

ITEM 19

FINAL STAFF ANALYSIS

State Controller's Reevaluation of Reimbursement Claims on

Education Code Section 51225.3
Statutes 1983, Chapter 498

Graduation Requirements

San Diego Unified School District, Claimant (CSM 4435-I-01 and 4435-I-37)

San Jose Unified School District, Claimant (CSM 4435-I-04)

Sweetwater Union High School District, Claimant (CSM 4435-I-05)

Castro Valley Unified School District, Claimant (CSM 4435-I-13 and 4435-I-39)

Grossmont Union High School District, Claimant (CSM 4435-I-35)

Clovis Unified School District, Claimant (CSM 4435-I-06 and 4435-I-38)

**On Remand from the Sacramento County Superior Court,
San Diego Unified School District, et al. v. Commission on State Mandates et al.,
Case No. 03CS01401 (Consolidated with Nos. 03CS01568, 03CS01569, 03CS01570,
03CS01702, 04CS00028)**

Executive Summary

Background

The Sacramento County Superior Court remanded six Commission on State Mandates (Commission) decisions on incorrect reduction claims filed by San Diego Unified School District, San Jose Unified School District, Sweetwater Union High School, Castro Valley Unified School District, Grossmont Union High School District, and Clovis Unified School District on the *Graduation Requirements* program. The legislation at issue in these cases, Education Code section 51225.3, increased the number of science courses required for high school graduation from one science course to two science courses. The State Controller's Office reduced the reimbursement claims filed by these school districts for the cost of teachers' salaries and the Commission, after hearing incorrect reduction claims filed by these districts, upheld the State Controller's reductions.

The Court disagreed with the Commission's decisions upholding the Controller's reduction of claims for teacher salary costs on the ground that the school districts did not

identify any offsetting savings due to a corresponding reduction of non-science teachers pursuant to Education Code section 44955. Thus, the court granted the petitions for peremptory writ of mandate on that issue. Pursuant to the writ, the Commission, on May 26, 2005, set aside the Statements of Decision on the incorrect reduction claims on the teacher salary issue and directed the State Controller’s Office to reevaluate each reimbursement claim in light of the court’s ruling.

The Commission has received the State Controller’s reevaluations of the claims for reimbursement of teacher salary costs incurred pursuant to Education Code section 51225.3. The Controller’s Office denied the total amount of the claims for teacher salary costs in years when the school districts provided no documentation of offsetting savings. In addition, the Controller’s Office reduced claims for teacher salary costs based on a review of data submitted by the school districts taken from the California Basic Educational Data System (CBEDS). CBEDS is an annual collection of basic student and staff data that the California Department of Education collects from local educational agencies. Using the CBEDS data, reductions were made by the Controller’s Office when the data showed a reduction of non-science teachers or a reduction of science classes compared to the base year. After reevaluation, the State Controller’s Office adjusted the claims, as shown in Table 1.

Thus, pursuant to the writ, the Commission is now required to “determine whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the petitioners that the claimed teachers’ salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3.”

Table 1

School Districts	Claimed Costs	SCO Allowable Costs	SCO Adjustments
Castro Valley Unified School District	\$1,410,217	\$526,503	-\$883,714
Clovis Unified School District	\$4,403,323	\$2,244,789	-\$2,158,534
Grossmont Union High School District	\$263,260	\$263,260	\$0
San Diego Unified School District ¹	\$16,162,373	\$4,542,692	-\$11,619,681
San Jose Unified School District	\$7,231,637	\$2,752,968	-\$4,478,669
Sweetwater Union High School District	\$3,156,545	\$273,161	-\$2,883,384
Totals	\$32,627,355	\$10,603,373	-\$22,023,982

¹ See Controller’s Reply, dated October 18, 2005, Revised Schedule 4, for Claimed Costs. (Exhibit J.)

Staff Analysis

In March 2006, staff issued a draft staff analysis that proposed a modified methodology for reevaluating these claims. In the draft staff analysis, findings were made that the State Controller's Office could properly use the data submitted by the school districts to show offsetting savings when the documentation showed reductions in non-science teachers in excess of any increases in science teachers resulting in a reduction of the total amount of teachers for the year.

After reviewing the comments on the draft staff analysis, and rereading the Court's Judgment, Ruling on Submitted Matter, and Writ, staff finds that the proposed modified methodology in the draft staff analysis does not comply with the Court's ruling because there is no evidence in the record that the reduction in non-science teachers was a direct result of the mandate.

The Court's Judgment, Ruling, and Writ (Exhibit A) provide the following:

- The finding in the Statement of Decision and the parameters and guidelines that school districts are eligible to receive reimbursement for the increased costs to staff the second science course mandated by the test claim statute (Education Code section 51225.3) is binding on the parties. The Controller's Office did not challenge or reduce the original claimed amount for teacher salary costs as unreasonable or excessive. Rather, reductions were made because the districts failed to show an offset of costs by laying off teachers of non-mandated courses pursuant to Education Code section 44955. Thus, the Commission does not have jurisdiction to address the fact that teacher salary costs are reimbursable, or the original amount claimed by the districts for teacher salary costs.
- The issue on remand is limited to whether the districts experienced any costs savings by exercising their discretionary authority under Education Code section 44955, by reducing the teaching staff of non-mandated courses as a direct result of the second science course mandated by the test claim statute.
- The parties are bound by the court's holding that the use of the authority in Education Code section 44955 rests entirely in the discretion of the district's governing board and cannot be used by the Controller's Office to require the district to show a reduction of costs in order to get reimbursed for teacher salary costs.
- The Controller may not deny or reduce a claim for teacher salary costs on the ground that the district has not exercised its authority under Education Code section 44955 and/or shown a reduction in non-science classes and teachers corresponding to the addition of the new mandated science class.
- The Controller may not require a showing by the school districts that the claimed teacher salary costs could not have been offset pursuant to Education Code section 44955.

Accordingly, based on the Court's Judgment, Ruling, and Writ, the staff analysis contains the following findings on the merits of these claims:

- The Controller improperly denied the total amount of the claims in years when the districts provided no documentation of offsetting savings. A complete denial of costs is not supported by the record, or the Court's Judgment and Ruling. The Court expressly rejected the Controller's assumption that it may conclude that since no documentation exists showing a change in the school day or year as a result of the mandate, there must be offsetting savings. The Court found that the Statement of Decision and parameters and guidelines authorizing reimbursement for teacher salaries is binding on the parties. The record contains the reimbursement claims signed under penalty of perjury by the school districts that increased costs were incurred for teacher salary costs as a result of the mandate. There is no evidence in the record that the districts exercised their authority under Education Code section 44955 during these years to offset the costs.
- The Controller improperly reduced the claims for teacher salary costs for all districts, except Grossmont, based on its use of the CBEDS data. Although the Controller did not require a showing from the school districts that their claims for teacher salary costs "could not have been offset pursuant to subdivision (b) of Education Code section 44955," as prohibited by the writ, the Controller did require an offset to reduce the claims using assumptions that are not based on facts in the record. There is no evidence in the record that the districts exercised their discretionary authority under Education Code section 44955 to lay off teachers of non-mandated courses as a direct result of the mandate. Such a finding is required by the Court's Judgment and Writ: "In reevaluating each petitioner's reimbursement claim pursuant to the ruling on submitted matter, the State Controller may require the petitioner to submit cost data and documentation *to demonstrate whether it experienced any savings to offset the teachers' salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3 ...*" (Court's Judgment, page 2, lines 23-27, Writ, para. 2.)
- The Controller improperly understated San Diego's original amount claimed for teacher salary costs by failing to include the costs for teacher staff development or training.
- The Controller properly reevaluated the Grossmont claim when it stated, in comments to the draft staff analysis, that Grossmont properly filed its reimbursement claim.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt this staff analysis. Pursuant to the Peremptory Writ of Mandate issued by the Court on February 9, 2005, staff recommends that the Commission:

- Issue a new decision, consistent with this staff analysis, for the claim filed by Grossmont Union High School District, and remand the reevaluated claim to the

State Controller's Office for payment. (See attached Order Adopting Staff Analysis as the Decision for Grossmont, p. 35.)

