

**COMMISSION ON STATE MANDATES**

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September 10, 2013

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

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

RE: **Final Staff Analysis and Proposed Amended Parameters and Guidelines**  
Habitual Truants, 01-PGA-06 and 09-PGA-01 (CSM-4487 and 4487A)  
Education Code Section 48262 and 48264.5;  
Statutes 1975, Chapter 1184; Statutes 1994, Chapter 1023; and  
Statutes 2001, Chapter 734  
Clovis Unified School District and San Jose Unified School District, Requestors

Dear Mr. Petersen:

The final staff analysis and proposed amendments to parameters and guidelines are enclosed.

**Hearing**

This matter is set for hearing on **Friday, September 27, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

**Special Accommodations**

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

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

Sincerely,

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

Heather Halsey  
Executive Director

**ITEM 6**  
**FINAL STAFF ANALYSIS**  
**AND**  
**PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS**

Education Code Section 48262 and 48264.5  
Statutes 1975, Chapter 1184; Statutes 1994, Chapter 1023;  
and Statutes 2001, Chapter 734

*Habitual Truants*

01-PGA-06, 09-PGA-01 (CSM-4487 and 4487A)

Clovis Unified School District and  
San Jose Unified School District, Requestors

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**EXECUTIVE SUMMARY**

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

**I. Summary of the Mandate**

The statement of decision for this test claim was adopted on September 25, 1997. The Commission found that Education Code section 48264.5 (Statutes of 1994, Chapter 1023) imposes a reimbursable state-mandated program on school districts within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission found that the statute requires school districts to verify pupil truancy, make a conscientious effort to notify parents or guardians of a pupil's truancy, schedule and hold conferences with students and parents or guardians, and, if a pupil has four trancies and the above requirements have been met, classify that pupil as an habitual truant.

**II. Procedural History**

On January 29, 1998, the Commission adopted the original parameters and guidelines. On April 29, 2002, Clovis Unified School District filed a request to amend the parameters and guidelines to include a uniform cost allowance for the costs of the mandate, and to amend the reimbursable activities to reflect a clarifying change in the law requiring only three trancies before classifying a pupil an habitual truant, rather than the four trancies indicated in the parameters and

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<sup>1</sup> California Code of Regulations, Title 2, section 1187.

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

<sup>3</sup> *Ibid.*

guidelines.<sup>4</sup> The letter accompanying the request stated that “[u]ntil the data is determined, the claimant’s proposed rate is an arbitrary \$999 per workload multiplier.”<sup>5</sup> After reviewing claims data submitted for fiscal year 2000-2001, Clovis sent a letter to the Commission, dated May 2, 2003, proposing a unit cost allowance of \$32.15 per habitual truant and providing supporting documentation, completing the filing for Clovis’s request to amend.<sup>6</sup>

On July 19, 2002 the Department of Finance (DOF) submitted comments on the request to amend parameters and guidelines questioning whether a unit cost was appropriate for this program.<sup>7</sup> On July 30, 2003, DOF submitted supplemental comments, recommending denial of the request to amend, and citing wide variation in costs among school districts.<sup>8</sup> On August 11, 2003, the State Controller’s Office (SCO) submitted comments, urging its disagreement with the proposed unit cost, citing the use of unaudited data and the wide range of costs.<sup>9</sup>

On April 7, 2006, the SCO requested an amendment to the parameters and guidelines to incorporate new boilerplate language regarding reimbursable costs and record retention, to reflect changes in the applicable Government Code sections.<sup>10</sup> On January 29, 2010, the parameters and guidelines were amended to incorporate those changes.<sup>11</sup>

Between October 26, 2009 and December 21, 2009, several additional school districts, including Fullerton Joint Union High School District, Poway Unified School District, Riverside Unified School District, Castro Valley Unified School District, Grossmont Union High School District, Norwalk-La Mirada Unified School District, San Juan Unified School District, and the San Diego County Office of Education, were joined as requesting districts in the parameters and guidelines amendment request initiated by Clovis Unified, and joined by San Jose Unified.<sup>12</sup>

On January 13, 2010, San Jose Unified School District filed a request to amend the parameters and guidelines to adopt an RRM in the form of a unit cost of \$32.15 per habitual truant.<sup>13</sup> Pursuant to section 1183.06 of the Commission’s regulations the Executive Director consolidated these matters on June 9, 2011.<sup>14</sup>

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<sup>4</sup> Exhibit A, Clovis Unified Request to Amend, at pp. 8-9; 12-13. On May 1, 2002, San Jose Unified School District was added as a requesting party. (Exhibit C, San Jose Unified Request to Amend Ps&Gs, at p. 3.)

<sup>5</sup> Exhibit A, Clovis Unified Request to Amend, at p. 2.

<sup>6</sup> Exhibit B, Clovis Unified Letter Identifying Unit Rate

<sup>7</sup> Exhibit D, DOF Comments on Request to Amend.

<sup>8</sup> Exhibit E, DOF Supplemental Comments on Request to Amend.

<sup>9</sup> Exhibit F, SCO Comments on Request to Amend.

<sup>10</sup> Exhibit X, SCO Request to Amend Parameters and Guidelines, 05-PGA-51.

<sup>11</sup> Exhibit X, Amended Parameters and Guidelines CSM-4487.

<sup>12</sup> See Exhibit C, San Jose Unified Request to Amend Ps&Gs, at p. 3.

<sup>13</sup> Exhibit C, San Jose Unified Request to Amend Ps&Gs.

<sup>14</sup> Code of Regulations, title 2, section 1183.06 (Register 2010, No. 44).

On March 3, 2010, the SCO submitted written comments on the RRM proposed by San Jose Unified, in which SCO expressed doubt that an RRM could accurately reimburse districts for the actual costs of the mandated activities, due to the variation in costs among districts. On March 17, 2010, the Commission held a prehearing conference to review and discuss the proposed RRM. On July 19, 2010, the SCO submitted additional analysis and comments on the proposed RRM, in which SCO proposed a unit rate based on the average claim per pupil over nine years of actual cost claims (rather than only one year), resulting in a rate of \$26.06 per habitual truant.<sup>15</sup> On July 28, 2010, SCO submitted still further comments, rescinding the July 19, 2010 comments, after “[f]urther review of this analysis revealed that the proposed RRM calculations were based on unaudited claim data and cannot be supported by SCO.”<sup>16</sup>

On June 9, 2011, Commission staff issued a draft staff analysis and proposed statement of decision, and noticed a schedule for comments.<sup>17</sup> The draft staff analysis recommended denial of the request to amend, on the ground that the RRM was not “cost-efficient,” and that the data underlying the unit rate varied too greatly to support a single unit cost. On June 29, 2011, Commission staff issued notice of a prehearing conference, and revised the schedule for comments, postponing the matter to the September 2011 hearing.<sup>18</sup> On June 30, 2011, SCO submitted comments agreeing with the draft staff analysis.<sup>19</sup> Also on June 30, 2011, the California Association of Supervisors of Child Welfare and Attendance submitted comments on the draft staff analysis urging the Commission to adopt a “less bureaucratic formula” for reimbursement.<sup>20</sup> On July 22, 2011, claimant San Jose Unified submitted comments on the draft staff analysis, in which San Jose Unified suggested that cost-efficiency and the variation in local costs were issues of first impression for the Commission.<sup>21</sup> On July 27, 2011, Commission staff held an informal conference attended by the representatives of the SCO and the claimant community. On August 9, 2011, the City and County of San Francisco submitted email comments regarding the draft staff analysis and the prehearing stating that San Francisco would generally support an RRM based on unit times, rather than unit costs, because such structure would account for differences in wages among local agencies.<sup>22</sup>

On August 12, 2011, Commission staff issued a request for comments on RRMs proposed for three pending claims: *Behavioral Intervention Plans* (CSM-4464), *Voter Identification Procedures* (03-TC-23), and *Habitual Truants* (09-PGA-01, 01-PGA-06).<sup>23</sup> Commission staff asked parties and interested parties the following questions:

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<sup>15</sup> Exhibit H, SCO Additional Analysis and Comments.

<sup>16</sup> Exhibit I, SCO Additional Comments.

<sup>17</sup> Exhibit J, Draft Staff Analysis.

<sup>18</sup> Exhibit X, Notice of Prehearing and Revised Comment Schedule.

<sup>19</sup> Exhibit K, SCO Comments on Draft Staff Analysis.

<sup>20</sup> Exhibit L, CASCWA Comments on Draft Staff Analysis.

<sup>21</sup> Exhibit M, Claimant Comments on Draft Staff Analysis.

<sup>22</sup> Exhibit N, City and County of San Francisco Comments.

<sup>23</sup> Exhibit O, Commission Request For Comments on Pending RRMs.

At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?

¶...¶

How should "cost-efficient" be defined?

¶...¶

What does this section require be cost-efficient? Stated another way, what does a requestor need to show to demonstrate that its proposed RRM unit cost meets the requirement of section 17518(c)?<sup>24</sup>

In response to those questions, a number of responses were submitted. On December 20, 2011, the co-claimants in *Behavioral Intervention Plans (BIPs)* (CSM-4464) submitted comments in which they argued that the “Legislature has authorized standardized reimbursement for a broad range of costs,” and that “[a]s long as the statutory requirements...are met there is no range of figures so wide as to violate constitutional requirements.”<sup>25</sup> Also on December 20, 2011, the County of Los Angeles submitted comments in which it asserted that a wide variation in local costs does not, in itself, render an RRM proposal unconstitutional.<sup>26</sup>

On August 22, 2011, Commission staff granted an extension of time to San Jose Unified in order to permit sufficient time to secure an independent analysis of the cost data underlying the proposed RRM.<sup>27</sup> On December 19, 2011, Education Mandated Cost Network (EMCN), on behalf of San Jose Unified, submitted that analysis, in which it determined that a weighted average, excluding no statistical outliers, yielded a more reliable estimate; EMCN therefore suggested assigning the unit rate at \$26 per habitual truant.<sup>28</sup> On December 20, 2011, San Jose Unified submitted comments endorsing EMCN’s proposed unit rate, and requesting that the rate be applied retroactively to fiscal year 2002-2003 claims.<sup>29</sup>

On July 17, 2013, Commission staff issued a revised draft staff analysis and proposed statement of decision and parameters and guidelines amendment.<sup>30</sup> No comments were received from the claimants or state agencies.

### III. Staff Analysis

#### A. All submissions of the co-requesters proposing amendments to the parameters and guidelines modify the first completed request of May 2, 2003. Thus, the potential period of reimbursement for the requested amendment begins July 1, 2002.

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<sup>24</sup> Exhibit O, Commission Request for Comments on Pending RRMs.

<sup>25</sup> Exhibit Q, BIPs Co-Claimants Response to Request for Comments, at pp. 5-7.

<sup>26</sup> Exhibit R, County of LA Response to Request for Comments, at p. 2.

<sup>27</sup> Exhibit P, EMCN Response to Request for Comments, at p. 1.

<sup>28</sup> Exhibit P, EMCN Response to Request for Comments, at p. 2.

<sup>29</sup> Exhibit S, San Jose Unified Response to Request for Comments.

<sup>30</sup> Exhibit T, Revised Draft Staff Analysis.

Five submissions in the record propose amendments to the parameters and guidelines, each with slight differences from the others. The issue before the Commission is whether the five separate filings are a single proposal to amend the parameters and guidelines, the later submissions building upon the earlier, or whether the five filings are separate proposed amendments to the parameters and guidelines.

