July 1, 2007. However the test claim statute at issue in *Williams III* was enacted as urgency legislation and became effective on October 12, 2007, and therefore the date of enactment marks the potential reimbursement period.

the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased costs are limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

1. Reimbursable activities for school districts:
 - a. Beginning September 29, 2004, reporting the following information on the School Accountability Report Card, pursuant to Education Code section 33126(b):⁴
 - i. Misassignments of teachers, including teachers of English learners, and the number of vacant teacher positions for the most recent three-year period. Reimbursement is not required for reporting the assignment of teachers outside their areas of competence, as was required by Proposition 98 and is not new.
 - ii. Availability of textbooks and other instructional materials. Reimbursement is not required for reporting on the quality and currency of textbooks and other instructional materials; those reporting requirements were required by Proposition 98 and are not new. Additionally, reimbursement is not required to determine whether each student in the district has sufficient textbooks or instructional materials; that activity is required as a condition of seeking funds under the Pupil Textbook and Instructional Materials Incentive grant program pursuant to Education Code section 60119, and was denied by the Commission.
 - iii. Maintenance needed to ensure good repair. Reimbursement is not required for reporting on the safety, cleanliness, and adequacy of school facilities, since that was required by Proposition 98 and is not new.

Reimbursement for this activity is required only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Education Code section 41020. If the information is

⁴ Statutes 2004, chapter 900.

determined to be inaccurate, reimbursement for reporting the information required by 1.a. i, ii. or iii above, is required if the information is corrected by May 15 following the audit.⁵

- b. Complying with the Williams Complaint Process pursuant to Education Code section 35186 as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347):
- i. Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.⁶
 - ii. Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.⁷
 - iii. Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.⁸
 - iv. Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.⁹
 - v. Remediating a valid complaint within a reasonable time period but not to exceed 30 working days. The eligible reimbursement period for this activity begins September 29, 2004.¹⁰

The activity of remediating a valid complaint includes costs incurred, where applicable, for the administrative activities of (1) arranging for the maintenance or repair required to remedy complaints related to facility conditions that pose an emergency or urgent threat to the health and safety of pupils or staff (2) procuring sufficient textbooks or instructional materials, but only in the case that the district is not participating in the Pupil Textbook and Instructional Materials Incentive Program pursuant to Education Code section 60117 et seq.; (2) locating suitable teachers to fill vacancies, or reallocating staff to remedy misassignments, as identified by the complaint process; and (3) remediating a failure to provide intensive instruction and services to

⁵ Education Code section 33126(c) (Stats. 2004, ch. 900 (SB 550)).

⁶ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550); Stats. 2004, ch. 903 (AB 2727)).

⁷ Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁸ Education Code section 35186(a)(3) (Stats. 2004, ch. 900 § 12 (SB 550)).

⁹ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁰ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

a pupil who has not passed one or both parts of the high school exit examination by the end of grade 12.

Reimbursement is **not required** for the costs of any maintenance or repair required to remedy complaints related to facilities conditions that pose an emergency or urgent threat to the health and safety of pupils or staff; teacher salaries and benefits; or the salaries and other direct costs of intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination by the end of grade 12.

- vi. Reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.¹¹
- vii. Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹²
- viii. Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.¹³
- ix. Beginning September 29, 2004, the *one-time activity* of posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage.¹⁴
- x. Beginning July 25, 2005, the *one-time activity* of adding to the posted notice in each classroom that “[t]here should be no teacher vacancies or misassignments.”¹⁵
- xi. Beginning October 12, 2007, the *one-time activity* of adding to the posted notice in each classroom in schools that serve grades 10 to 12, that “[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.”¹⁶

¹¹ Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹² Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹³ Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁴ Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

¹⁵ Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831)).

¹⁶ Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347)).

- xii. Beginning October 12, 2007, receiving complaints regarding “any deficiencies related to intensive instruction and services provided...to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.”¹⁷
- c. Beginning September 29, 2004, including verification of the following in annual compliance audits, pursuant to Education Code sections 14501 and 41020:
 - i. That the reporting requirements and the hearings required to establish sufficiency of textbooks or instructional materials, or both, as outlined in section 60119, have been completed, for schools that receive instructional materials funds.¹⁸
 - ii. Whether any of a representative sample of teachers are misassigned, within the meaning of sections 33126(b) and 44258.9.¹⁹
 - iii. That the information reported on the School Accountability Report Card required by section 33126 is accurate based on the tests and criteria provided for in the Audit Guide.²⁰
- d. Beginning September 29, 2004, providing to the county superintendent of schools, pursuant to Education Code section 42127.6:
 - i. A copy of a study, report, evaluation, or audit commissioned by the school district, the county superintendent, the Superintendent of Public Instruction, or a state control agency, which contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Education Code sections 33127, unless commissioned by the district or the county office of education.
 - ii. A copy of a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Education Code section 42127.8.

Reimbursement is not required to provide a copy of a study, report, evaluation, or audit commissioned *at the discretion of* the district or of the county office of education.

2. Reimbursable activities for county offices of education:

Beginning September 29, 2004, reviewing audit exceptions related to the following, pursuant to Education Code sections 14501 and 41020, and determining whether the

¹⁷ Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347)).

¹⁸ Education Code sections 14501; 41020; 60119; 60252 (Stats. 2004, ch. 900 (SB 550)).

¹⁹ Education Code sections 14501; 41020; 44258.9 (Stats. 2004, ch. 900 (SB 550)). See also Code of Regulations, title 5, section 19817.5 (Register 2011, No. 18).

²⁰ Education Code sections 14501; 41020; 33126(b) (Stats. 2004, ch. 900 (SB550)). See also Code of Regulations, title 5, section 19837.3 (Register 2009, No. 27).

exceptions are either corrected or an acceptable plan of correction has been developed:

- i. Reporting and hearing requirements for sufficiency of textbooks or instructional materials, or both, as defined in section 60119.
- ii. Teacher misassignments pursuant to Education Code section 44258.9.
- iii. The accuracy of the information reported on the School Accountability Report Card required by section 33126.²¹

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

²¹ Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter²² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

²² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

Commission on State Mandates

Original List Date: 8/19/2011
Last Updated: 3/27/2013
List Print Date: 03/27/2013
Claim Number: 05-TC-04 et al.
Issue: Williams Case Implementation I, II, III

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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