- Return the reevaluation of the claims filed by San Diego Unified School District, San Jose Unified School District, Sweetwater Union High School District, Castro Valley Unified School District, and Clovis Unified School District to the Controller for correction and resubmission to the Commission within 30 days.
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STAFF ANALYSIS

Chronology

- 02/09/05 Sacramento County Superior Court enters Judgment and issues Peremptory Writ of Mandate
- 05/26/05 Commission sets aside Statements of Decision on the incorrect reduction claims relating to teacher salary costs and directs the State Controller's Office to reevaluate claims for teacher salary costs pursuant to court order
- 07/19/05 San Diego Unified School District files copies of documentation submitted to the State Controller's Office (letters dated 5/4/05, 6/10/05, 7/14/05)
- 07/20/05 SixTen and Associates files copies of documentation submitted to the State Controller's Office on behalf of Castro Valley, Clovis, Grossmont and San Jose (includes letters from State Controller's Office, dated June 6, 2005, to Grossmont and Clovis, and the CBEDS Administrative Manual)
- 07/20/05 Sweetwater Union High School District files copies of documentation submitted to the State Controller's Office
- 07/29/05 State Controller's Office submits status of reevaluation
- 08/26/05 State Controller's Office files reevaluation of claims
- 09/28/05 Response to reevaluation filed by Castro Valley Unified School District, Clovis Unified School District, Grossmont Union High School District, and San Jose Unified School District
- 09/29/05 Response to reevaluation filed by Sweetwater Union High School District
- 09/29/05 Response to reevaluation filed by San Diego Unified School District
- 10/18/05 State Controller's Office files reply
- 02/15/06 Pre-hearing conference
- 03/28/06 Draft staff analysis issued
- 04/06/06 State Controller's Office requests extension of time to comment on draft staff analysis
- 04/10/06 Commission staff grants extension of time until June 19, 2006
- 06/19/06 Sweetwater Union High School District files comments, dated June 16, 2006, on the draft staff analysis
- 06/19/06 Castro Valley, Clovis, Grossmont, and San Jose file comments, dated June 16, 2006, on the draft staff analysis
- 06/19/06 State Controller's Office files comments on the draft staff analysis

Background

This item is on remand from the Sacramento County Superior Court involving six Commission decisions on incorrect reduction claims filed by San Diego Unified School District, San Jose Unified School District, Sweetwater Union High School, Castro Valley Unified School District, Grossmont Union High School District, and Clovis Unified School District on the *Graduation Requirements* program. The legislation at issue in these cases, Education Code section 51225.3, increased the number of science courses required for high school graduation from one science course to two science courses. The Commission found, in each case, that the State Controller's Office properly reduced the reimbursement claims filed by these school districts for the cost of teachers' salaries because the claims did not identify offsetting savings due to a corresponding reduction of non-science teachers. The Commission and the Controller relied on Education Code section 44955, which allows a school district to lay off teachers of non-mandated courses when the state changes mandated curriculum.

These school districts filed petitions for writ of mandate in Sacramento County Superior Court challenging the Commission's decisions sustaining the reduction of teacher salary costs.

The court consolidated all cases for purposes of the hearing and decision. On February 9, 2005, the Sacramento County Superior Court entered a judgment and issued a peremptory writ of mandate in all cases. (Exhibit A.) The court disagreed with the Commission's decisions on the issue of teacher salary costs and, thus, granted the petitions for peremptory writ of mandate on that issue.

On the teacher salary issue, the peremptory writ of mandate directs the Commission to:

1. Set aside your decisions sustaining respondent State Controller's reductions of petitioners' claims for reimbursement of teachers' salary costs incurred in providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3.
2. Direct respondent State Controller to set aside his reductions of petitioners' claims for reimbursement of teachers' salary costs incurred pursuant to subdivision (a)(1) of Education Code section 51225.3, reevaluate each claim in light of the court's ruling on submitted matter (Exhibit A to judgment), and submit the results of these reevaluations to you within 60 days of receiving your directions. In reevaluating each petitioner's reimbursement claim pursuant to the ruling on submitted matter, the State Controller may require the petitioner to submit cost data and documentation to demonstrate whether it experienced any savings to offset the teachers' salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3, but the State Controller may not require the petitioner to demonstrate that it could not have offset the costs by using its authority under subdivision (b) of Education Code section 44955 to terminate teachers of other courses provided by the

petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3.

3. Upon receiving the State Controller's reevaluations of petitioners' claims for reimbursement of teachers' salary costs incurred pursuant to subdivision (a)(1) of Education Code section 51225.3, determine whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the petitioners that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3.
4. Upon determining that the State Controller has properly reevaluated the reimbursement claim of any petitioner, issue a new decision sustaining the reevaluation and remanding the reevaluated claim to the Controller for payment. Upon determining that the State Controller has not properly reevaluated the reimbursement claim of any petitioner, return the reevaluation to the Controller for correction and resubmission to you within 30 days.

Pursuant to the court's order, the Commission set aside the Statements of Decision with respect to the Commission's conclusion on the teacher salary issue and directed the State Controller's Office to reevaluate each reimbursement claim in light of the court's ruling on May 26, 2005.

The Commission has received the State Controller's reevaluations of the claims for reimbursement of teacher salary costs incurred pursuant to Education Code section 51225.3. Thus, pursuant to the writ, the Commission is now required to "determine whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the petitioners that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3."

The Court's Decision (Exhibit A)

The test claim statute, Education Code section 51225.3, states in relevant part the following:

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

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

[¶]

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

(2) Other coursework as the governing board of the school district may by rule specify.

The Commission determined that Education Code section 51225.3 constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma. Section V(C) of the parameters and guidelines describes the reimbursement for teacher salaries as follows: “*Increased cost to school district for staffing and supplying the new science classes mandated.*” (Emphasis added.) Section VI of the parameters and guidelines states the following with respect to “offsetting savings:”

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

The Commission’s Statement of Decision was not challenged in court and, therefore, remains a final decision on the merits of the case and is legally binding on the parties. In this regard, the Court held as follows:

On the basis of the parties’ supplemental briefing, the court has concluded that the Commission’s test claim decision is final and should not be disturbed. The court focus [sic] its review on the Commission’s IRC decision, affirming the Controller’s offsetting savings requirement and interpreting the reimbursement limitation language in Section VI of the parameters and guidelines.²

As explained in the judgment, the State Controller’s Office denied reimbursement for teacher salary costs on the ground that the claims “should have resulted in offsetting savings due to a corresponding reduction of non-science classes” as a result of the districts’ authority in Education Code section 44955 to lay off teachers of non-mandated courses when the state changes mandated curriculum, and that the claims did not indicate any offsetting savings.³ The position of the State Controller’s Office is explained on pages 8 and 9 of the Court’s Ruling as follows:

It is clear that [the test claim statute] required a modification of curriculum by adding a second year of science to a student’s secondary education curriculum. It is also clear the district hired new science teachers to staff the new classes. Because of [the test claim statute], the students who would have chosen elective courses, other than science, must now take a second year of science. Assuming no change in enrollment, the

² See Court’s Ruling on Submitted Matter (hereafter “Court’s Ruling”), pages 13-14, footnote 3.

³ Court’s Ruling, page 7.

requirement of students to take an additional year of science should have resulted in a reduced number of classes. We strongly believe the increased costs to the district are differentials in salaries or other remunerations, if any between new science teachers and non-science teachers who would have been released, and the costs of laboratory assistants or special teaching aids required by a science class. Since the district's claims do not indicate cost differentials or show offsetting non-science teacher costs as directed by the claiming instructions, the claims are clearly excessive and unreasonable.

The Controller also took the view that since the Legislature did not increase the minimum school day and year or the credits required for high school graduation, the districts could shift students from non-mandated classes to science classes, eliminate the non-mandated classes, use the authority under Education Code section 44955 to terminate teachers of the non-mandated classes, and thereby offset the costs of the teachers' salaries for the second science course. Thus, by reorganizing the class offerings and reallocating revenues for teacher salaries, the Controller expected that the districts could avoid incurring a net increase in the cost of teacher salaries, except for any differential between the salaries of the teachers hired for the second science course and the salaries of the terminated teachers of non-mandated courses.⁴

As a result of the Controller's reduction, the districts challenged the "requirement that a school district claiming reimbursement for science teachers' salaries either identify offsetting savings produced by laying off teachers of non-mandated courses pursuant to Education Code section 44955 or document the lack of offsetting savings." The districts argued that "no Commission decision or legal authority requires the district to cut back the district's local course offerings to provide the state-mandated science course; as indicated in the Commission's parameters and guidelines, the district is entitled to state reimbursement of the additional science teachers' salaries offset only by the termination of teachers as a direct result of compliance with [the test claim statute]."⁵

The court determined that the correctness of the Controller's offsetting savings requirement depends on whether the offsetting savings requirement is consistent with statutory and case law limiting reimbursement under article XIII B, section 6 to actual increased costs incurred by a district in providing the new program or increased level of service mandated by the state. The court, citing *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 (discussed in the quote below), acknowledged the principle of law that there are no increased costs mandated by the state and reimbursement is not required if the district can comply with the state mandate by reallocating revenues.⁶

⁴ Court's Ruling, page 15.