Government Code section 17557, as originally enacted in Statutes 1984, chapter 1459, allowed the Commission to adopt an allocation formula or uniform allowance when adopting or amending parameters and guidelines. Former section 1183.1 of the Commission's regulations stated that "whenever possible" the parameters and guidelines should use an allocation formula or uniform allowance as the basis for reimbursement.<sup>31</sup> Government Code section 17557 was amended in 1985 and 1988, but authority to adopt an allocation formula or uniform allowance in parameters and guidelines or amendments to parameters and guidelines remained without interruption in the law and was in place when Clovis Unified filed its request to amend the parameters and guidelines for the *Habitual Truants* program on April 29, 2002.<sup>32</sup>

In 2004, AB 2856 amended Government Code section 17557 to provide that the Commission "may adopt a reasonable reimbursement methodology."<sup>33</sup> AB 2856 also added section 17518.5 to define "reasonable reimbursement methodology" as a "formula for reimbursing local agency and school district costs mandated by the state," which, whenever possible, "shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs." That section was amended in 2007 to provide that an RRM "shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs." The amended section also provides that an RRM "shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner," and that "[w]henver possible, a reasonable reimbursement methodology *shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state*, rather than detailed documentation of actual costs."<sup>34</sup>

Thus, the terms "general allocation formula" and "uniform cost allowance" have consistently been used by the Legislature as tools provided to the Commission when adopting parameters and guidelines pursuant to Government Code section 17557. There is no evidence to suggest that an "allocation formula" and "uniform allowance" under *former* section 17557 mean something

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<sup>31</sup> Code of Regulations, title 2, section 1183.1 (Register 87, No. 18).

<sup>32</sup> Government Code section 17557 (as amended by Stats. 1985, ch. 179; Stats. 1988, chs. 1123 and 1179; Stats. 1995, ch. 945 (S.B. 11).)

<sup>33</sup> Government Code section 17557 (as amended by Stats. 2004, ch. 890 (AB 2856)).

<sup>34</sup> Government Code section 17518.5 (as amended by Stats. 2007, ch. 329 (A.B. 1222)) [AB 1222 amended the definition of an RRM to delete the conditions that the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner; and for 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner].

different than “general allocation formula” and “uniform cost allowance,” as those terms are used to define an RRM in current sections 17518.5 and 17557. Both require the Commission to adopt a reasonable method of reimbursing local government their costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution, and that authority has existed for the last 28 years.

Based on the foregoing analysis, staff finds that the authority provided in current section 17557 to adopt an RRM is not materially different, as a matter of law, from the authority to adopt a uniform allowance or an allocation formula under the prior statute.

The first submission, filed by Clovis Unified on April 29, 2002 (01-PGA-06), requested an amendment to the parameters and guidelines to include a uniform cost allowance, to be calculated on the basis of cost claims submitted to the SCO, but did not identify the unit rate to be applied or provide support for such a rate, thus this filing was not complete.<sup>35</sup> On May 1, 2002, San Jose Unified was added as a co-requester to 01-PGA-06. On May 2, 2003, Clovis Unified, on behalf of the co-claimants and EMCN, requested a uniform cost allowance of \$32.15 per pupil identified as an habitual truant, and incorporated the April 29, 2002 filing by reference, thus completing the request to amend.<sup>36</sup>

On January 13, 2010, co-requester San Jose Unified submitted what was essentially the same request to amend as the 01-PGA-06 request, but framed in terms of a “reasonable reimbursement methodology.” In this request, San Jose Unified’s representative, SixTen and Associates, stated that it represented all ten co-requesters in the pending 01-PGA-06 request. San Jose Unified also incorporated by reference all documentation submitted in support of 01-PGA-06, including the letter identifying the calculated unit rate.<sup>37</sup>

On August 22, 2011, after the first draft staff analysis recommended denial of the unit rate RRM, Commission staff granted an extension of time to San Jose Unified in order to permit sufficient time to secure an independent analysis of the cost data underlying the proposed RRM.<sup>38</sup> On December 19, 2011, EMCN submitted that analysis, on behalf of San Jose Unified, proposing a slightly different averaging method, utilizing two years of claims data, as opposed to the single year on which the earlier unit rates were based. The result was an RRM that provided reimbursement at \$26 per habitual truant; a rate very similar to that proposed by the SCO in its July 19, 2010 comments, which were retracted in further comments submitted July 28, 2010.<sup>39</sup> San Jose Unified submitted further comments on December 20, 2011, adopting the proposal put forward by EMCN, and requesting that the rate be retroactively effective to the 2002-2003 fiscal year, “based on the original filing date of the Clovis request.”<sup>40</sup>

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<sup>35</sup> See Exhibit A, Clovis Unified Request to Amend.

<sup>36</sup> Exhibit B, Clovis Unified Letter Identifying Unit Rate.

<sup>37</sup> Exhibit C, San Jose Unified Request to Amend, at p. 3.

<sup>38</sup> Exhibit P, EMCN Response to Request for Comments, at p. 1.

<sup>39</sup> See Exhibit P, EMCN Response to Request for Comments; Exhibit H, SCO Additional Comments on Request to Amend; Exhibit I, SCO Additional Comments on Request to Amend.

<sup>40</sup> Exhibit S, San Jose Unified Response to Request for Comments.

If each of these five filings discussed above was a separate request to amend the parameters and guidelines, the Commission would be required to decide each separately, and to provide for periods of reimbursement accordingly. The Clovis Unified request and the San Jose Unified request were given separate case numbers, and at least initially reviewed as distinct requests to amend. But the salient distinction between these filings is merely that 01-PGA-06 proposed a uniform cost allowance while 09-PGA-01 proposed an RRM. There is no legal distinction between a request for a uniform cost allowance and a request for an RRM based on a unit cost.<sup>41</sup> Moreover, the requesters have demonstrated by their conduct and their submissions a belief and understanding that all later alterations or modifications are part of the same amendment request: San Jose Unified incorporated by reference all previously filed documentation in its 2010 request to amend,<sup>42</sup> and subsequently endorsed the unit rate proposed by EMCN and requested its retroactive application to the effective date of the Clovis Unified request.<sup>43</sup>

Neither the Government Code nor the Commission's regulations require a new case number and file for modifications made by the original requestor in a rebuttal, or for a subsequently filed comment addressing the same issues raised in the original request. Moreover, nothing suggests that the use of general civil procedure rules on amendments of pleadings cannot apply to quasi-judicial actions, which would permit an amended request to relate back to the filing date of an earlier request.<sup>44</sup> The purpose of the law allowing amendments of claims or requests is to permit correction of errors and omissions, to clarify ambiguities, or to explain mistaken statements made in the original pleadings.<sup>45</sup> The Legislature has recognized these principles in the statutory mandates process by allowing amendments to test claims that relate back to the original filing. Finally, there is a more pragmatic and prudential reason to allow the later modifications to be treated as a single request to amend: once a request to amend parameters and guidelines is received, the filing is issued to the state agencies and interested parties for comment and rebuttal.<sup>46</sup> While comments and rebuttals circulate, original proposals may be modified, as here, and the requester may see fit to endorse a commenter's suggestion. If a modification to a request to amend were treated as a new proposal (thus resetting the period of eligibility, requiring opening a new file and assigning a new case number, and rebooting the public comment process), the stakeholders to a proposed amendment would have very little incentive to express any agreement with the comments of any other party, or to collaborate or compromise with other parties at all, for fear of causing further delay and more procedure.

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<sup>41</sup> See Exhibit X, Graduation Requirements Minute Order 2/15/2013 County Superior Court Case No. 34-2010-80000529.

<sup>42</sup> Exhibit C, San Jose Unified Request to Amend, at p. 3.

<sup>43</sup> Exhibit S, San Jose Unified Response to Request for Comments.

<sup>44</sup> Code of Civil Procedure, sections 472, 473.

<sup>45</sup> California Jurisprudence 3d Limitation of Actions, § 145.

<sup>46</sup> Code of Regulations, title 2, section 1183.2.

Based on the foregoing, staff finds that the five submissions in question are amendments to the first completed request of May 2, 2003, with the potential period of reimbursement beginning July 1, 2002.<sup>47</sup>

## **B. Amendments to the Parameters and Guidelines.**

The issues before the Commission are as follows:

- Whether the reimbursable activities section should be amended to reflect a clarifying change in law.
- Whether the proposed RRM of \$26 per habitual truant should be adopted by the Commission.

### ***1. Reimbursable Activities (Section IV. of Parameters and Guidelines)***

Clovis Unified seeks to amend the parameters and guidelines to reflect that a pupil is now required, pursuant to clarifying amendments made to section 48264.5 in Statutes 2001, chapter 734, to be classified an habitual truant upon the *third* truancy within a single school year.<sup>48</sup> The prior section 48264.5 provided for *classification* of a pupil as an habitual truant upon the *fourth* truancy within a school year,<sup>49</sup> while section 48262, also pled in the test claim, provided that a pupil “is *deemed* an habitual truant who has been reported as a truant *three or more times* per school year.”<sup>50</sup>

Note that the *definition* of an habitual truant in section 48262, and the *consequences of multiple truanies* in section 48264.5, as enacted by Statutes 1991, chapter 1023 (SB 1728), are inconsistent. Statutes 2001, chapter 734 amended section 48264.5, above, to provide that a pupil shall be *classified* as a habitual truant, as defined in section 48262” upon the *third* truancy in a school year. This amendment was a part of a large “clean-up” bill, amending numerous sections of the Education Code, and correcting mistakes in drafting and eliminating inconsistencies and obsolete cross-references.<sup>51</sup>

The relevant approved activity in the test claim decision was to “[v]erify that the pupil has been reported as a truant *at least four* times during the same school year.”<sup>52</sup> The Commission treated section 48262, in its test claim analysis, as being prohibitive, based on the language “provided that no pupil shall be deemed an habitual truant unless...” The Commission concluded that the mandated activities arose from section 48264.5, which required a pupil to be “classified” an habitual truant, and therefore the reimbursable activities were triggered by the fourth truancy, not the third. Given that the Legislature has since undertaken to reconcile the inconsistency,<sup>53</sup> the

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<sup>47</sup> Government Code section 17557(d)(1) (Stats. 2010, ch. 719 (SB 856); Stats. 2011, ch. 144 (SB 112)).

<sup>48</sup> Statutes 2001, chapter 734 (AB 804).

<sup>49</sup> Statutes 1994, chapter 1023 (SB 1728).

<sup>50</sup> Education Code section 48262 (Stats., 1976, ch. 1010)

<sup>51</sup> See Exhibit X, Assembly Floor Analysis of AB 804.

<sup>52</sup> Exhibit X, Test Claim Statement of Decision, CSM 4487 & 4487A.

<sup>53</sup> Statutes 2001, chapter 734.

Commission finds here that the parameters and guidelines should be amended to reflect the clarifying change in the law.

Based on the foregoing, the parameters and guidelines are amended to provide reimbursement for: “[r]eview of school district records to verify that the pupil has been reported as a truant at least ~~four~~ three times during the same school year.”

## ***2. Reasonable Reimbursement Methodology (Section V. of Parameters and Guidelines)***

The following analysis will show that an RRM may be based on a broad range of criteria and information, and need not conform to any specific statutory standards, other than balancing accuracy with simplicity, and considering variation in costs among local government claimants in order to implement the mandate in a cost efficient manner. The analysis will also show that the California Constitution requires that an RRM provide reasonable reimbursement of local government claimants’ costs mandated by the state. The analysis will conclude that substantial evidence exists to adopt an RRM for reimbursement of the mandated activities approved in the test claim.

- a. The purpose of an RRM is to reimburse local government efficiently and simply, with minimal auditing and documentation required.