⁵ Court's Ruling, page 11.

⁶ Court's Ruling, page 14.

The Court, however, agreed with the school districts, finding as a matter of law that the test claim statute does not require school districts to comply with the program by reallocating revenues. The court's holding, on pages 15-17 of the Ruling, is as follows:

As SDUSD correctly points out, however, Education Code section 51225.3 mandates school districts to add a second science course without requiring school districts to replace or eliminate existing course offerings. To the contrary, subdivision (a)(2) of section 51225.3 preserves the school district's right to specify and offer other courses required for high school graduation on an equal par with the courses specified by the Legislature in subdivision (a)(1) of section 51225.3. In contrast to the situation in *County of Los Angeles v. Commission on State Mandates* [(2003) 110 Cal.App.4th 1176], where state legislation directed local law enforcement agencies to reallocate their training resources in a certain manner to include domestic violence training, subdivision (a) of section 51225.3 directs a school district to include a second science course and other specified courses *in addition to* courses specified by the district's board. In section 51225.3, the Legislature does not give the courses specified in subdivision (a)(1) higher priority than the courses specified by the district's board under subdivision (a)(2) and does not require school districts to redirect their resources from the courses specified by the board to the courses specified by the Legislature. The courses specified by the district's board under subdivision (a)(2) are not deemed optional by the Legislature.

Nor does the Legislature provide any indication in Education Code section 44955 of legislative intent to provide the school district with a means of avoiding actual increased costs and precluding reimbursement under section 6 for teachers' salaries incurred in providing a second science course pursuant to Education Code section 51225.3. Subdivision (b) of section 44955 ... authorizes a school district to terminate the services of permanent employees in the district whenever the amendment of state law requires the modification of curriculum and when, in the opinion of the governing board of the district, it has become necessary by reason of this condition to decrease the number of permanent employees in the district.

By its terms, the authority given to a district by subdivision (b) of section 44955 does apply to modifications of curriculum such as the addition of a second science course by an amendment of section 51225.3, but use of the authority rests entirely in the discretion of [the] district's governing board. There is no suggestion in subdivision (b) of a legislative intent to supply the district with an offset mechanism to reallocate teaching staff resources and avoid actual increased costs for teachers' salaries otherwise reimbursable under section 6 whenever the district adds a newly state-mandated course to its curriculum. [Footnote omitted.]

...Such an intent would also defeat the purpose of section 6, to protect local agencies like the district from a state mandate that forces the district to shift its limited revenues to the state mandate from existing local programs for which the revenues have been budgeted. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 52 Cal.3d 482, 487.) If the school district is precluded from section 6 reimbursement of its costs for teachers' salaries incurred in providing a second science course mandated by section 51225.3 because subdivision (b) of section 44955 is construed as a mechanism for offsetting the such [sic] salary costs, the district is forced, absent an additional source of revenue, to redirect the revenues budgeted for staff teaching courses specified by the district's board under section 51225.3 [subdivision (a)(2)] to staff hired to teach the second science course. Courses locally specified by the district's board are thereby eliminated so that the district can provide the second science course mandated by section 51225.3, contrary to the terms of section 51225.3 and the purpose of section 6. [Emphasis in original.]

The court held that its conclusion does not prevent the Controller, when reevaluating the claims "from requiring the districts to provide detailed documentation of offsetting savings *directly* resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course." (Emphasis added.)⁷ The court states on page 18 of its Ruling the following:

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

However, the court's conclusion regarding the invalidity of the Controller's offset savings requirement does prevent the Controller from denying school districts' claims for reimbursement of science teachers' salaries on the ground that the claimants have not shown a reduction in non-science classes and teachers corresponding to the addition of science classes and teachers to comply with the mandate in subdivision (a)(1)(C) of Education Code section 51225.3. As explained in this ruling, this ground for denying reimbursement of science teachers' salaries is premised on an erroneous interpretation of Education Code section 44955

⁷ Court's Ruling, pages 17-18.

and 51225.3 that would require school districts to divert their limited revenues from courses specified by the districts' boards pursuant to [Education Code section 51225.3,] subdivision (a)(2), in violation of section 6. (Emphasis added.)

Thus, the court's writ provides that "the State Controller may require the petitioner to submit cost data and documentation to demonstrate *whether it experienced any savings to offset the teachers' salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3*, but the State Controller may not require the petitioner to demonstrate that it could not have offset the costs by using its authority under subdivision (b) of Education Code section 44955 to terminate teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3." (Emphasis added.)

Position of the State Controller's Office

The State Controller's Office requested documentation from the school districts to substantiate their "the lack of offsetting savings," including documentation showing the impact of the second science course on the school day (classes taken) and year (instructional minutes). The Controller's Office contends that the judgment expressly found that the Controller's demand for documentation has a firm legal basis in the Government Code and the Commission's regulations. However, the Controller contends that the districts did not comply with the request and instead submitted data based on the California Basic Educational Data System (or "CBEDS").

The school districts did not comply with the documentation request and, instead, submitted data based on the California Basic Educational Data System (CBEDS), showing the change in the number of science and non-science classes relative to enrollment for each school year.

Nevertheless, the State Controller's Office agreed to use the CBEDS data to re-evaluate the claims for the following reason.

We used the CBEDS data because it was the only information we received from the petitioners that provided the means of making a correlation between the number of additional science teachers needed to implement the mandate and its impact on non-science classes. Assuming the school day and year have remained unchanged, then the number of additional science classes could result in corresponding reductions in the number of non-science classes.⁸

The Controller explains that since the districts have not demonstrated that the mandate resulted in an increase in the school day and year, and given a fixed number of classes a student may take, the addition of one more class *could* result in a corresponding reduction

⁸ State Controller's Reply, dated October 18, 2005, page 2.

in another class.⁹ Thus, using the CBEDS data, the Controller applied the following three assumptions when re-evaluating each claim:

1. An increase in science teachers along with a corresponding increase in non-science teachers would result in an allowance of costs claimed.
2. Conversely, an increase in science teachers relative to a decrease in non-science teachers per CBEDS would result in a reduction of science teachers claimed to the extent of the decrease in non-science teachers per CBEDS. In situations where the comparison of CBEDS science and non-science teachers results in a positive remainder, the State Controller's Office would compute a percentage based on the change in non-science teachers divided by the change in science teachers. The State Controller's Office would apply that percentage as an offset to claimed science teacher costs.
3. A decrease in science classes per CBEDS would result in unallowable costs claimed.

Using these assumptions, the State Controller's Office determined that \$10,603,373 was allowable as increased teacher costs from the \$32,606,431 amount claimed by the school districts. In addition, the Controller denied all claims for fiscal year 1991-92 because no documentation, including CBEDS data, exists for that year. The Controller found offsetting savings for all school districts, except Grossmont.

In response to the draft staff analysis, the Controller argues the following (Exhibit O):

- Under general auditing principles, a refusal to provide documentation properly requested results in a finding against the party refusing to produce the documentation. Thus, the Controller may properly conclude that there were no changes in the school day or year as a result of the addition of the second science course and, thus, there are offsetting teacher salary savings for all science teachers hired. The districts would be entitled only to the difference, if any, between the salaries of the non-science teachers and the science teachers.
- There is no evidence that there were changes in the school day or year. "As a science class is added to the finite number of classes that each student will take, an elective class (and the teaching staff supporting it) must be eliminated, because the students now in the science class are not taking an elective class that they could otherwise have taken. Clearly, each non-science teacher position eliminated should setoff each science teacher added. The total number of classes that students will take is a zero sum game. If the number of non-science teachers that are eliminated exceeds the number of science teachers added, then there must be another cause for the loss of the 'extra' non-science teachers."
- The argument that the reduction of non-science teachers was caused by a lack of funds "is an untenable argument that ignores reality." "It assumes that the districts would have enlarged the school day/year, with the expectation that

⁹ State Controller's Reply, dated October 18, 2005, attachment 2, page 3.

students would add the required science class without dropping an elective, thereby exceeding their already full school day/year. This is not the conclusion that the court would have drawn from the evidence presented by the districts.”