Article XIII B, section 6 provides: “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government [defined to include school districts], the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>54</sup> Section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.” The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.<sup>55</sup>

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<sup>54</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

<sup>55</sup> *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.<sup>56</sup> Prior section 17557 provided that the Commission “may adopt an allocation formula or uniform allowance.”<sup>57</sup> The current version of section 17557 provides, and has, since 2004, for adoption of an RRM that “balances accuracy with simplicity.”<sup>58</sup> Rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*, and only requires that the end result “balances accuracy with simplicity.”<sup>59</sup> Section 1183.131 of the regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”<sup>60</sup> Section 17518.5 provides that an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs*.”<sup>61</sup> The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly the regulations provide that a “‘representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”<sup>62</sup> The statute provides that an RRM “[w]henver possible... shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs.”<sup>63</sup> There is no requirement that the data upon which an RRM is based be audited, or otherwise verified; an “approximation” is sufficient. The section cannot reasonably be read to require audited cost data to develop an RRM, especially in the case that the RRM is proposed as a part of the first parameters and guidelines after a test claim decision, at which time no audited cost data yet exists. Moreover, the RRM is specifically provided as an alternative to the requirement for detailed documentation of actual costs. Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.”

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<sup>56</sup> Government Code section 17500 et seq.

<sup>57</sup> Government Code section 17557 (Stats. 1984, ch. 1459).

<sup>58</sup> Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

<sup>59</sup> Government Code section 17557.

<sup>60</sup> Register 2008, number 17.

<sup>61</sup> Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>62</sup> Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

<sup>63</sup> Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

Based on the foregoing, staff finds that the primary requirements of an RRM are to consider variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse eligible claimants for costs mandated by the state.

- b. Substantial evidence in the record supports the finding that the proposed RRM is consistent with the Constitutional and statutory requirements of Commission decisions, and reasonably reimburses local government for the costs of the mandate.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”<sup>64</sup> Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;<sup>65</sup> and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>66</sup>

The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”<sup>67</sup> Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”<sup>68</sup>

The evidence required to adopt an RRM is necessarily more relaxed than that required to approve reimbursement for actual costs.<sup>69</sup> As discussed above, there are very few statutory requirements of an RRM, and those that remain are somewhat subjective. However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record.

The proposal submitted by EMCN on San Jose Unified’s behalf, and formally adopted by San Jose Unified, arrived at a lower RRM rate than the original Clovis Unified request: \$26 per habitual truant, based on calculations made using multiple years of data, and excluding fewer outliers.<sup>70</sup> EMCN used *all claims* submitted in 2000-2001, ranging from \$2 to \$331 per truant,

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<sup>64</sup> Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

<sup>65</sup> *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

<sup>66</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

<sup>67</sup> *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

<sup>68</sup> *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

<sup>69</sup> See Government Code 17518.5 [Statute employs terms like “projections;” “approximations”].

<sup>70</sup> Exhibit P, EMCN Response to Commission Request for Comments, at pp.3-4. See also, Exhibit S, San Jose Unified Response.

and excluded only the top five claims in 2001-2002, which were extreme “in relation to the other 98% of the respondents for that year.”<sup>71</sup> EMCN concluded that its weighted average, using all claims for 2000-2001 and all but the five highest-dollar claims for 2001-2002, is “reliable, in that the rate is dependent on results of the largest districts, which had the lowest per-truant claim amounts, exhibited the least variance, and showed a relatively high degree of consistency between the two years we examined.”<sup>72</sup>

The first draft staff analysis recommended denial of the RRM, finding the comments of DOF and SCO “persuasive,” with respect to the requirements of an RRM, and concluding that the proposed unit rate was not reasonable, given the wide variation in costs. The application of a \$26 unit cost per pupil identified as a habitual truant is based on a weighted average of actual cost claims from those districts that filed claims in 2000-2001 and 2001-2002. EMCN notes that the vast majority of claims are clustered in a range of \$66 and under, per habitual truant identified.<sup>73</sup>

The \$26 unit cost is also strikingly similar to the figure reached by SCO in its analysis: the SCO filed comments on July 19, 2010, in which nine fiscal years were analyzed, and a rate of \$26.06 per habitual truant was determined.<sup>74</sup> That analysis was retracted by SCO on July 28, 2010, based on the fact that “[f]urther review of this analysis revealed that the proposed RRM calculations were based on unaudited claim data and cannot be supported by the SCO.”<sup>75</sup> As discussed above, audited data is not required for the development of an RRM.<sup>76</sup> The SCO’s retraction of its analysis is noted, but the degree of similarity between SCO’s analysis and EMCN’s proposal remains illuminating, with respect to the reasonableness of the proposed rate.

Additionally, the fact that none of the claims on which the unit cost is based have been audited is relevant only to the extent that it reinforces the notion of excluding the five highest claims submitted by districts whose cost claims were anomalous: districts that may be attempting to claim costs for unapproved activities, or misunderstanding the scope of activities approved for reimbursement. Given that the majority of claims (approximately 78 percent) were clustered between \$0 and \$66 per truant, substantial evidence supports approval of a unit rate near the middle of that range.

Furthermore, DOF’s suggestion that any unit rate should be discounted in order to remain revenue neutral cannot be supported. DOF assumes that districts that did not file actual cost claims will file under the RRM, increasing the state’s liability.<sup>77</sup> An essential feature of parameters and guidelines is to provide for reimbursement of local government claimants’ actual costs mandated by the state. Intentionally discounting a unit rate to avoid reimbursing districts for their actual costs is in clear violation of article XIII B, section 6.

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<sup>71</sup> *Id.*, at p. 4.

<sup>72</sup> *Id.*, at p. 2.

<sup>73</sup> Exhibit P, EMCN Response to Commission Request for Comments, at pp. 3-4.

<sup>74</sup> Exhibit H, SCO Comments on Request to Amend, at p. 3.

<sup>75</sup> Exhibit I, SCO Additional Comments on Request to Amend, at p. 1.

<sup>76</sup> Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222)).

<sup>77</sup> Exhibit E, DOF Supplemental Comments on Request to Amend, at p. 2.

Finally, as discussed above, sections 17518.5 and 17557 confer broad authority on the Commission to adopt an RRM, and provide criteria that expressly contemplate variation in costs among local governments. The Commission must presume these statutes are constitutional, and that some degree of variation is permissible. The Commission declines to extend its reasoning so far as to declare that “no range of figures [would be] so wide as to violate constitutional requirements,” as suggested by the BIPs co-claimants.<sup>78</sup> At some point, a range could be so broad, and there could be a lack of clustering of the data such that it cannot be said an RRM reasonably reimburses local governments for their actual state-mandated costs, as required by the California Constitution. However, such determinations must be made on a case by case basis and turn on the presence or absence of substantial evidence to support the Commission’s decision.

Based on the foregoing, staff finds that substantial evidence in the record supports adoption of the proposed RRM, at a rate of \$26 per pupil identified as an habitual truant, beginning in the 2002-2003 fiscal year, and adjusted by the Implicit Price Deflator for each subsequent year.

### **C. Boilerplate Changes to Reflect Current Law and Commission Usage.**

Several boilerplate sections of the existing parameters and guidelines do not reflect current law and Commission usage. The parameters and guidelines have been amended to reflect current boilerplate language and statutory language. These changes do not apply retroactively because all claims filed under these amended parameters and guidelines will be filed prospectively.

### **Staff Recommendation**

Staff recommends that the Commission adopt the attached parameters and guidelines and statement of decision, and direct staff to make any technical, non-substantive changes following the hearing.

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<sup>78</sup> Exhibit Q, BIPs Co-Claimants Response to Request for Comments, at pp. 5-7.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
AMENDMENT FOR:

Education Code Section 48262  
Chapter 1184, Statutes of 1975  
Chapter 1023, Statutes of 1994  
Amended to Add Education Code Section  
48264.5 Chapter 1023, Statutes of 1994

Clovis Unified School District and  
San Jose Unified School District, Requestors

Case No.: 01-PGA-06, 09-PGA-01

*Habitual Truants (CSM-4487)*

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

*(Proposed for Adoption: September 27, 2013)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on September 27, 2013. [Witness list will be included in the final statement of decision.]

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

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

**I. SUMMARY OF THE MANDATE**

The statement of decision for this test claim was adopted on September 25, 1997. The Commission found that Education Code section 48264.5 (Statutes of 1994, Chapter 1023) imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission found that the statute requires school districts to verify pupil truancy, make a conscientious effort to notify parents or guardians of a pupil's truancy, schedule and hold conferences with students and parents or guardians, and, if a pupil has four trancies and the above requirements have been met, classify that pupil as an habitual truant. School districts have been eligible for reimbursement for this program since July 1, 1995.

This request to amend the parameters and guidelines seeks to include a reasonable reimbursement methodology (RRM) for reimbursement of all mandated activities, based on a unit cost of \$26, applied to the number of habitual truants identified in each school district under

the statute, and to amend the reimbursable activities to reflect a clarifying change in the definition of an habitual truant.

## **II. PROCEDURAL HISTORY**

On January 29, 1998, the Commission adopted the original parameters and guidelines. On April 29, 2002, Clovis Unified School District filed a request to amend the parameters and guidelines to include a uniform cost allowance for the costs of the mandate, and to amend the reimbursable activities to reflect a clarifying change in the law requiring only three truanancies before classifying a pupil an habitual truant, rather than the four truanancies indicated in the parameters and guidelines.<sup>79</sup> The letter accompanying the request stated that “[u]ntil the data is determined, the claimant’s proposed rate is an arbitrary \$999 per workload multiplier.”<sup>80</sup> After reviewing claims data submitted for fiscal year 2000-2001, Clovis sent a letter to the Commission, dated May 2, 2003, proposing a unit cost allowance of \$32.15 per habitual truant.<sup>81</sup>

On July 19, 2002 the Department of Finance (DOF) submitted comments on the request to amend parameters and guidelines questioning whether a unit cost was appropriate for this program.<sup>82</sup> On July 30, 2003, DOF submitted supplemental comments on Clovis Unified’s request to amend the parameters and guidelines, recommending denial of the request to amend, and citing wide variation in costs among school districts.<sup>83</sup> On August 11, 2003, the State Controller’s Office (SCO) submitted comments on Clovis Unified’s request to amend the parameters and guidelines, urging its disagreement with the proposed unit cost, citing the use of unaudited data and the wide range of costs.<sup>84</sup>

On April 7, 2006, the SCO requested an amendment to the parameters and guidelines to incorporate new boilerplate language regarding reimbursable costs and record retention, to reflect changes in the applicable Government Code sections.<sup>85</sup> On January 29, 2010, the parameters and guidelines were amended to incorporate those changes.<sup>86</sup>

Between October 8, 2009 and October 21, 2009, several additional school districts, including Fullerton Joint Union High School District, Poway Unified School District, Riverside Unified School District, Castro Valley Unified School District, Grossmont Union High School District, Norwalk-La Mirada Unified School District, San Juan Unified School District, and the San Diego County Office of Education, requested to be included as a requesting district in the parameters and guidelines amendment request initiated by Clovis Unified, and joined by

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<sup>79</sup> Exhibit A, Clovis Unified Request to Amend, at pp. 8-9; 12-13. On May 1, 2002, San Jose Unified School District was added as a requesting party. (Exhibit C, San Jose Unified Request to Amend Ps&Gs, at p. 3.)

<sup>80</sup> Exhibit A, Clovis Unified Request to Amend, at p. 2.

<sup>81</sup> Exhibit B, Clovis Unified Letter Identifying Unit Rate.

<sup>82</sup> Exhibit D, DOF Comments on Request to Amend Ps&Gs.

<sup>83</sup> Exhibit E, DOF Supplemental Comments on Request to Amend.

<sup>84</sup> Exhibit F, SCO Comments on Request to Amend Ps&Gs.

<sup>85</sup> Exhibit X, SCO Request to Amend Parameters and Guidelines, 05-PGA-51.

<sup>86</sup> Exhibit X, Amended Parameters and Guidelines CSM-4487.