- Layoffs are not the only way to reduce teaching staff. San Diego, for example, could have achieved the staff reductions by not hiring new teachers when existing teachers retired, transferred, were reassigned, or left the district. “[I]t appears that SDUSD achieved reductions in staff without resorting to layoffs.”
- “The mandate does not address reimbursement for the maintenance of non-science classes, only the change in graduation requirements relative to science. Again, in a fixed environment, it is difficult to see how costs increased when the additional science classes resulted in a corresponding decrease in the number of non-science classes.”
- If the funding sources of the costs claimed include federal, state, or local categorical funds, then these funds should be applied as offsetting revenues.
- In the majority of claims filed, the school districts compared the number of science teachers before the implementation of the mandate to science teachers in the claim year, adjusted for enrollment, to determine that gross amount of the claim. This methodology has significant shortcomings since the method does not address offsetting savings and the impact the mandate had on non-science teachers.

The claiming method used by Grossmont appears to be the most accurate and the easiest to apply. Grossmont’s calculation is based on one quarter of enrollment and average class size. The assumption is that in one of the four years of high school a student will take one science course. The impact on non-science classes is addressed using a class size differential. The incremental increase in costs results only when the size of the average science class is below that of the average non-science class.

Position of Castro Valley, Clovis, San Jose, and Grossmont

Districts’ arguments on the merits of the reevaluation

These three school districts contend that they did not experience any offsetting savings as a direct result of the test claim statute and, thus, their reimbursement claims should be reimbursed for the full amount claimed, plus interest.

These districts contend that the CBEDS data was provided for the specific purpose of determining whether there was offsetting savings in the form of reduced teacher costs for non-science courses as a result of the increase in science courses since fiscal year 1983-84, the “base year” or the year before the test claim legislation was enacted. The districts compared the number of teachers and classes for each of the fiscal years subject to the incorrect reduction claims to the base year data after the base year data was adjusted for enrollment. Using the data, the districts contend that they did not experience a reduction of teacher costs for non-science courses as a result of the increased science course.

The districts did not use the CBEDS data for cost accounting purposes to determine the costs originally claimed. Thus, the CBEDS data will not match the reimbursement claims submitted by the districts. Information regarding the costs claimed is found in the original reimbursement claims.

The districts argue that the Controller inappropriately used the CBEDS data for cost accounting purposes when reevaluating the claims. Using the CBEDS data, the Controller reduced science teacher costs originally claimed by a percentage based on the change in non-science teachers divided by the change in science teachers. Thus, the Controller is only reimbursing the costs for additional science teachers based on the change in the number of additional non-science teachers. The districts argue, however, that there is no correlation between the number of additional science teachers required for the mandate and the number of teachers for other courses. For example, the test claim statute also increased the number of math and English courses required for graduation. The districts contend that these other curriculum changes account for some of the increases in non-science teachers, which the Controller considered and used when reducing the claims. In addition, the districts contend that since the state did not reimburse the cost of additional science teachers at the time the districts incurred the cost, it is impossible for the districts to replace non-science teachers at the same rate as the increase in the number of science teachers.

The districts further argue that relying on CBEDS data to calculate reimbursable costs yields illogical results. The costs claimed by the districts were not based on CBEDS data. For example, the CBEDS data indicates that in 1994-95, Grossmont had an estimated 33 more science teachers than in the base year and 51.9 more non-science teachers. Under the Controller's method, all 33 science teachers would be reimbursed. However, Grossmont only claimed 1.28 science teachers in their claim. The districts contend that the Controller ignores the number of teachers actually claimed. The Controller just reduced the claimed costs by the percentage of non-science teachers. The result is that in some cases the Controller is disallowing costs never claimed.

Finally, the districts contend that denying reimbursement for fiscal year 1991-92 to the school districts because no documentation exists for that year, including CBEDS data, is inappropriate. The collection, analysis, and reporting of the CBEDS data is the responsibility of the state. Since the CBEDS data was not used in the reimbursement claims for cost accounting purposes, the unavailability of the CBEDS data cannot be determinative of an adjudication of reimbursable costs for that year. "To default the claims because CBEDS data was not available fifteen years after the fact, as well as never required or used for the preparation of the claims, is capricious and punitive."

Districts' arguments regarding the documentation requested by the Controller's Office

The districts contend that the documentation requested by the Controller's Office exceeds the scope of the court's decision and, thus, is not relevant to the reevaluation of these claims. The districts make the following arguments:

- The scope of the Controller's authority to demand documentation was limited to whether the claimants "experienced" any cost savings as a result of the increased

science course. The Controller's authority did not include demanding documentation in support of cost savings for other reasons that may have occurred, such as other changes in curriculum. The Controller was specifically precluded from requiring the claimants to prove that it could have experienced savings by reducing other course offerings.

- The Controller's request for documentation showing what year the district began implementing the additional science course to satisfy the mandate is not relevant. The scope of review is limited to the years in dispute.
- The Controller's request for documentation to support "that the second science course increased the number of classes provided during the school day and year, as well as documentation of the number of teachers required for the classes provided" exceeds the court's order. The court order does not require findings on how many classes a student takes per day or year, the number of classes provided per school day and year, nor the number of teachers required for the classes provided. The districts argue that there is no state law mandating the number of teachers required for the classes provided, or for the number of classes enrolled by a student.
- The Controller's request for documentation to demonstrate whether or not the second science course resulted in an overall increase in the number of classes taken by students exceeds the scope of the court's order. There is no requirement to prove that the increase in science teacher courses increases the number of classes taken by students, and is contrary to the court's order regarding Education Code section 51225.3, subdivision (a)(2), the classes offered at the district's discretion.
- The Controller's request for documentation that justifies the lack of offsetting savings directly resulting from teachers hired each year for the second science course exceeds the scope of the court's order. The court's order pertains the whether the districts experienced any savings to offset costs, and does not make findings regarding the number of teachers hired each year for the second science course.

Districts' arguments regarding procedure and jurisdiction

The districts also raise the following procedural and jurisdictional issues:

- The State Controller's Office was in violation of the court order when it failed to complete its re-evaluation of the claims 60 days after the Commission set aside the Statements of Decision. The court order does not give the Commission the jurisdiction to grant extensions of time to the State Controller's Office. The delay has prejudiced the school districts. Thus, when the Commission granted the Controller's request for an extension, the Commission violated the court order.
- The court order did not give the Commission the authority to request comments on the State Controller's re-evaluations, or the authority to allow the State Controller to file a reply.

- The Commission’s authority is to determine whether the Controller’s process on re-evaluation was proper, not to substitute its own quantitative findings.
- It is inappropriate for the Controller and the Commission to recalculate anew the District’s increased science teacher costs. The findings should be limited to the determination of the amount of any offsetting savings.

These districts request the following:

The Commission should determine from the record as of July 29, 2005 [60 days after the Controller’s Office was notified that the Statements of Decision on the incorrect reduction claims were set aside] that the Controller did not properly reevaluate the claims according to the scope of the court order since the Controller defaulted on his duty to timely reply. The Controller should be directed to pay the claims as filed.

Failing that, the Commission should determine from the record as of August 26, 2005 [the date the Controller submitted its reevaluation of the claims], that the Controller failed, in substance and according to the Commission’s evidentiary standards, to respond to substantive requirements of the court order, and disregard all submissions of the parties after that date as in excess of the jurisdiction of the court order. The Controller should be directed to pay the claims as filed.

Failing that, the Commission should determine that any and all of the Controller’s reports on his reevaluation have not provided any substantive evidence of actual offsetting savings. The Controller should be directed to pay the claims as filed.¹⁰

Position of Sweetwater Union High School District

Sweetwater raises the same arguments regarding the issue on remand, jurisdiction of the Commission, the documents requested by the Controller, and the use of the CBEDS data as Castro Valley, Clovis, and Grossmont.

Sweetwater states that the CBEDS data illustrates that Sweetwater provided at least the same level of instructional service, adjusted for enrollment, to students during the years in question as provided in the base year (1983-84) and had a significant increase in science instructional service compared to the base year.

Sweetwater admits that in fiscal year 1990-91, the instructional service level of teachers was 2.2 full time equivalent (FTE) *below* what would have been provided in the base year for the total high school population and “would have conceivably resulted in offset savings of 2.2 FTE to the excess science instructional service level, as adjusted by the enrollment Change Factor, of 25.3 FTE resulting in a net excess of 23.1 FTE science teachers.