San Jose Unified. The districts each requested that Mr. Keith Petersen be appointed their representative in this matter. Those requests were granted between October 26, 2009, and December 21, 2009.<sup>87</sup>

On January 13, 2010, San Jose Unified School District filed a request to amend the parameters and guidelines to adopt an RRM in the form of a unit cost of \$32.15 per habitual truant. San Jose Unified expressed its intention to incorporate by reference the prior request made by Clovis Unified, and all documentation and evidence in support of that request.<sup>88</sup> Pursuant to section 1183.06 of the Commission's regulations the Executive Director consolidated these matters on June 9, 2011.<sup>89</sup>

On March 3, 2010, the SCO submitted written comments on the RRM proposed by San Jose Unified, in which SCO expressed doubt that an RRM could accurately reimburse districts for the actual costs of the mandated activities, due to the variation in costs among districts. On March 17, 2010, the Commission held a prehearing conference to review and discuss the proposed RRM. On July 19, 2010, the SCO submitted additional analysis and comments on the proposed RRM, in which SCO proposed a unit rate based on the average claim per pupil over nine years of actual cost claims (rather than only one year), resulting in a rate of \$26.06 per habitual truant.<sup>90</sup> On July 28, 2010, SCO submitted still further comments, rescinding the July 19, 2010 comments, after "[f]urther review of this analysis revealed that the proposed RRM calculations were based on unaudited claim data and cannot be supported by SCO."<sup>91</sup>

On June 9, 2011, Commission staff issued a draft staff analysis and proposed statement of decision, and noticed a schedule for comments.<sup>92</sup> The draft staff analysis recommended denial of the request to amend, on the ground that the RRM was not "cost-efficient," and that the data underlying the unit rate varied too greatly to support a single unit cost. On June 29, 2011, Commission staff issued notice of a prehearing conference, and revised the schedule for comments, postponing the matter to the September 2011 hearing.<sup>93</sup> On June 30, 2011, SCO submitted comments agreeing with the draft staff analysis.<sup>94</sup> Also on June 30, 2011, the California Association of Supervisors of Child Welfare and Attendance submitted comments on the draft staff analysis urging the Commission to adopt a "less bureaucratic formula" for reimbursement.<sup>95</sup> On July 22, 2011, claimant San Jose Unified submitted comments on the draft staff analysis, in which San Jose Unified suggested that cost-efficiency and the variation in local

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<sup>87</sup> See Exhibit C, San Jose Unified Request to Amend Ps&Gs, at p. 3.

<sup>88</sup> Exhibit C, San Jose Unified Request to Amend Ps&Gs.

<sup>89</sup> Code of Regulations, title 2, section 1183.06 (Register 2010, No. 44).

<sup>90</sup> Exhibit H, SCO Additional Analysis and Comments.

<sup>91</sup> Exhibit I, SCO Additional Comments.

<sup>92</sup> Exhibit J, Draft Staff Analysis.

<sup>93</sup> Exhibit X, Notice of Prehearing and Revised Comment Schedule.

<sup>94</sup> Exhibit K, SCO Comments on Draft Staff Analysis.

<sup>95</sup> Exhibit L, CASCWA Comments on Draft Staff Analysis.

costs were issues of first impression for the Commission.<sup>96</sup> On July 27, 2011, Commission staff held an informal conference attended by the representatives of the SCO and the claimant community. On August 9, 2011, the City and County of San Francisco submitted email comments regarding the draft staff analysis and the prehearing conference, stating that San Francisco would generally support an RRM based on unit times, rather than unit costs, because such structure would account for differences in wages among local agencies.<sup>97</sup>

On August 12, 2011, Commission staff issued a request for comments on RRM's proposed for three pending claims: *Behavioral Intervention Plans* (CSM-4464), *Voter Identification Procedures* (03-TC-23), and *Habitual Truants* (09-PGA-01, 01-PGA-06).<sup>98</sup> Commission staff asked parties, interested parties, and interested persons the following questions:

At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?

¶...¶

How should "cost-efficient" be defined?

¶...¶

What does this section require be cost-efficient? Stated another way, what does a requestor need to show to demonstrate that its proposed RRM unit cost meets the requirement of section 17518(c)?<sup>99</sup>

In response to those questions, a number of responses were submitted.<sup>100</sup> On August 22, 2011, Commission staff granted an extension of time to San Jose Unified in order to permit sufficient time to secure an independent analysis of the cost data underlying the proposed RRM.<sup>101</sup> On December 19, 2011, Education Mandated Cost Network (EMCN), on behalf of San Jose Unified, submitted that analysis, in which it determined that a weighted average, excluding no statistical outliers, yielded a more reliable estimate; EMCN therefore suggested assigning the unit rate at \$26 per habitual truant.<sup>102</sup> On December 20, 2011, San Jose Unified submitted comments endorsing EMCN's proposed unit rate, and requesting that the rate be applied retroactively to fiscal year 2002-2003 claims.<sup>103</sup>

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<sup>96</sup> Exhibit M, Claimant Comments on Draft Staff Analysis.

<sup>97</sup> Exhibit N, City and County of San Francisco Comments.

<sup>98</sup> Exhibit O, Commission Request for Comments on Pending RRM's.

<sup>99</sup> Exhibit O, Commission Request for Comments on Pending RRM's.

<sup>100</sup> Exhibit Q, BIPs Co-Claimants Response to Request for Comments, at pp. 5-7; Exhibit R, County of LA Response to Request for Comments, at p. 2..

<sup>101</sup> Exhibit P, EMCN Response to Request for Comments, at p. 1.

<sup>102</sup> Exhibit P, EMCN Response to Request for Comments, at p. 2.

<sup>103</sup> Exhibit S, San Jose Unified Response to Request for Comments.

On July 17, 2013, Commission staff issued a revised draft staff analysis and proposed statement of decision and parameters and guidelines amendment.<sup>104</sup> No comments were received from the claimants or state agencies.

### **III. POSITIONS OF THE PARTIES**

#### **A. Requestors' Position**

As last modified, San Jose Unified's request to amend incorporated by reference the evidence and documentation submitted in support of Clovis Unified's original request to amend, submitted April 29, 2002, and completed May 2, 2003. San Jose Unified has also endorsed the independent analysis of the cost data, resulting in a unit rate calculation of \$26 per habitual truant, and has requested that the RRM be retroactively effective to fiscal year 2002-2003.<sup>105</sup>

#### **B. Department of Finance Position**

DOF has not filed further comments, either on the first draft staff analysis issued June 9, 2011; on Commission staff's request for comments issued August 12, 2011, or the responses thereto; or on the amended proposal of a \$26 unit rate RRM proposed by EMCN on behalf of San Jose Unified and formally adopted by San Jose Unified on December 20, 2011. In earlier comments on the 01-PGA-06 and 09-PGA-01 requests, DOF argued that the proposed changes do not necessarily support the purported savings of time and money to local government claimants, and that "we believe accuracy of claims in total to be a higher state interest than easing the marginal claiming process burden on LEAs." DOF also argued that some LEAs would receive reimbursement in excess of their actual costs, and states that "[g]enerally, we do not support reimbursement standards that allow reimbursement greater than actual costs...[t]hus only if district actual costs fall within a fairly narrow range is a unit cost approach appropriate."<sup>106</sup> DOF also expressed its preference for three years of audited claims data, or "audited claim samples, credible time studies, or other analytically and statistically valid approach."<sup>107</sup>

In supplemental comments, submitted July 30, 2003, DOF argued that the data used to develop the cost rates "have not been audited." DOF argued that "[t]hat fact, coupled with the large observed range in the unit costs of each program, leads us to question whether these programs are suitable for a unit cost." And, DOF argued that "[i]f the Commission decides to establish unit costs at this time, we recommend using a discounted weighted average to calculate the unit costs." DOF argued that "[t]his discounting would be used to offset the fact that the claims have not been audited and to account for the large number of districts that did not file claims, but which likely would if a unit reimbursement rate was adopted."<sup>108</sup>

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<sup>104</sup> Exhibit T, Revised Draft Staff Analysis.

<sup>105</sup> See Exhibit C, San Jose Unified Request to Amend at p. 3; Exhibit S, San Jose Unified Response to Comments.

<sup>106</sup> Exhibit D, DOF Comments on Clovis Unified Request to Amend, at p. 1.

<sup>107</sup> Exhibit D, DOF Comments on Clovis Unified Request to Amend, at pp. 2-3.

<sup>108</sup> Exhibit E, DOF Supplemental Comments on Clovis Unified Request to Amend, at pp. 1-2.

### **C. State Controller's Office Position**

SCO also opposes the adoption of a unit cost RRM, stating that “[w]e feel that the data provided by SixTen and Associates does not support the single weighted average cost rate for each mandate proposed by them.” The SCO continues, “[t]his is because the unaudited claim data used by SixTen and Associates contains a variance that is too great and does not lend itself to adopting a fair and reasonable single uniform cost allowance.”<sup>109</sup>

On March 3, 2010, SCO stated that “[w]e are concerned that the unit cost methodology proposed for creating a single RRM for all of the reimbursable activities of this mandate does not represent an accurate representation [sic] of the actual costs to perform the mandated activities.”<sup>110</sup> SCO suggested that “it may be more accurate to create RRMs for each of the reimbursable activities rather than blend all activities into a single rate,” and SCO also noted a concern that “most of the cost data submitted for Fiscal Year 2000-01 has not been audited by the State Controller's Office (SCO).”<sup>111</sup>

On July 19, 2010, SCO submitted additional comments and analysis, in which SCO argued that the San Jose Unified's method of excluding statistical outliers resulted in a higher unit rate calculation.<sup>112</sup> Utilizing all data from the 2000-2001 fiscal year, including the outliers, the SCO calculated a unit rate of \$25.72, rather than the \$32.15 calculated by the claimant.<sup>113</sup> The SCO further calculated an average using data from 2000-2001 through 2008-2009 fiscal years, and determined an average over that period of \$26.06 per pupil reported as an habitual truant.<sup>114</sup> SCO later retracted these comments saying that it could not support the RRM because the claims data had not been audited.<sup>115</sup>

On June 30, 2011, the SCO submitted comments on the draft staff analysis in which it expressed its agreement with Commission staff's recommendation in the first draft staff analysis to deny the proposed amendment.

### **D. Other Interested Parties and Persons**

On June 30, 2011, the California Association of Supervisors of Child Welfare and Attendance submitted written comments in which the association expressed its strong support for “streamlining the claiming process and having a reasonable reimbursement unit rate when appropriate.” The association stated that it sought to ensure that school districts would be “reimbursed in a timelier, less bureaucratic formula.”<sup>116</sup>

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<sup>109</sup> Exhibit F, SCO Comments on Clovis Unified Request to Amend, at p. 1.

<sup>110</sup> Exhibit G, SCO Comments on San Jose Unified Request to Amend, at p. 1.

<sup>111</sup> Exhibit G, SCO Comments on San Jose Unified Request to Amend, at p. 2.

<sup>112</sup> Exhibit H, SCO Additional Comments and Analysis, at p. 2.

<sup>113</sup> *Ibid.*

<sup>114</sup> Exhibit H, SCO Additional Comments and Analysis, at p. 2.

<sup>115</sup> Exhibit I, SCO Additional Comments.

<sup>116</sup> Exhibit L, CASCWA Comments on Draft Staff Analysis, at pp. 1-2.

On August 9, 2011, the City and County of San Francisco submitted comments responding to the draft staff analysis and the July 27, 2011 prehearing, in which the City and County stated that it would favor an RRM based on a unit time, rather than unit cost, which would account for regional differences in employee compensation.<sup>117</sup>

On December 19, 2011, EMCN submitted comments in response to the draft staff analysis, the July 27, 2011 prehearing, and Commission staff's request for comments, in which EMCN stated that an independent statistical analysis of the data used to calculate the proposed unit rate had been performed, and that the consultant had concluded that \$26 per habitual truant was a reasonable unit rate.