¹⁰ Exhibit M.

Sweetwater further disagrees with the complete disallowance of costs for fiscal year 1991-92 on the ground that no documentation, including CBEDS data, exists for that year. Sweetwater argues that the 1991-92 school year did exist and schools were providing the second science course required by the mandate. Sweetwater contends that the pattern of compliance with the mandate, as shown in the CBEDS data, provides reasonable assurance that the district complied with the mandate.

With the exception of fiscal year 1990-91, Sweetwater provided comparable instructional services for high school students, incurred a significant increase in the level of science instructional service, and experienced no offsetting savings to deny reimbursement.

Position of San Diego Unified School District

As indicated in its initial filings, San Diego contends that its school “board has not laid off teachers due to the change of instructional requirements of an additional science course. Consequently, no offset or savings exist to the teachers’ salary costs **‘as a direct result of providing a second science course.’**” (Emphasis in original.)¹¹

San Diego filed comments to the draft staff analysis, contending that the denial of reimbursement for fiscal year 1991-92 because there was no CBEDS data for that year is arbitrary and capricious and not supported by any legal authority. San Diego proposes a methodology using historic statistical reports of the district to estimate the change in full time equivalent (FTE) secondary teachers from the base year (1983-84) to fiscal year 1991-92. Using the proposed method, San Diego argues that the reports show an overall increase in teachers and no apparent offsetting savings for fiscal year 1991-92. Thus, the district’s claim for that year should not be reduced.

San Diego also contends that the decrease in total secondary teacher FTE in fiscal year 1995-96 did not occur as a direct result of the mandate, but instead was due to an increase in secondary class size of one student per class. In 1995, the district reduced the elementary student to teacher ratio to 25:1 in grades one and two, and increased class size at the secondary level by “nearly one student per class.” San Diego submits a document (“Human Resources Division, Certificated Layoff History, 1978-1994”) indicating that the governing board approved the elementary class size reduction. Thus, in order to determine if any offsetting savings occurred as a direct result of the science mandate for fiscal year 1995-96, an adjustment must be made to remove the effect of the increase in the secondary class size. After adjusting for enrollment and the elementary class size reduction, there were 9 fewer teacher FTE in fiscal year 1995/96 compared to the base year. Therefore, San Diego contends that “the possible offsetting savings according to the Commission’s methodology [in the draft staff analysis] is 9.0 FTE rather than 34.1 as originally calculated. Since the offsetting FTE does not exceed the claimed FTE, the District is entitled to \$1,149,124 ((30.7-9.0) x \$52,955)” for fiscal year 1995-96.

¹¹ Exhibit B, Letter from San Diego to the State Controller’s Office, dated July 14, 2005 (attached to the July 19, 2005 filing).

San Diego also argues that the reduction of instructional service identified in the CBEDS data occurred as result of the state’s failure to fund mandate claims. San Diego states the following:

Page 17 of the Superior Court’s ruling on this matter states that “if the school district is precluded from section 6 reimbursement of its costs for teachers’ salaries incurred in providing a second science course mandated by section 51225.3 because subdivision (b) of section 44955 is construed as a mechanism for offsetting such salary costs, the district is forced, absent an additional source of revenue, to redirect the revenues budgeted for staff teaching courses specified by the district’s board under section 51225.3 to staff hired to teach the second science course. Courses locally specified by the district’s board are thereby eliminated so that the district can provide the second science course mandated by section 51225.3, **contrary to the terms of section 51235.3 and the purpose of section 6.**” Since 85% of the District’s annual budget is attributable to salaries and with the SCO failing to pay over \$16 million through fiscal year 1995/96 for this mandate claim alone, the District is forced to make reductions in its budget that may result in fewer classes and teachers. This is not a **direct result** of providing a second science course, but instead a direct consequence of not receiving the amount owed for reimbursement claims. It becomes even more obvious when you identify the total amount owed to the District for mandate reimbursement claims of approximately \$58 million through 2004/05.

...The district has previously submitted a document ... demonstrating that the Board did not approve teacher layoffs due to the state change of instructional requirements of an additional science course. Consequently there have been no offsets to the teachers’ salary costs “as a direct result of providing a second science course.” (Emphasis in original.)

Finally, San Diego contends that it is entitled to interest at the legal rate of 10% as the prevailing party or, in the alternative, interest based on Government Code section 17561.5.

Issue 1: What is the Commission’s jurisdiction on remand?

The parties raise several procedural and jurisdictional arguments in support of their claims.

First, the school districts contend that the Court’s decision does not give the Controller and the Commission the authority to recalculate the districts’ original claimed science teacher costs. Rather, the jurisdiction on remand is limited to the determination of the amount of any offsetting savings experienced by a school district as a direct result of the mandate.

The State Controller’s Office contends that if the funding sources of the costs claimed by the districts include federal, state, or local categorical funds, then these funds should be applied as offsetting savings.

Staff finds that the Commission does not have jurisdiction on remand to make any findings with respect to the school districts' original amount claimed for teacher salary costs, or to make findings relative to other funding sources that could have been applied as an offset. The Commission's jurisdiction is limited by the Court's writ to "determine whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the petitioners that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3." As indicated in the Court's Ruling, the sole issue in this case and the Court's focus was on the Controller's interpretation of Education Code section 44955 and the "offsetting savings requirement."¹²

The school districts further argue that the Controller did not properly reevaluate the claims in accordance with the court order since the Controller did not timely complete the reevaluations within 60 days after the Commission set aside the Statements of Decision on the incorrect reduction claims and directed the Controller to reevaluate the claims, as required by the writ. Although the writ requires that the Controller complete the reevaluations within the 60-day time period, staff finds that this time limitation is directory and not mandatory. Thus, the failure to complete the reevaluation within 60 days does not, in itself, deem the Controller's reevaluations invalid. As determined by the Third District Court of Appeal, time limits are usually deemed to be directory, and not mandatory, unless there is a consequence or penalty that has the effect of invalidating the government action.

With respect to statutorily prescribed time limits in particular, the high court has articulated the following principles: "Time limits are usually deemed to be directory unless the Legislature clearly expresses a contrary intent. [Citation omitted.] In ascertaining probable intent, California courts have expressed a variety of tests. In some cases focus has been directed at the likely consequences of holding a particular time limitation mandatory, in an attempt to ascertain whether those consequences would defeat or promote the purpose of the enactment. [Citations.] Other cases have suggested that a time limitation is deemed merely directory 'unless a consequence or penalty is provided for failure to do the act within the time commanded.'" [Citation omitted.] As [the California Supreme Court] held, the consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as 'mandatory'." [Citation omitted.]¹³

The plain language of the writ does not impose a penalty on the Controller's Office or the state for failure to complete the reevaluations within the 60-day time period. Therefore,

¹² Court's Ruling, pages 13-14, footnote 3.

¹³ *Board of Education of Sacramento City Unified School Dist. v. Sacramento County Board of Education* (2001) 85 Cal.App.4th 1321, 1327. (Exhibit Q.)

the failure to complete the reevaluations within 60 days does not defeat or invalidate the Controller's reevaluations.

The districts also contend that the court order does not give the Commission the jurisdiction to grant extensions of time to the Controller, and that the delay created by the extensions of time to complete the reevaluation prejudiced the school districts. The districts further contend that the Commission does not have jurisdiction to allow a comment period by the districts on the Controller's reevaluations.

Staff disagrees with the school districts. The Commission has jurisdiction to grant extensions of time to allow the parties to submit their comments on the merits of this case. In order to "relieve unnecessary congestion of the judicial system," Government Code section 17500 charges the Commission with the duty of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. In carrying out this duty, the Commission has the power to "do any and all ... actions necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it." (Gov. Code, § 17527.) In the present case, the Commission has been expressly charged by the plain language of the writ with the duty of "determin[ing] whether the State Controller *properly* reevaluated each of the claims" in accordance with the Court's ruling. (Emphasis added.) Neither the writ, nor the Court's Ruling, limit the Commission's authority to do any and all actions necessary, including granting extensions of time based on good cause and requesting comments on the merits of this case, to enable the Commission to fully perform the function required by the writ. Moreover, the writ does not include a deadline for the Commission to complete its review of the Controller's reevaluation of these claims.

Staff further finds that the school districts have not been prejudiced by any delay in the proceedings. If the school districts prevail on their claim, Government Code section 17561.5 authorizes the payment of accrued interest at the Pooled Money Investment Account rate, beginning on July 1, 1996 (the operative date of the statute) as follows:

The payment of an initial reimbursement claim by the Controller shall include accrued interest at the Pooled Money Investment Account rate, if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim or, in the case of payment of a subsequent claim relating to the same statute or executive order, if payment is being made more than 60 days after the filing deadline for, or the actual date of receipt of, the subsequent claim, whichever is later. In those instances, interest shall begin to accrue as of the 366th day after adoption of the statewide cost estimate for an initial claim and as of the 61st day after the filing deadline for, or actual date of receipt of, the

subsequent claim, whichever is later. (Gov. Code, § 17561.5, as added by Stats. 1995, ch. 945.)¹⁴

Thus, there is no evidence in the record that the school districts have been harmed by the extension of time. Moreover, a similar argument was made by a local agency in *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 282-283, and denied by the court.

We agree with the trial court that El Monte has failed to show cognizable prejudice with respect to these assertions. The issue presented is one of law not fact. We cannot assume the Commission would have reached an erroneous legal conclusion in the absence of the errors asserted by El Monte, and we cannot base a finding of prejudice upon the possibility the Commission would have reached an erroneous legal conclusion.

Accordingly, the Commission's jurisdiction on remand is limited to determining "whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the petitioners that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3."

Issue 2: Whether the State Controller properly reevaluated each of the claims without requiring a showing by any of the claimants that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the claimant, in particular discretionary courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3.

A. The documentation requested by the Controller's Office complies with the Court order

As a preliminary issue, the school districts contend that the following documentation requested by the State Controller's Office exceeds the scope of the Court's order and writ and, therefore, the Controller's reevaluation was not proper:

- Documentation supporting cost savings by reducing course offerings.
- Documentation showing the year the district began to implement the additional science course to satisfy the mandate.

¹⁴ As an alternative to the interest under Government Code section 17561.5, San Diego Unified School District contends that it, as the prevailing party, is entitled to interest at the rate of 10% in accordance with litigation principles. The Commission does not have the authority or jurisdiction to award interest to a prevailing party in litigation. Moreover, Code of Civil Procedure section 685.010 provides for interest at 10 percent, but only on a money judgment. The school districts here do not have a money judgment. They have a writ directing the reevaluation of their claims.

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

Staff finds that the documentation requested by the Controller’s Office complies with the Court order. The Court’s Ruling gives the Controller’s Office broad authority to seek documentation when reevaluating these claims. The court held that its conclusion does not prevent the Controller, when auditing and reevaluating the claims “from requiring the districts to provide detailed documentation of offsetting savings directly resulting from their provision of the second science course, including savings that offset the salaries of teachers hired for the second science course.” (Emphasis added.)¹⁵ The court further states on page 18 of its Ruling that:

Such a documentation requirement has a firm legal basis in subdivision (e) of Government Code section 17556 and California Code of Regulations, title 2, section 1183.1(a)(9). Further, the documentation requirement reflects a reasonable expectation that savings to offset the science teachers’ salaries may be generated when students taking the second science course do not increase the number of classes that they take overall. Thus, the Controller can properly require claimants to demonstrate that the second science course has not increased the number of classes provided during the school day and year along with the number of teachers required for the classes provided.

The writ states that “in reevaluating each petitioner’s reimbursement claim pursuant to the ruling on submitted matter, the State Controller may require the petitioner to submit cost data and documentation to demonstrate whether it experienced any savings to offset the teachers’ salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3 ...” Thus, the authority given by the Court is similar to a discovery request in litigation for “information that may lead to the discovery of admissible evidence” in order for the Controller to determine whether the school districts experienced any offsetting savings to the claim for teacher salaries as a direct result of the mandate.¹⁶

Staff finds that the documents requested by the Controller’s Office fall within the scope of the Court’s order.

¹⁵ Court’s Ruling, pages 17-18.

¹⁶ Code of Civil Procedure section 2017.

However, the Court's order, on page 18 of the Ruling, limits the Controller's application of the documentation as follows:

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

Thus, the Controller is prohibited from applying the documentation to deny a claim on the ground that the district has not shown a reduction in non-science classes and teachers corresponding to the addition of science teachers.

B. Except for Grossmont, the Controller's Office did not properly reevaluate the claims

As previously indicated, the Commission's finding in the Statement of Decision and the parameters and guidelines that school districts are eligible to receive reimbursement for the increased costs to staff the second science course mandated by the test claim statute is binding on the parties. In this regard, the State Controller's Office, when the incorrect reduction claims were challenged in court, admitted that "[i]t is ... clear the district hired new science teachers to staff the new classes."¹⁷ This admission is supported by evidence in the record of reimbursement claims signed under penalty of perjury by the school districts that increased costs were incurred for teacher salary costs as a result of the mandated science class. The Controller did not challenge the original amount claimed by the districts for teacher salary costs as unreasonable or excessive.¹⁸ Thus, the parties cannot now challenge the fact that teacher salary costs are reimbursable, or the original amount claimed by the districts for teacher salary costs.

Rather, the issue in this case is limited to whether the districts experienced any cost savings by exercising their discretionary authority under Education Code section 44955, by reducing the teaching staff of non-mandated courses as a direct result of the second science course mandated by Education Code section 51225.3, subdivision (a)(1). If cost

¹⁷ Court's Ruling, page 8.

¹⁸ Exhibit P, Reimbursement Claims filed by the school districts. The incorrect reduction claim record for Sweetwater Union High School District does not contain its reimbursement claims. At the time these incorrect reduction claims were filed, reimbursement claims were not required to be filed with the Commission.

savings are shown by evidence in the record, the claimed amount for teacher salary costs can be reduced by the amount saved with the reduction of non-mandated teaching staff.

Furthermore, the parties are bound by the Court's holding that the use of the authority in Education Code section 44955 rests entirely in the discretion of the district's governing board and cannot be used by the State Controller's Office to require the district to show a reduction in order to get reimbursed for teacher salary costs.

There is no suggestion in [Education Code section 44955,] subdivision (b) of a legislative intent to supply the district with an offset mechanism to reallocate teaching staff resources and avoid actual increased costs for teachers' salaries otherwise reimbursable under section 6 whenever a district adds a newly state-mandated course to its curriculum.

Indeed, such a legislative intent would directly conflict with subdivision (a)[(2)] of section 51225.3, recognizing the right of the district's board to specify and provide courses required for graduation in addition to courses mandated by the Legislature. Such an intent would also defeat the purpose of section 6, to protect local agencies like the district from a state mandate that forces the district to shift its limited revenues to the state mandate from existing local programs for which the revenues have been budgeted. [Citations omitted.] If the school district is precluded from section 6 reimbursement of its costs for teachers' salaries incurred in providing a second science course mandated by section 51225.3 because subdivision (b) of section 44955 is construed as a mechanism for offsetting the such [sic] salary costs, the district is forced, absent an additional source of revenue, to redirect the revenues budgeted to staff teaching courses specified by the district's board under section 51255.3 [, subdivision (a)(2),] to staff hired to teach the second science course. Courses locally specified by the district's board are thereby eliminated so that the district can provide the second science course mandated by section 51225.3, contrary to the terms of section 51255.3 and the purpose of section 6. [Citations omitted.]¹⁹

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

Finally, the writ also prohibits the Controller from requiring a showing by any of the school districts that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955.

¹⁹ Court's Ruling, pages 16-17.

The Controller improperly denied the total amount of the claims in years when the districts provided no documentation of offsetting savings

The State Controller's Office contends that the school districts refused to comply with its documentation request and, instead, submitted CBEDS data. The Controller's Office contends that, under general auditing principles, a refusal to provide documentation properly requested results in a finding against the party refusing to produce the documentation. Thus, the Controller argues that it may properly conclude that there were no changes in the school day or year as a result of the addition of the second science course and, thus, there are offsetting teacher salary savings for *all* science teachers hired. Therefore, in those years where there is no documentation, including CBEDS data, the Controller denied the original claimed amount in full. Specifically, there is no CBEDS data for fiscal year 1991-1992 and, thus, the Controller denied the gross amount claimed for teacher salaries for fiscal year 1991-92 for all school districts except Grossmont (who did not claim costs for that year).²⁰ In addition, the Controller contends that no documentation was provided by Clovis in fiscal year 1997-98, by San Jose for fiscal years 1992-93 and 1997-98, and by Castro Valley in fiscal years 1997-98 and 1998-99, and, thus, no teacher salary costs were allowed for these years.