On December 20, 2011, the co-claimants in the BIPs (CSM-4464) claim submitted comments on the issues of cost-efficient implementation and the wide range of costs reported. The BIPs co-claimants argued that the statute creating the process and limitations for adopting an RRM must be presumed to be constitutional, and that it entails very few concrete requirements.<sup>118</sup> As such, the BIPs co-claimants concluded that an RRM could be based on very wide-ranging costs and still be constitutional. The BIPs co-claimants also suggested that implementation at an average cost promotes efficiency, because higher-cost districts are encouraged to implement cost-savings and lower-cost districts are encouraged to implement the mandate more fully.<sup>119</sup>

Also on December 20, 2011, the County of Los Angeles submitted comments in which it too argued for broad and lenient standards in the adoption of RRMs. The County argued: "while RRM surveys initially produce a wide range of responses which may appear inequitable, that is not, in and of itself, a basis for maintaining that the proposed RRM rate is constitutionally prohibited."<sup>120</sup>

#### **IV. DISCUSSION**

##### **A. All later submissions of the co-requesters proposing amendments to the parameters and guidelines modify the first completed request of May 2, 2003. Thus, the potential period of reimbursement for the parameters and guidelines amendment at issue in this matter, as last modified in 2011, begins July 1, 2002.**

There are five submissions in the record regarding proposed amendments to the parameters and guidelines, each with slight differences from the others.<sup>121</sup> The issue before the Commission is whether the five separate filings constitute a single request to amend the parameters and guidelines, the later submissions building upon the earlier, thus triggering a period of reimbursement based on the filing date of the first completed request; or whether the five filings are separate requests to amend the parameters and guidelines, with separate potential periods of reimbursement attached to each request. The analysis of this issue turns primarily on two

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<sup>117</sup> Exhibit N, City and County of San Francisco Comments.

<sup>118</sup> Exhibit Q, BIPs Co-Claimants Response to Commission Request for Comments, at pp. 2-3.

<sup>119</sup> Exhibit Q, BIPs Co-Claimants Response to Commission Request for Comments, at pp. 5; 7.

<sup>120</sup> Exhibit R, LA County Response to Commission Request for Comments, at p. 3.

<sup>121</sup> Exhibit A, Clovis Unified Request To Amend; Exhibit B, Clovis Unified Letter Identifying Unit Rate; Exhibit C, San Jose Unified Request to Amend; Exhibit P, EMCN Comments on Request to Amend; Exhibit S, San Jose Unified Response to Comments.

questions: first, is the Commission’s statutory authority to adopt an RRM, as requested in the later submissions, legally distinct from the Commission’s earlier authority and discretion to adopt a uniform allowance or an allocation formula? And second, are the later filings factually distinct from the first request, thus constituting new proposed amendments and triggering new potential periods of reimbursement for each filing?

***1. The Commission has always had authority to adopt a unit cost or allocation formula, and the statutory definition and authorization to adopt an RRM is no different as a matter of law.***

As originally enacted in 1984, the mandates process required the Commission, after approving a test claim, to determine the amount to be subvended to local agencies and school districts for the reimbursement of those costs by adopting parameters and guidelines.<sup>122</sup> Government Code section 17557, as originally enacted, also allowed the Commission to adopt an allocation formula or uniform allowance when adopting or amending parameters and guidelines. Former section 1183.1 of the Commission’s regulations stated that “whenever possible” the parameters and guidelines should use an allocation formula or uniform allowance as the basis for reimbursement.<sup>123</sup>

Government Code section 17557 was amended in 1985 and 1988, and then repealed and replaced in 1995 as part of a mandates reform bill that modified and shortened timelines. The authority to adopt an allocation formula or uniform allowance in parameters and guidelines or amendments to parameters and guidelines, however, remained without interruption in the law and was in place when Clovis Unified filed its request to amend the parameters and guidelines for the *Habitual Truants* program on April 29, 2002.<sup>124</sup>

Article XIII B, section 6 requires reimbursement for the “actual” increased costs incurred to comply with the mandate,<sup>125</sup> but the Legislature has the power to enact statutes that provide “reasonable” regulation and control of the rights granted under the Constitution and the Commission is bound to apply those provisions in a constitutional manner.<sup>126</sup> The phrase “allocation formula or uniform allowance” authorized the Commission to determine the costs mandated by the state and the amount to be subvended by adopting a formula for reimbursement, or a uniform cost allowance applied by local government to a reimbursable activity. Accordingly, the Commission adopted several parameters and guidelines with allocation

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<sup>122</sup> Government Code sections 17514; 17557 (Stats. 1984, ch. 1459).

<sup>123</sup> Code of Regulations, title 2, section 1183.1 (Register 87, No. 18).

<sup>124</sup> Government Code section 17557 (as amended by Stats. 1985, ch. 179; Stats. 1988, chs. 1123 and 1179; Stats. 1995, ch. 945 (S.B. 11).)

<sup>125</sup> *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

<sup>126</sup> *Chesney v. Byram* (1940) 15 Cal.2d 460, 465.

formulas and uniform allowances under this original authority,<sup>127</sup> but at all times article XIII B, section 6 has required that reimbursement be reasonably representative of local governments' actual costs.

In 2004, AB 2856 amended Government Code section 17557 in relevant part as follows:

(b) In adopting parameters and guidelines, the commission *may adopt a reasonable reimbursement methodology.*

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.<sup>128</sup>

AB 2856 also added section 17518.5 to define “reasonable reimbursement methodology” as a “formula for reimbursing local agency and school district costs mandated by the state,” which, whenever possible, “shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.” That section was amended in 2007, to provide that an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.” The amended section also provides that an RRM “shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner,” and that “[w]henver possible, a reasonable reimbursement methodology *shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state*, rather than detailed documentation of actual costs.”<sup>129</sup>

Thus, the terms “general allocation formula” and “uniform cost allowance” have consistently been used by the Legislature as tools provided to the Commission when adopting parameters and

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<sup>127</sup> See, e.g., *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 747, fn. 16, wherein the Commission adopted parameters and guidelines in 2001 for a program requiring school site councils to comply with the Open Meetings laws and, as part of the parameters and guidelines, adopted a uniform cost allowance authorizing school districts to claim \$90-\$106 per meeting. See also, parameters and guidelines adopted by the Commission in 1997 for *Absentee Ballots*, which includes a formula adopted for the reimbursement of state-mandated costs; parameters and guidelines for *Open Meetings/Brown Act Reform* adopted on April 25, 2002, which contains a uniform cost allowance; and parameters and guidelines for *Immunization Records: Hepatitis B* adopted on July 31, 2003, which also contains a uniform cost allowance.

<sup>128</sup> Government Code section 17557 (as amended by Stats. 2004, ch. 890 (AB 2856)).

<sup>129</sup> Government Code section 17518.5 (as amended by Stats. 2007, ch. 329 (A.B. 1222)) [AB 1222 amended the definition of an RRM to delete the conditions that the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner; and for 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner].

guidelines pursuant to Government Code section 17557. There is no evidence in the plain language of the statutory scheme or in the legislative history to suggest that an “allocation formula” and “uniform allowance” under former section 17557 mean something different than a “general allocation formula” and “uniform cost allowance” used to define an RRM in current sections 17518.5 and 17557.<sup>130</sup> Both require the Commission to adopt a reasonable method of reimbursing local government their costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution, and that authority has existed for the last 28 years.

Based on the foregoing analysis, the Commission finds that the authority provided in current section 17557 to adopt an RRM is not materially different, as a matter of law, from the authority to adopt a uniform allowance or an allocation formula under the prior statute.

***2. The RRM proposed by San Jose Unified and the modification thereto provided by EMCN on behalf of San Jose Unified in 2010 and 2011 were intended to modify the original uniform cost allowance proposal based on the request to amend by Clovis Unified in May 2003, and therefore are not new requests to amend.***

The first submission, filed by Clovis Unified on April 29, 2002, requested an amendment to the parameters and guidelines to include a uniform cost allowance, to be calculated on the basis of cost claims submitted to the SCO.<sup>131</sup> That request to amend, however, failed to identify the amount of the uniform cost allowance, pending review of the claims data and, therefore, is not considered a complete request. On May 2, 2003, Clovis Unified submitted supplemental documentation to the Commission setting the requested uniform cost allowance at \$32.15 per pupil identified as an habitual truant.<sup>132</sup> As of May 2, 2003, the request to amend was complete. On June 19, 2002, Commission staff deemed the request complete, consisting of these two Clovis filings, and numbered it 01-PGA-06.

The third submission was filed by San Jose Unified on January 13, 2010. San Jose Unified framed its request in terms of a “reasonable reimbursement methodology,” but otherwise sought the same amendments to the parameters and guidelines as had Clovis Unified. San Jose Unified and Clovis Unified were both co-requesters in support of the other’s requests, and San Jose Unified recognized the pending request by Clovis Unified and asked that all documentation submitted in support of that first request be incorporated by reference, including the letter identifying the calculated unit rate.<sup>133</sup>

After the first draft staff analysis recommended denial of the unit cost, EMCN submitted comments, on behalf of San Jose Unified, on December 19, 2011, in which it proposed a slightly different averaging method, utilizing two years of claims data, as opposed to the single year on which the earlier unit rates were based. The result was an RRM that provided reimbursement at \$26 per habitual truant; a rate very similar to that proposed by the SCO in its July 19, 2010

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<sup>130</sup> Exhibit X, Graduation Requirements Minute Order, Superior Court for the County of Sacramento, 34-2010-80000529-CU-WM-GDS, 2/15/2013, at p. 6.

<sup>131</sup> See Exhibit A, Clovis Unified Request to Amend.

<sup>132</sup> Exhibit B, Clovis Unified Letter Identifying Unit Rate.

<sup>133</sup> Exhibit C, San Jose Unified Request to Amend, at p. 3.

comments, which were disavowed in further comments submitted July 28, 2010.<sup>134</sup> San Jose Unified submitted further comments on December 20, 2011, formally adopting the EMCN proposal as its own, and requesting that the rate be retroactively effective to the 2002-2003 fiscal year, “based on the original filing date of the Clovis request.”<sup>135</sup>

If each of these five filings discussed above was a separate request to amend the parameters and guidelines, the Commission would be required to decide each separately, and to provide for periods of reimbursement accordingly. While the Clovis Unified request and the San Jose Unified request were given separate case numbers, and at least initially reviewed as distinct requests to amend, as has been shown, there is no legal distinction between a request for a uniform cost allowance and a request for an RRM based on a unit cost. Moreover, the requesters have demonstrated by their conduct and their submissions a belief and understanding that all later alterations or modifications are part of the same amendment request: San Jose Unified incorporated by reference all previously filed documentation in its 2010 request to amend,<sup>136</sup> subsequently adopted the unit rate proposed by EMCN which was made on San Jose Unified’s behalf in the first place, and requested its retroactive application to the effective date of the Clovis Unified request.<sup>137</sup>

In 2010, the Commission amended its regulations in an attempt to clarify the effect of subsequent filings to requests to amend the parameters and guidelines as follows:

The addition or substitution of requestors and supporting declarations based on the original facts alleged in an existing parameters and guidelines amendment request is not an “amendment.” However, new proposals for amendments must be submitted as a new parameters and guidelines amendment request.”<sup>138</sup>

The regulation does not clarify exactly what a “new proposal for amendment” is, but the addition or substitution of San Jose Unified as a requesting party is “not an ‘amendment,’” and therefore should not in itself demand a new parameters and guidelines request. Furthermore, the later submission by EMCN, endorsed and adopted by San Jose Unified, although applying a different averaging method to determine a lower RRM unit cost, is still based on the actual cost claims submitted to SCO (i.e., the original facts alleged).<sup>139</sup>

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<sup>134</sup> See Exhibit P, EMCN Response to Request for Comments; Exhibit H, SCO Additional Comments on Request to Amend; Exhibit I, SCO Additional Comments on Request to Amend.

<sup>135</sup> Exhibit S, San Jose Unified Response to Request for Comments.

<sup>136</sup> Exhibit C, San Jose Unified Request to Amend, at p. 3.

<sup>137</sup> Exhibit S, San Jose Unified Response to Request for Comments.

<sup>138</sup> Code of Regulations, title 2, section 1183.2(c), added by Register 2010, No. 44.

<sup>139</sup> Because a “new proposal for amendment” must be submitted “as a new parameters and guidelines amendment request,” a new proposal will necessitate a new public comment period, and a new draft analysis, and will apply only to the period of reimbursement permitted under the Government Code, as discussed below. San Jose Unified did submit its request as a separate request to amend, including filing the request consistently with the Commission’s regulations, and staff treated the request as a new request to amend. However, it is unclear whether those actions were taken as a result of the uncertainty surrounding the treatment of an RRM request, or

Neither the Government Code nor the Commission's regulations require a new case number and file for modifications made by the original requestor in a rebuttal, or a subsequently filed comment addressing the same issues raised in the original request. Nor are there rules prohibiting the Commission from accepting the 2011 comments made by EMCN and endorsed by the original requestor as a modification to the original 2002 requested amendment that relates back to the original 2002 filing date.

Moreover, nothing suggests that the use of general civil procedure rules on amendments of pleadings cannot apply to quasi-judicial actions. Generally, the law allows a party to amend their pleadings, either as a matter of course when undertaken in a timely manner, or when justice requires, even after the time for amendment by right has passed.<sup>140</sup> If a subsequent amendment relies on the same set of facts as the original pleading, seeks relief for the same injuries, and refers to the same incident, the subsequent amendment will be deemed filed as of the date of the original amendment.<sup>141</sup> The purpose of the law allowing amendments of claims and request is to permit correction of errors and omissions, to clarify ambiguities, or to explain mistaken statements made in the original pleadings.<sup>142</sup> The Legislature has recognized these principles in the statutory mandates process by allowing amendments to test claims that relate back to the original filing. Government Code section 17557(e) provides that a claimant may "amend the test claim at any time, but before the test claim is set for hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim." Thus, the Legislature is aware of the general civil procedure rules for amendments and allows the Commission to apply those rules in the test claim process.

Finally, there is a more pragmatic and prudential reason to allow the later modifications to be treated as a single request to amend: once a request to amend parameters and guidelines is received, the filing is issued to the state agencies and interested parties for comment and rebuttal.<sup>143</sup> While comments and rebuttals circulate, original proposals may be modified, as here, and the requester may see fit to endorse a commenter's suggestion. Indeed the public comment process is set up to invite participation; discussion and collaboration are key functions of a public comment period. If the mandates process, and specifically the regulations regarding requests to amend parameters and guidelines, were read so strictly as to require that any modification to a request be treated as a new proposal (thus resetting the period of eligibility, requiring opening a

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uncertainty regarding the pending request by Clovis Unified; the above analysis concluding that the RRM authority is merely an extension of the authority to adopt a unit cost may not have been well understood by the requesters or by Commission staff at that time. Rather than require a new file, case number, public comment period, and analysis for each submission that modifies a prior amendment request, the submissions should be considered together, and treated as a single proposed amendment, especially in the case, as here, that the requesters and commenters clearly intended such treatment.

<sup>140</sup> Code of Civil Procedure, sections 472, 473.

<sup>141</sup> California Jurisprudence 3d Pleading, § 258; *Wiener v. Superior Court* (1976) 58 Cal.App.3d 525; *San Diego Gas & Elec. Co. v. Superior Court* (2007) 146 Cal.App.4th 1545.

<sup>142</sup> California Jurisprudence 3d Limitation of Actions, § 145.

<sup>143</sup> Code of Regulations, title 2, section 1183.2.

new file and assigning a new case number, and rebooting the public comment process), the stakeholders to a proposed amendment would have very little incentive to express any agreement with the comments of any other party, or to collaborate or compromise with other parties at all, for fear of causing further delay and more procedure.

Based on the foregoing, the Commission finds that the five submissions in question modify the first completed request of May 2, 2003, with the potential period of reimbursement beginning July 1, 2002.<sup>144</sup>

The remaining issues before the Commission are as follows:

- Whether the reimbursable activities section should be amended to reflect a clarifying change in law.
- Whether the proposed RRM of \$26 per habitual truant should be adopted by the Commission.

## **B. Amendments to the Parameters and Guidelines.**

### *i. Reimbursable Activities (Section IV. of Parameters and Guidelines)*

Clovis Unified seeks to amend the parameters and guidelines to reflect that a pupil is now required, pursuant to clarifying amendments made to section 48264.5 in Statutes 2001, chapter 734, to be classified an habitual truant upon the *third* truancy within a single school year.<sup>145</sup> The prior statute provided for classification of a pupil as an habitual truant upon the *fourth* truancy within a school year, as follows:

(d) Upon the fourth truancy within the same school year, the pupil shall be classified a habitual truant, as defined in Section 48262, and shall be within the jurisdiction of the juvenile court which may adjudge such pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code.<sup>146</sup>

Meanwhile, section 48262, also pled in the test claim, has always provided as follows:

Any pupil is deemed an habitual truant who has been reported as a truant *three or more times per school year*, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer of employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself...<sup>147</sup>

Note that the definition of an habitual truant in section 48262, and the consequences of multiple trancies resulting in “classifying” a pupil as an habitual truant in section 48264.5, are inconsistent. Statutes 2001, chapter 734 amended section 48264.5, above, to provide that: “(c) The third time a truancy report is issued within the same school year, the pupil shall be classified as a habitual truant, as defined in section 48262...” Thus the requirement that a pupil “shall be

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<sup>144</sup> Government Code section 17557(d)(1) (Stats. 2010, ch. 719 (SB 856); Stats. 2011, ch. 144 (SB 112)).

<sup>145</sup> Statutes 2001, chapter 734 (AB 804).

<sup>146</sup> Education Code section 48264.5 (Stats. 1994, ch. 1023 (SB 1728)).

<sup>147</sup> Education Code section 48262 (Stats., 1976, ch. 1010)

classified” an habitual truant upon the third truancy report pursuant to section 48264.5 is now consistent with the definition in section 48262, stating that a pupil “is deemed” an habitual truant after “three or more” trancies in a school year. This amendment was a part of a large “clean-up” bill, amending numerous sections of the Education Code, and correcting mistakes in drafting and eliminating inconsistencies and obsolete cross-references.<sup>148</sup>

The relevant approved activity in the test claim decision was to “[v]erify that the pupil has been reported as a truant at least four times during the same school year;”<sup>149</sup> the fourth truancy triggered the approved reimbursable activities. Accordingly, the parameters and guidelines approved reimbursement for “[r]eview of school district records to verify that the pupil has been reported as a truant at least four times during the same school year.”<sup>150</sup> However, as discussed, the definition of an habitual truant is found in section 48262, which also imposes the requirement to hold a conference with the pupil and a parent or guardian, but requires only three trancies to “deem” a pupil an habitual truant. The Commission treated section 48262, in its test claim analysis, as being prohibitive, based on the language “provided that no pupil shall be deemed an habitual truant unless...” The Commission concluded that the mandated activities arose from section 48264.5, which required a pupil to be “classified” an habitual truant, and therefore the reimbursable activities were triggered by the fourth truancy, not the third. Given that the Legislature has since undertaken to reconcile the inconsistency,<sup>151</sup> the Commission finds here that the parameters and guidelines should be amended to reflect the clarifying change in the law.

Based on the foregoing, the parameters and guidelines are amended to provide reimbursement for: “[r]eview of school district records to verify that the pupil has been reported as a truant at least ~~four~~ three times during the same school year.”

***ii. Reasonable Reimbursement Methodology (Section V. of Parameters and Guidelines)***

As discussed above, there is no legal distinction between the authority to adopt an RRM and the authority to adopt a uniform cost allowance or allocation formula, as provided for under the earlier statutes. Therefore the analysis here will discuss only the requirements of an RRM, which are somewhat more clear and specific. The following analysis will show that an RRM may be based on a broad range of criteria and information, and need not conform to any specific statutory standards, other than balancing accuracy with simplicity, and considering variation in costs among local government claimants in order to implement the mandate in a cost efficient manner. The analysis will also show that the requesters have submitted documentation and argument which constitutes substantial evidence to adopt an RRM for reimbursement of the mandated activities approved in the test claim.

1. The purpose of an RRM is to reimburse local government efficiently and simply, with minimal auditing and documentation required.

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<sup>148</sup> See Exhibit X, Assembly Floor Analysis of AB 804.

<sup>149</sup> Exhibit X, Test Claim Statement of Decision, CSM 4487 & 4487A.

<sup>150</sup> Exhibit C, San Jose Unified Request to Amend, at p. 24.

<sup>151</sup> Statutes 2001, chapter 734.

Article XIII B, section 6 provides: “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government [defined to include school districts], the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>152</sup> Section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.” (Emphasis added.) The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.<sup>153</sup>

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.<sup>154</sup> Prior section 17557 provided that the Commission “may adopt an allocation formula or uniform allowance.”<sup>155</sup> The current version of section 17557 provides, and has, since 2004, for adoption of an RRM that “balances accuracy with simplicity.”<sup>156</sup> Section 17518.5 defines an RRM as follows:

(a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.

(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

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<sup>152</sup>*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

<sup>153</sup> *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

<sup>154</sup> Government Code section 17500 et seq.

<sup>155</sup> Government Code section 17557 (Stats. 1984, ch. 1459).

<sup>156</sup> Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

(c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

(d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs . . . .

(e) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.<sup>157</sup>

Requester San Jose Unified cited the statutory requirements in its request to amend, and argued that the evidence submitted was sufficient to satisfy the requirements of an RRM. San Jose Unified stated that the proposed RRM is based on cost information from a representative sample of claimants, because the rate is “derived from the cost data from substantially all of the FY 2000-01 annual reimbursement claims submitted to the State Controller.” San Jose also argued that a unit rate based on the number of students identified as habitual truants was sufficient to consider the variation in costs among districts to implement the mandate in a cost efficient manner.<sup>158</sup>

DOF and SCO both assert the need for audited claims data in the development of an RRM. DOF argues that “standards should be developed using three years of actual (audited) claim data, not counting the initial year’s claims, as this approach would provide some assurance that the activities and procedures have stabilized sufficiently to accurately reflect necessary time and/or costs.”<sup>159</sup> DOF argues that absent audited claims data, “it cannot be assumed that the data selected are representative of all valid claims statewide.”<sup>160</sup> DOF also argues that the unit cost allowance proposed would tend to reimburse districts in excess of their actual costs, and that “we do not support reimbursement standards that allow reimbursement greater than actual costs.”<sup>161</sup> And, DOF argues that the RRM would result in greater reimbursement than could be estimated on the basis of claims filed:

We do not believe these unit costs would be revenue neutral. For each program there are several districts that filed estimated claims, but never filed actual claims.

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<sup>157</sup> Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>158</sup> Exhibit C, San Jose Unified Request to Amend, at pp. 12-13.

<sup>159</sup> Exhibit D, DOF Comments on Request to Amend, at p. 2.

<sup>160</sup> *Ibid.*

<sup>161</sup> Exhibit D, DOF Comments on Request to Amend, at p. 1.

Because of this, we do not believe the data represents the entire statewide costs of these programs.

¶...¶

If the Commission decides to establish unit costs at this time, we recommend using a discounted weighted average to calculate the unit costs. The discounting would be used to offset the fact that the claims have not been audited and to account for the large number of districts that did not file claims, but which likely would if a unit reimbursement rate was adopted.