Staff finds that the Controller's denial of the original claimed amount for teacher salary costs does not comply with the Court's Ruling and, thus, is improper.

First, the Court expressly rejected the Controller's assumption that it may conclude that since no documentation shows a change in the school day or year as a result of the mandate, there must be offsetting teacher salary savings for all science teachers hired. On page 14 of the Court's Ruling, the Court, citing *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, acknowledged that reimbursement may be precluded if the district can comply with a state mandate by reallocating revenues. In the *County of Los Angeles* case, the state legislation expressly directed local law enforcement agencies to reallocate their training resources in a certain manner to include domestic violence training.

But the Court found, on page 15 of the Ruling, that the test claim statute, "*in contrast to the situation in County of Los Angeles v. Commission on State Mandates,*" does not require a reallocation of resources, but instead requires a school district to include the second science course *in addition to* the courses already mandated by the state and those courses required by the school district for graduation. (Emphasis added.) The court further held, on pages 15 and 16 of the Ruling, that the Legislature did not "provide any indication in Education Code section 44955 of legislative intent to provide the school district with a means of avoiding actual increased costs ... [to] preclud[e] reimbursement under section 6 for teachers' salaries incurred in providing a second science course pursuant to Education Code section 51225.3." The use of Education Code section 44955 is within the complete discretion of the school district. The school district is not required to have offsetting savings. Thus, the Controller's assumption does not comply with the Court's Ruling and Judgment.

²⁰ See Exhibit F, Controller's Schedules 1-6.

Second, the Controller points to no law, authority, or findings of the Court that under general auditing principles, a refusal to provide documentation properly requested results in a finding against the party refusing to produce the documentation; in this case, a denial of the original amount claimed for teacher salary costs. As previously indicated, a complete denial of costs is not supported by the record, or the Court's Ruling and Judgment. The Court found that the Commission's Statement of Decision and the parameters and guidelines authorizing reimbursement to school districts for the increased costs to staff the second science course mandated by the test claim statute is binding on the parties. When the incorrect reduction claims were challenged in court, the Controller's Office admitted that "[i]t is ... clear the district hired new science teachers to staff the new classes."²¹ That admission is contrary to the position taken on remand. However, the Controller's admission that the districts hired new science teachers is supported by evidence in the record of the reimbursement claims signed under penalty of perjury by the school districts that increased costs were incurred for teacher salary costs as a result of the mandated science class.²² There is no evidence in the record that the school districts exercised their discretionary authority under Education Code section 44955 to lay off non-science teaching staff to offset the original amount of teacher salary costs claimed for the mandate in fiscal year 1991-92, and the other years the Controller alleges that no documentation was provided.

Thus, staff finds that the Controller improperly denied the total amount of the claims in years when the districts provided no documentation of offsetting savings. Accordingly, the State Controller did not properly reevaluate the claims for fiscal year 1991-92, and the claims filed by Clovis in fiscal year 1997-98, by San Jose for fiscal years 1992-93 and 1997-98, and by Castro Valley in fiscal years 1997-98 and 1998-99, "without requiring a showing by any of the petitioners that the claimed teachers' salary costs could not have been offset pursuant to subdivision (b) of Education Code section 44955 by terminating teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3."

The Controller improperly reduced the claims for teacher salary costs based on the Controller's use of the CBEDS data

The Controller's Office states it used "the CBEDS data because it was the only information we received from the petitioners that provided the means of making a correlation between the number of additional science teachers needed to implement the mandate and its impact on non-science classes."²³ The Controller explains that since the districts have not demonstrated that the mandate resulted in an increase in the school day and year, and given a fixed number of classes a student may take, the addition of one

²¹ Court's Ruling, page 8.

²² Exhibit P.

²³ Exhibit J, State Controller's Reply, dated October 18, 2005, page 2.

more class *could* result in a corresponding reduction in another class.²⁴ Under this theory, the Controller applied the following three assumptions to the claims:

1. An increase in science teachers along with a corresponding increase in non-science teachers would result in an allowance of costs claimed.
2. Conversely, an increase in science teachers relative to a decrease in non-science teachers per CBEDS would result in a reduction of science teachers claimed to the extent of the decrease in non-science teachers per CBEDS. In situations where the comparison of CBEDS science and non-science teachers results in a positive remainder, the State Controller's Office would compute a percentage based on the change in non-science teachers divided by the change in science teachers. The State Controller's Office would apply that percentage as an offset to claimed science teacher costs.
3. A decrease in science classes per CBEDS would result in unallowable costs claimed.

Staff finds that the Controller's reevaluation of the claims, which resulted in a reduction of claims for teacher salary costs for all school districts except Grossmont, does not comply with the Court's Ruling and Judgment.

First, the Controller's initial premise, that claims can be reduced because offsetting savings *could* occur when the school day and year do not change, contradicts the Court's Judgment. Page 2, paragraph 1 (lines 5-13) of the Court's Judgment prohibits the Controller from reducing a claim on the ground that the school district *could* have offsetting savings. The court states the following:

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

Second, the Controller's assumptions, which result in reduced claims when the CBEDS data shows a reduction of non-science teachers or a reduction of science classes compared to the base year, does not comply with the Court's Ruling and Judgment.

The Controller's second assumption reduces claims when there is an increase in science teachers and a decrease in non-science teachers that results in a positive remainder. For example, if a district per CBEDS showed an increase of 10 science teachers and a decrease of 7 non-science teachers, the Controller's Office divided 7 by 10 to come up with 70%. The costs claimed by the district would then be reduced by 70%. The

²⁴ Exhibit J, State Controller's Reply, dated October 18, 2005, attachment 2, page 3.

Controller's third assumption disallows costs when there is a decrease in science classes compared to the base year.

These assumptions do not comply with the Court's Ruling since there is no evidence in the record that the decreases in non-science teachers or science classes are a direct result of the mandate. The Court's writ states that

The State Controller may require the petitioner to submit cost data and documentation to demonstrate *whether it experienced any savings to offset the teachers' salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3*, but the State Controller may not require the petitioner to demonstrate that it could not have offset the costs by using its authority under subdivision (b) of Education Code section 44955 to terminate teachers of other courses provided by the petitioner, in particular courses provided pursuant to subdivision (a)(2) of Education Code section 51225.3.

There is no evidence in the record that the districts exercised their discretionary authority under Education Code section 44955 by reducing non-science teaching staff as a direct result of this mandate.

Rather, the evidence in the record shows that the school districts reduced non-science teachers for reasons other than the mandated science class. For example, San Diego submits a document entitled "Human Resources Division, Certificated Layoff History."²⁵ This document shows that the district laid off non-science teachers and other staff in 1987, 1988, 1991, and 1994 for the following reasons:

- Reduced state funding.
- Elimination of Secondary excess teachers.
- "Change in State instructional requirements (increased English and Math) which resulted in fewer electives."
- Class size reduction in grades 1-3. San Diego contends that the decrease in total secondary teachers in fiscal year 1995-96 did not occur as a direct result of the mandate, but instead was due to an increase in secondary class size of one student per class to accommodate the elementary class size reduction.²⁶

The other school districts similarly contend that any decreases shown in the CBEDS data in instructional service are due to a lack of funding.

In response, the Controller contends that the districts' argument, that the reduction of non-science teachers was caused by a lack of funds, "is an untenable argument that ignores reality." The Controller further states that the argument "assumes that the districts would have enlarged the school day/year, with the expectation that students

²⁵ Exhibit B.

²⁶ Exhibit N, San Diego's comments to draft staff analysis.

would *add* the required science class without dropping an elective, thereby exceeding their already full school day/year.” (Emphasis added.)

The Controller’s response contradicts the Court’s Ruling. The Court expressly held on page 15 of the Ruling that the second science class mandated by the test claim statute requires the district to *add* the course to the courses specified by the district’s board. The Court further held on page 15 of the Ruling that the test claim statute does not require school districts to redirect their resources from the courses specified by the district’s board to the courses specified by the Legislature. The courses specified by the district’s board under Education Code section 51225.3, subdivision (a)(2), “are not deemed optional by the Legislature.” On pages 16 and 17 of the Court’s Ruling, the court held that if the Legislature intended to require districts to reallocate their resources to comply with the mandate, such an intent would “directly conflict with subdivision (a) of section 51225.3, recognizing the right of the district’s board to specify and provide courses required for graduation in addition to courses mandated by the Legislature” and would “defeat the purpose of section 6, to protect local agencies like the district from a state mandate that forces the district to shift its limited revenues to the state mandate from existing local programs for which the revenues have been budgeted.” Thus, the Court concludes on page 17 of the Ruling that “[i]f the school district is precluded from section 6 reimbursement of its costs for teachers’ salaries incurred in providing a second science course mandated by section 51225.3 because subdivision (b) of section 44955 is construed as a mechanism for offsetting the such [sic] salary costs, the district is forced, absent an additional source of revenue, to redirect the revenues budgeted for staff teaching courses specified by the district’s board under section 51225.3 to staff hired to teach the second science course” that is “contrary to the terms of section 51225.3 and the purpose of section 6.”