SCO, for its part, objects also to the proposed unit cost, arguing that “the unaudited claim data used by SixTen and Associates contains a variance that is too great and does not lend itself to adopting a fair and reasonable single uniform cost allowance.”<sup>162</sup> SCO further concludes that the RRM’s “were based on unaudited claim data and cannot be supported by the SCO.”<sup>163</sup>

The first draft staff analysis on the request to amend the parameters and guidelines, issued June 9, 2011, concluded that the unit cost proposed met the statutory requirements of an RRM, in that it was developed on the basis of cost information from a representative sample of eligible claimants. However, the same draft recommended denying the request to include an RRM, because staff found that a unit cost was not appropriate for this program, due to the wide variation in local costs, and because staff concluded that the unit rate proposed did not meet the requirement of being “cost-efficient.” Staff found persuasive the arguments of DOF and SCO with respect to the wide range of costs, and questioned whether the program was suitable for a unit cost. However, the first draft staff analysis failed to elaborate on what was meant by the phrase “cost-efficient,” and how efficiency should be viewed; and the Commission never had the opportunity to rule on the reasonableness of the unit rate with respect to the variation in costs among districts.<sup>164</sup>

Requester San Jose Unified filed comments on that draft staff analysis, in which it disagreed with staff’s conclusion, and suggested that cost-efficiency was an issue of first impression. San Jose Unified cited an excerpt from a report by the General Accounting Office, in which efficiency is framed not just in terms of cost-reductions, but also in terms of quality or quantity of *outputs* or *outcomes*.<sup>165</sup> San Jose Unified thus argues that cost-efficiency should take into account the degree to which a mandate is properly implemented, and that an average level of reimbursement makes variability in the activities performed “academic once all activities are pooled for unitary cost allocation.”<sup>166</sup>

Recognizing the uncertainty surrounding the proper application of the RRM statute, on July 27, 2011 Commission staff requested comments from the parties and interested parties to three

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<sup>162</sup> Exhibit F, SCO Comments on Request to Amend, at p. 1.

<sup>163</sup> Exhibit I, SCO Additional Comments on Second Request to Amend, at p. 1.

<sup>164</sup> Exhibit J, First Draft Staff Analysis, at pp. 8-9.

<sup>165</sup> Exhibit M, Requester San Jose Unified Comments on First Draft Staff Analysis, at p. 3.

<sup>166</sup> Exhibit M, Requester San Jose Unified Comments on First Draft Staff Analysis, at p. 2.

claims that were pending on a proposed unit cost RRM.<sup>167</sup> Commission staff posed the question: “At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandate-related costs?”<sup>168</sup> Additionally, Commission staff asked parties and interested parties to comment on what was meant by “cost-efficient,” in the context of section 17518.5(c), which provides that an RRM “shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost efficient manner.”<sup>169</sup> The BIPs co-claimants responded to both questions, arguing that the Legislature intended that “a mandate implemented at a middle cost, not at a high cost, and not at a low cost, was a mandate implemented with cost efficiency.” The BIPs co-claimants also argued that an average level of reimbursement would result in more efficient implementation with respect to outcomes: “the highest cost districts are reimbursed below their costs requiring them to be more efficient if possible and the lowest cost districts are reimbursed above their costs encouraging their fuller implementation of the mandate.”<sup>170</sup>

The BIPs co-claimants also responded directly to the question regarding an appropriate range of costs, arguing that the initial enactment of the RRM language and the subsequent amendment evidence the Legislature’s conclusion that levels of mandate reimbursement may range widely and still be constitutional:

Since 2007, the current requirements for RRMs are considerably less specific and more flexible than the former requirements. Now, there is no requirement that a minimum percentage of claimants’ projected costs be fully offset or that the total amount to be reimbursed statewide covers the total of local estimated costs. Since 2007, Section 17518.5 requires only that RRMs “be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs,” and that the RRM “consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.”

[Citation omitted.] In other words, the statute expressly contemplates variation and leaves open the possibility for a potentially large degree of variation in the costs offset.<sup>171</sup>

The County of Los Angeles also addressed the question, asserting that “while RRM surveys may produce a wide range of responses, that is not, in and of itself, a basis for maintaining that the proposed RRM rate is constitutionally prohibited.”<sup>172</sup>

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<sup>167</sup> *Behavioral Intervention Plans* (CSM-4464); *Habitual Truants* (09-PGA-01, 01-PGA-06) (CSM-4487 and CSM-4487A); *Voter Identification Procedures* (03-TC-23).

<sup>168</sup> Exhibit O, Commission Request for Comments on Pending RRMs, at p. 2.

<sup>169</sup> *Id.*, at p. 2.

<sup>170</sup> Exhibit Q, BIPs Co-Claimants’ Response to Request for Comments on Pending RRMs, at p. 7.

<sup>171</sup> Exhibit Q, BIPs Co-Claimants’ Response to Request for Comments on Pending RRMs, at p. 5.

<sup>172</sup> Exhibit R, County of LA Response to Commission Request for Comments, at p. 2.

Rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*, and only requires that the end result “balances accuracy with simplicity.”<sup>173</sup> Section 1183.131 of the regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”<sup>174</sup> Section 17518.5 provides that an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs*.”<sup>175</sup> The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly the regulations provide that a “‘representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”<sup>176</sup> The statute provides that an RRM “[w]henver possible... shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation of actual costs*.”<sup>177</sup> There is no requirement that the data upon which an RRM is based be audited, or otherwise verified; an “approximation” is sufficient. The section cannot reasonably be read to require audited cost data to develop an RRM, especially in the case that the RRM is proposed as a part of the first parameters and guidelines after a test claim decision, at which time no audited cost data yet exists. Moreover, the RRM is specifically provided as an alternative to the requirement for detailed documentation of actual costs.

Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.”

Based on the foregoing, the Commission finds that the primary requirements of an RRM are to consider variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse eligible claimants for costs mandated by the state. The statutory scheme for the adoption of an RRM does not require detailed actual cost information; cost information from a representative sample of eligible claimants; audited data from multiple years of cost claims; or an RRM proposal that *addresses or mitigates* variation in costs incurred among different districts. An RRM is meant to be based on an *approximation* of local costs, and need not precisely reimburse every actual dollar expended on the program. However, an RRM must be reasonable; satisfying the statutory requirements of an RRM is not the end of the inquiry. Ever present is the constitutional requirement that the end result must *reasonably* reimburse

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<sup>173</sup> Government Code section 17557.

<sup>174</sup> Register 2008, number 17.

<sup>175</sup> Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

<sup>176</sup> Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

<sup>177</sup> Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

claimants for their mandated costs, as required by article XIII B, section 6; and substantial evidence, as discussed below, must support the Commission’s decision to adopt an RRM.

2. Substantial evidence in the record supports the finding that the proposed RRM is consistent with the Constitutional and statutory requirements of Commission decisions, and reasonably reimburses local government for the costs of the mandate.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”<sup>178</sup> Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;<sup>179</sup> and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>180</sup>

The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”<sup>181</sup> Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”<sup>182</sup>

The evidence required to adopt an RRM is necessarily more relaxed than that required to approve reimbursement for actual costs.<sup>183</sup> As discussed above, there are very few statutory requirements of an RRM, and those that remain are somewhat subjective. However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.<sup>184</sup> Thus, the plain language of the statutory and regulatory mandates scheme, undergirded by the California Constitution, permits an RRM to be adopted on the basis of a number of different types of evidence or approximations, but requires substantial evidence in the record to support the adoption of an RRM, and requires the adopted RRM to reasonably reimburse local government for costs mandated by the state.

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<sup>178</sup> Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

<sup>179</sup> *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

<sup>180</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

<sup>181</sup> *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

<sup>182</sup> *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

<sup>183</sup> See Government Code 17518.5 [Statute employs terms like “projections;” “approximations”].

<sup>184</sup> *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

The proposal submitted by EMCN on San Jose Unified’s behalf, and formally adopted by San Jose Unified, arrived at a lower RRM rate than the original Clovis Unified request: \$26 per habitual truant, based on calculations made using multiple years of data, and excluding fewer outliers.<sup>185</sup> EMCN used *all claims* submitted in 2000-2001, ranging from \$2 to \$331 per truant, and excluded only the top five claims in 2001-2002, which were extreme “in relation to the other 98% of the respondents for that year.”<sup>186</sup> EMCN concluded that its weighted average, using all claims for 2000-2001 and all but the five highest-dollar claims for 2001-2002, is “reliable, in that the rate is dependent on results of the largest districts, which had the lowest per-truant claim amounts, exhibited the least variance, and showed a relatively high degree of consistency between the two years we examined.”<sup>187</sup>

The first draft staff analysis recommended denial of the RRM, finding the comments of DOF and SCO “persuasive,” and concluding that the proposed unit rate was not reasonable, given the wide variation in costs. As noted above, the Commission did not have the opportunity to weigh that recommendation at a public hearing, and staff subsequently requested comments on the issues of cost efficiency and the constitutionality of an RRM based on a wide variation in local costs. The comments received persuasively argue that the RRM statute clearly contemplates variation among local government claimants, and that a unit cost reimbursement will encourage local government to bring their costs closer to the average. The BIPs co-claimants argued as follows:

The initial enactment of the RRM language and its subsequent amendment evidence the Legislature's conclusion that levels of mandate reimbursement may range widely and still be constitutional. Prior to 2004, RRMs did not exist. In 2004, the Legislature amended Section 17557 subdivision (b) to substitute “reasonable reimbursement methodology” for “allocation formula” or “uniform allowance.” Amended Section 17557, subdivision (b) reads: “In adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology.” At the same time, Section 17518.5 was added to the Government Code, which required RRMs to meet certain conditions, including the following: “The total amount to be reimbursed statewide is *equivalent* to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner;” and “For *50 percent or more* of eligible local agency and school district claimants, the amount reimbursed is estimated to *fully offset their projected costs* to implement the mandate in a cost-efficient manner.” (Gov. Code § 17518.5, subd. (a)(1)&(2) (2004), *emphasis added*.)

The 50% requirement makes it clear that in 2004 the Legislature had authorized reimbursement that would be quite different from actual costs for claimants - allowing for the possibility that 50% of claimants would be over-reimbursed and 50% would be under-reimbursed. However, in 2007 both of these requirements were eliminated and replaced by subdivisions (b) and (c).

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<sup>185</sup> Exhibit P, EMCN Response to Commission Request for Comments, at pp.3-4. See also, Exhibit S, San Jose Unified Response.

<sup>186</sup> *Id.*, at p. 4.

<sup>187</sup> *Id.*, at p. 2.

Since 2007, the current requirements for RRM are considerably less specific and more flexible than the former requirements. Now, there is *no* requirement that a minimum percentage of claimants' projected costs be fully offset or that the total amount to be reimbursed statewide covers the total of local estimated costs. Since 2007, Section 17518.5 requires only that RRM "be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs," and that the RRM "consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." (Gov. Code § 17518.5, subs.(b)&(c) (2007).) In other words, the statute expressly contemplates variation and leaves open the possibility for a potentially large degree of variation in the costs offset.

Not only does Section 17518.5 subdivision (c) intentionally leave open the possibility for cost variation underlying the RRM, it also only requires that the RRM *consider* the variation in costs. The Legislature's amendment of Section 17518.5 to impose less stringent requirements coupled with the fact that variation of costs is assumed in the section's language, demonstrates legislative intent to allow RRM even when the underlying costs reflect significant variation. Cost variation is not a bar to the use of RRM nor is there any provision requiring that cost variation be within certain limits. As set out in Co-Claimants' Rebuttal to Finance's Comments, variation is only relevant to determine what a reasonable *level* of reimbursement is for an RRM -presumably one at or near the average, as Co-Claimants propose in the BIP context- not *whether* the use of an RRM is appropriate in the first place.<sup>188</sup>

Here, the application of a \$26 unit cost per pupil identified as an habitual truant is based on a weighted average of actual cost claims from those districts that filed claims in 2000-2001 and 2001-2002. EMCN notes that the vast majority of claims are clustered in a range of \$66 and under, per habitual truant identified:

[A]verage costs are highly skewed, with nearly 43 percent of the districts reporting average costs of between 0 and \$33 per truant, another 35 percent reporting average costs of between \$33 and \$66 per truant, and the remaining 22 percent of districts reporting claims, in declining frequency, all the way up to over \$330 per truant. A similar pattern holds for 2001-02.

The \$26 unit cost is strikingly similar to the figure reached by SCO in its analysis: the SCO filed comments on July 19, 2010, in which nine fiscal years were analyzed, and a rate of \$26.06 per habitual truant was determined.<sup>189</sup> That analysis was retracted by SCO on July 28, 2010, based on the fact that "[f]urther review of this analysis revealed that the proposed RRM calculations were based on unaudited claim data and cannot be supported by the SCO."<sup>190</sup> As discussed above, audited data is not required for the development of an RRM.<sup>191</sup> The SCO's retraction of

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<sup>188</sup> Exhibit Q, BIPs Co-Claimants' Response to Commission Request for Comments, at pp. 4-6.

<sup>189</sup> Exhibit H, SCO Comments on Request to Amend, at p. 3.

<sup>190</sup> Exhibit I, SCO Additional Comments on Request to Amend, at p. 1.

its analysis is noted, but the degree of similarity between SCO's analysis and EMCN's proposal remains illuminating, with respect to the reasonableness of the proposed rate.

Additionally, the fact that none of the claims on which the unit cost is based have been audited is relevant only to the extent that it reinforces the notion of excluding the five highest claims submitted by districts whose cost claims were anomalous: districts that may be attempting to claim unallowable costs, or otherwise misunderstanding the scope of activities approved for reimbursement. Given that the majority of claims (approximately 78 percent) were clustered from \$0 to \$66 per truant, substantial evidence supports approval of a unit rate near the middle of that range.

Furthermore, DOF's suggestion that any unit rate should be discounted in order to remain revenue neutral cannot be supported. DOF states that the rate must be discounted to account for districts that did not file actual cost claims but would file under an RRM (the presumption being that the filing would be simpler and require less documentation).<sup>192</sup> But as explained at length in this section, an essential feature of parameters and guidelines is to provide for reasonable reimbursement of local government claimants' actual costs mandated by the state. Intentionally discounting a unit rate to avoid reimbursing districts for their actual costs is in clear violation of article XIII B, section 6.

Finally, as discussed above, sections 17518.5 and 17557, the RRM statutes, confer broad authority on the Commission, including criteria that expressly contemplate variation in costs among local governments. The Commission must presume these statutes are constitutional, and that some degree of variation is permissible. The BIPs co-claimants argued in comments filed with the Commission that "[a]s long as the statutory requirements...are met there is no range of figures so wide as to violate constitutional requirements."<sup>193</sup> Similarly, the County of Los Angeles asserted in its comments that a wide variation in local costs does not, in itself, render an RRM proposal unconstitutional.<sup>194</sup> The Commission declines to extend its reasoning so far as to declare that "no range of figures [would be] so wide as to violate constitutional requirements," as suggested by the BIPs co-claimants. At some point, a range could be so broad, and there could be a lack of clustering such that it cannot be said that an RRM reasonably reimburses local governments for their actual costs mandated by the state. However, such determinations must be made on a case by case basis and turn on the presence or absence of substantial evidence to support the reasonableness of the Commission's decision. In this case, however, the Commission finds that substantial evidence supports adoption of an RRM unit rate at an average level of reimbursement.

Based on the foregoing, the Commission finds that substantial evidence in the record supports adoption of the proposed RRM, at a rate of \$26 per pupil identified as an habitual truant, beginning in the 2002-2003 fiscal year, and adjusted by the Implicit Price Deflator for each subsequent year.

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<sup>191</sup> Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222)).

<sup>192</sup> Exhibit E, DOF Supplemental Comments on Request to Amend, at p. 2.

<sup>193</sup> Exhibit Q, BIPs Co-Claimants Response to Request for Comments, at pp. 5-7.

<sup>194</sup> Exhibit R, County of LA Response to Request for Comments, at p. 2.

### **C. Boilerplate Changes to Reflect Current Law and Commission Usage.**

Several boilerplate sections of the existing parameters and guidelines do not reflect current law and Commission usage. The parameters and guidelines have been amended to reflect current boilerplate language and statutory language. These changes do not apply retroactively because all claims filed under these amended parameters and guidelines will be filed prospectively.

### **V. CONCLUSION**

The proposed amendments to the parameters and guidelines are adopted, as specified.

Adopted: 1/29/98  
Amended: 1/29/10  
Amended: 09/27/13

## **Second Amendment to Parameters and Guidelines**

Education Code Sections 48262 and 48264.5

Statutes 1975, Chapter 1184

Statutes 1994, Chapter 1023

Statutes 2001, Chapter 734

*Habitual Truants*

~~05-PGA-51-01-PGA-06; 09-PGA-01~~ (CSM-4487 and 4487A)

This amendment is effective beginning ~~with claims filed for the~~  
July 1, 2002 ~~through June 30, 2006~~ period of reimbursement

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

Chapter 1184, Statutes of 1975, added former Education Code section 12403, and Chapter 1010, Statutes of 1976, recodified this section as Education Code Section 48262. Section 48262 defines *habitual truant* as a pupil who has been reported as a truant three or more times per school year, and states that no pupil shall be deemed a *habitual truant*, unless school districts make a "conscientious effort" to hold at least one conference with the pupil's parent or guardian and the pupil.

Chapter 1023, Statutes of 1994, added Education Code section 48264.5. Subdivision (d) of this section requires school districts to classify a pupil as a habitual truant as defined in Education Code Section 48262 upon the pupil's fourth truancy within the same school year.

Statutes 2001, chapter 734 made several technical and "non-controversial changes to the Education Code," including reconciling the definition of an habitual truant in section 48262 as being a pupil who has been reported truant three or more times per school year with the consequences for each incidence of truancy provided in section 48264.5, which, as approved in the test claim statement of decision, provided for classifying a pupil as an habitual truant upon the fourth truancy within a school year.

~~The Commission on State Mandates, in the Statement of Decision adopted at the September 25, 1997 hearing, determined that Education Code sections 48262 and 48264.5 subdivision (d), impose a reimbursable state mandated new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code.~~

On September 27, 2013, the Commission amended these parameters and guidelines by adopting a unit cost RRM of \$26 per pupil identified as an habitual truant, for reimbursement of the activities approved in the test claim decision. The RRM shall be applicable to costs incurred by eligible claimants beginning July 1, 2002. The Commission also amended the reimbursable

activities section of these parameters and guidelines to reflect the clarifying change in law effected by Statutes 2001, chapter 734.

## **II. COMMISSION ON STATE MANDATES DECISION**

### **II. ELIGIBLE CLAIMANTS**

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

### **III. PERIOD OF REIMBURSEMENT**

~~This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.~~

~~Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was submitted on September 28, 1995 and was amended on December 16, 1996. Therefore, all mandated costs incurred on or after July 1, 1995, for compliance with Education Code sections 48262 and 48264.5, subdivision (d), are eligible for reimbursement.~~

~~Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.~~

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

Government Code section 17557(d) states that a parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The first request to amend was complete on May 2, 2003, identifying the unit cost reasonable reimbursement methodology (RRM) to be applied to the program. That request establishes a period of reimbursement beginning July 1, 2002. Therefore, costs incurred pursuant to Education Code Sections 48262 and 48264.5, as added or amended by Statutes 1975, Chapter 1184, Statutes 1994, Chapter 1023, and Statutes 2001, chapter 734, on or after July 1, 2002, are eligible for reimbursement under these amended parameters and guidelines.

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

- Reimbursement based on the unit cost RRM provided for in these amended parameters and guidelines applies to costs incurred beginning on July 1, 2002.
- Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

- Pursuant to Government Code section 17560(a), a claimant may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim for that fiscal year based on the RRM.
- If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a claimant filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
- If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE COSTS/ACTIVITIES**

To be eligible for mandated cost reimbursement on or after July 1, 2002~~for any fiscal year, only actual costs may be claimed,~~ costs must be claimed under the RRM described below. ~~Actual costs are those costs actually incurred to implement the mandated activities. Actual costs~~ Costs claimed under the RRM must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the ~~actual~~ cost was incurred for the event or activity in question. Source documents may include, but are not limited to, data collected on the number of habitual truants identified under the statute in a given year, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

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

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

##### A. Verifying Prior Truancies

Review of school district records to verify that the pupil has been reported as a truant at least ~~four~~ three times during the same school year.

##### B. Making a Conscientious Effort to Schedule a Parent Conference

Make a conscientious effort to schedule a conference with the pupil's parent or guardian, the pupil and an appropriate school district employee, by:

- 1 Sending notice (by certified mail, if necessary) to the pupil's parent or guardian inviting the parent or guardian and the pupil to attend a conference with an appropriate school district employee; and
- 2 Making a final effort to schedule a conference by placing a telephone call to the parent/guardian, and by placing return calls to the parent/guardian.

C. Scheduling and Holding a Conference

If a conscientious effort results in the parent's or guardian's agreement to confer, schedule and hold a conference.

D. Reclassifying Pupils

After the school district has made a conscientious effort to schedule a conference (whether or not this effort resulted in a conference), reclassify the pupil as a habitual truant.

## **V. CLAIM PREPARATION**

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

~~A. Reporting by Components~~

~~Claimed costs must be allocated according to the four components of reimbursable activity described in Section V.~~

~~B. Supporting Documentation~~

~~Claimed costs should be supported by the following information:~~

~~1. Employee Salaries and Benefits~~

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

~~2. Materials and Supplies~~

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

~~3. Contracted Services~~

~~Give the name(s) of the contractor(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities. Show the inclusive dates when services were performed and itemize all costs for those services.~~

~~4. Allowable Overhead Cost~~

- a. ~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~
- b. ~~County Offices of Education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

### C. Cost Accounting Statistics

~~The State Controller is directed to include in its claiming instructions each year the requirement that claimants report to the State Controller the number of pupils verified to have been reported as a truant at least four times during the same school year. This information is being collected for the purpose of establishing a database for potential future reimbursement based on prospective rates. The claiming instructions shall request that claimants send a copy of the completed form HT-1 for each of the initial years' reimbursement claims by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, Facsimile number: (916) 445-0278. Providing this information is not a condition of payment; however, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate and recommend an appropriation to the Legislature.~~

### Reasonable Reimbursement Methodology – Direct and Indirect Costs

In lieu of filing detailed documentation of actual costs, the Commission adopted a reasonable reimbursement methodology (RRM) to reimburse claimants for all *direct* and *indirect* costs of the reimbursable activities identified in Section IV. Reimbursable Activities of this document as authorized by Government Code sections 17557(b) and 17518.5.

#### 1. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5 (as amended by Statutes 2007, Chapter 329 (A.B. 1222)) as follows:

- (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(e) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.

## 2. Uniform Cost Allowance

The reasonable reimbursement methodology for the mandated activities shall consist of a uniform cost allowance calculated as follows: Multiply the total number of students reported as habitual truants each fiscal year by the relevant unit cost rate for the fiscal year. The unit cost rate for FY 2002-2003 is \$26. The unit cost rate shall be adjusted each subsequent year by the Implicit Price Deflator.

## **VI. SUPPORTING DATA RECORD RETENTION**

~~Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.~~

Pursuant to Government Code section 17558.5(a), a reimbursement claim for costs filed by a claimant pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. Pursuant to Government code section 17561(d)(2), the State Controller has the authority to audit the application of a reasonable reimbursement methodology. If an audit has been initiated by the State Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. Claimants must retain documentation that supports the application of the reasonable reimbursement methodology, including documentation supporting the number of students reported as habitual truants and offsetting revenue funded by restricted resources during the period subject to audit.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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

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

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

To the extent that a claimant has been reimbursed for a fiscal year within the period of reimbursement applicable to these amended parameters and guidelines, mandate reimbursement received under the former parameters and guidelines must be offset against any claim under the amended parameters and guidelines.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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

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

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

## Commission on State Mandates

Original List Date: 5/20/2002  
Last Updated: 8/1/2013  
List Print Date: 09/05/2013  
Claim Number: 01-PGA-06 and 09-PGA-01  
Issue: Habitual Truants

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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