Moreover, evidence of a reduction of non-science teachers, a reduction of science classes, or other changes in instructional service, alone, does not prove that the district reduced the instructional service as a “direct result” of the mandate. As determined by the Court, the test claim statute recognizes the right of the district’s board to specify and provide courses required for graduation in addition to courses mandated by the Legislature. Thus, no matter what a school district does to the curriculum it requires for graduation pursuant to Education Code section 51223.5, subdivision (a)(2), the second science course is still mandated by the state and school districts are paying a teacher to teach the mandated course. Reimbursement is also required if no changes in a district’s instructional service is shown. The Legislature, in Government Code section 17565, has determined that “[i]f a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.” Thus, even if a school district was requiring the completion of a second science course in order to graduate before the test claim statute was enacted, the district would still be entitled to reimbursement under article XIII B, section 6.

Although the Controller did not require a showing from the school districts that their claims for teacher salary costs “could not have been offset pursuant to subdivision (b) of Education Code section 44955,” as prohibited by the writ, the

Controller did require an offset to reduce the claims using assumptions that are not based on facts in the record. There is no evidence in the record that the districts exercised their discretionary authority under Education Code section 44955 to lay off teachers of non-mandated courses as a direct result of the mandate. Such a finding is required by the Court's Judgment and Writ: "In reevaluating each petitioner's reimbursement claim pursuant to the ruling on submitted matter, the State Controller may require the petitioner to submit cost data and documentation to demonstrate whether it experienced any savings to offset the teachers' salary costs as a direct result of providing a second science course pursuant to subdivision (a)(1) of Education Code section 51225.3 ..." (Court's Judgment, page 2, lines 23-27, Writ, para. 2.)

Therefore, staff finds that the Controller's reevaluation of the claims, which resulted in a reduction of claims for teacher salary costs for all school districts except Grossmont, does not comply with the Court's Ruling and Judgment.

The State Controller improperly understated San Diego's original amount claimed for teacher salary costs during reevaluation by failing to include the costs for teacher staff development, or training

San Diego contends that the State Controller's Office understated its claim for fiscal years 1984-1985, 1985-1986, and 1987-1988 by failing to include costs in the amount of \$41,857 for teacher staff development, or training. The Controller's Office argues that the costs for staff development were not included in the incorrect reduction claim filed by San Diego and that staff development is not identified in the parameters and guidelines and claiming instructions as a reimbursable component of the mandate.

Staff finds that the costs claimed for teacher staff development/training were included in the incorrect reduction claim. The State Controller's Office reduced San Diego's entire claim for teacher salaries because the claim failed to identify any offsetting savings. The claim was reduced without any reference to the specific activities the teachers were performing.

In addition, staff finds that the costs for teacher staff development/training are reimbursable. Section V (C) of the parameters and guidelines states the following:

School Districts will be reimbursed for increased costs incurred in providing the additional science course mandated by Chapter 498/83 [the test claim legislation], such as:

C. Increased cost to school district for staffing ... the new science classes mandated.

The cost for science teacher training falls within the provision of the parameters and guidelines authorizing reimbursement for the "cost to school district for staffing ... the new science classes mandated." In addition, training or staff development is not specifically excluded in the parameters and guidelines or claiming instructions.

Therefore, staff finds that the State Controller's Office improperly understated San Diego's original amount claimed for teacher salary costs during reevaluation by failing to include the costs for teacher staff development, or training.

C. The Controller’s Office properly reevaluated the claim filed by Grossmont

During its reevaluation, the State Controller’s Office applied its assumptions to the Grossmont claim based on the CBEDS data and found that no offsetting savings resulted. The Controller concluded that the CBEDS data showed that Grossmont experienced an increase in science teachers and an increase in non-science teachers.²⁷ Even though the Controller’s Office determined that Grossmont’s entire claim was reimbursable, Grossmont contended that the Controller did not properly reevaluate the claim. As indicated above, staff finds that the Controller’s assumptions do not comply with the Court’s Ruling, Judgment, and Writ.

However, in comments to the draft staff analysis, the Controller, without applying the assumptions, admits that Grossmont properly filed its reimbursement claim for teacher salary costs. The Controller states the following:

One of the petitioners in the reevaluation, Grossmont Union High School District, used, in all years subject to the reevaluation, a method that we believe addresses the two shortcomings identified in the previous paragraph [regarding the preparation of claims using a comparative method, by comparing the number of science teachers before the implementation of the mandate to science teachers in the claim year, adjusted by changes in enrollment]. The method’s calculation is based on one quarter of enrollment and average class sizes. The assumption is that in one of the four years of high school, a student will take one science course. The impact on non-science classes is addressed using a class size differential. The incremental increase in costs results only when the size of the average science class is below that of the average non-science class.

The method positively identifies the second science course, addresses offsetting savings by the application of a class size differential, and does not require base year data. A shortcoming of this methodology is that it does not specifically identify each teacher associated with the mandate, and therefore it does not specifically identify the funding source of the each [sic] teacher. Despite the shortcoming, this methodology appears to be the most accurate with respect to identifying mandate-related costs and is the easiest to apply.²⁸

Accordingly, in compliance with the writ, staff finds that the Controller properly reevaluated Grossmont’s claim when it determined that Grossmont properly filed its claim. Accordingly, staff recommends that the Commission issue a new decision, consistent with this staff analysis, for the claim filed by Grossmont and remand the reevaluated claim to the State Controller’s Office for payment to Grossmont.

²⁷ See, Controller’s Schedule 3, Exhibit F.

²⁸ Exhibit O.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt this staff analysis. Pursuant to the Peremptory Writ of Mandate issued by the Court on February 9, 2005, staff recommends that the Commission:

- Issue a new decision, consistent with this staff analysis, for the claim filed by Grossmont Union High School District, and remand the reevaluated claim to the State Controller's Office for payment. (See attached Order Adopting Staff Analysis as the Decision for Grossmont)
- Return the reevaluation of the claims filed by San Diego Unified School District, San Jose Unified School District, Sweetwater Union High School District, Castro Valley Unified School District, and Clovis Unified School District to the Controller for correction and resubmission to the Commission within 30 days.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIMS
ON:

Education Code Section 51225.3
Statutes of 1983, Chapter 498

Filed on August 16, 1999, to include Fiscal
Years 1994-95 through 1996-97;

By Grossmont Union High School District,
Claimant.

NO. CSM 4435-I-35

Graduation Requirements

ORDER ADOPTING FINAL STAFF
ANALYSIS AS THE DECISION OF THE
COMMISSION ON STATE MANDATES
FOR THE REEVALUATION OF THE
REIMBURSEMENT CLAIM FILED BY
GROSSMONT UNION HIGH SCHOOL
DISTRICT

(Pursuant to Peremptory Writ of Mandate
Issued by Sacramento County Superior Court,
Case No. 04CS00028)

(Proposed for Adoption on July 28, 2006)

**ORDER ADOPTING FINAL STAFF ANALYSIS
AS THE DECISION OF THE COMMISSION ON STATE MANDATES
REIMBURSEMENT CLAIM OF
GROSSMONT UNION HIGH SCHOOL DISTRICT**

The Commission on State Mandates (“Commission”) heard and decided the State Controller’s reevaluation of the reimbursement claim filed by Grossmont Union High School District, pursuant to the Peremptory Writ of Mandate issued by the Sacramento County Superior Court, Case No. 04CS00028, during a regularly scheduled hearing on July 28, 2006. [Witness list will be included in the final order.]

The Commission, by a vote of ____ [vote count will be included in the final order], hereby adopts the attached Final Staff Analysis as its decision for Grossmont Union High School District. This decision is to be remanded to the State Controller’s Office for payment in the amount of \$263,260, plus any interest pursuant to Government Code section 17561.5 as determined by the State Controller’s Office.

Dated: _____

Paula Higashi, Executive Director