

ITEM 7

**FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES
PARAMETERS AND GUIDELINES AMENDMENT
AND STATEMENT OF DECISION**

**CONSOLIDATED SUSPENSIONS, EXPULSIONS, and EXPULSION
APPEALS**

PUPIL EXPULSIONS II (96-358-03, 03A, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (98-TC-23)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
48918, 48918.5, 48923, 48926

As Amended by Statutes 1995, Chapters 972 and 974;
Statutes 1996, Chapters 915, 937, and 1052; Statutes 1997, Chapter 637;
Statutes 1998, Chapter 489; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147;
Statutes 2001, Chapter 116

Consolidated With

PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)

Education Code Section 48911, Subdivisions (b) and (e)

Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;
Statutes 1983, Chapter 489; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)

Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916 and 48918

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes
1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622; Statutes 1987,
Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters
1255, 1256, and 1257; Statutes 1994, Chapter 146

PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924

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Pupil Expulsion Appeals (CSM-4463) Statement of Decision

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48916.2, 48917 (& former 48907.5), 48918

Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965, Statutes 1978, Chapter 668, Statutes 1979, Chapter 1014, Statutes 1982, Chapter 318, Statutes 1983, Chapter 498, Statutes 1984, Chapter 23, Statutes 1984, Chapter 536, Statutes 1984, Chapter 622, Statutes 1985, Chapter 318, Statutes 1986, Chapter 1136, Statutes 1987, Chapter 383, Statutes 1987, Chapter 942, Statutes 1989, Chapter 1306, Statutes 1990, Chapter 1231, Statutes 1990, Chapter 1234, Statutes 1992, Chapter 152, Statutes 1992, Chapter 909, Statutes 1993, Chapter 1255, Statutes 1993, Chapter 1256, Statutes 1993, Chapter 1257, Statutes 1994, Chapter 146, Statutes 1994, Chapter 1017, Statutes 1994, Chapter 1198, Statutes 1995, Chapter 95, Statutes 1995, Chapter 972, Statutes 1996, Chapter 15, filed on December 23, 1996; and

First Amendment to add Education Code Sections 48916.1 & 48918.5, and to delete 48916.2 & 48915.7, and to add Statutes 1995, Chapter 974, Statutes 1996, Chapter 915, Statutes 1996, Chapter 937, Statutes 1996, Chapter 1052, filed on June 6, 1997

Second Amendment to add Education Code Section 48900.7, and to add Statutes 1997, Chapter 405, and Statutes 1997, Chapter 637, filed on March 2, 1998

Third Amendment to add Education Code sections 48918 (as amended), 48919, 48919.5, and to add Statutes 1997, Chapter 417, Statutes 1998, Chapter 489, filed on June 28, 1999

Case Nos. 96-358-03, 03A, 03B,
98-TC-22, 01-TC-18

Pupil Expulsions II

Case Nos. 96-358-04, 04A, 04B,
98-TC-23, 01-TC-17

Pupil Suspensions II

Case No. 97-TC-09

***Educational Services Plan for
Expelled Pupils***

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

*(Adopted on August 1, 2008; corrected and
issued on May 20, 2011)*

Fourth Amendment to add Education Code Sections 48900, 48900.3, 48915, 48916.1, 48918, 48919, 48923, Statutes 1998, Chapter 489, Statutes 1999, Chapter 332, Statutes 1999, Chapter 646, Statutes 2000, Chapter 147, Statutes 2001, Chapter 484, filed on June 3, 2002

By the San Juan Unified School District,
Claimant

TEST CLAIM:

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5, 48911 Statutes 1977, Chapter 965, Statutes 1978, Chapter 668, Statutes 1980, Chapter 73, Statutes 1982, Chapter 318, Statutes 1983, Chapter 498, Statutes 1983, Chapter 1302, Statutes 1984, Chapter 536, Statutes 1985, Chapter 318, Statutes 1985, Chapter 856, Statutes 1985, Chapter 907, Statutes 1986, Chapter 1136, Statutes 1987, Chapter 134, Statutes 1987, Chapter 383, Statutes 1989, Chapter 1306, Statutes 1990, Chapter 1234, Statutes 1992, Chapter 909, Statutes 1992, Chapter 1360, Statutes 1994, Chapter 146, Statutes 1994, Chapter 1017, Statutes 1994, Chapter 1198, Statutes 1995, Chapter 972, filed on December 23, 1996; and

First Amendment to add Statutes 1996, Chapter 915 amending Education Code Section 48900, filed on June 6, 1997

Second Amendment to add Statutes 1997, Chapters 405 and 637, adding or amending Education Code Sections 48900.7 and 48900, filed on March 2, 1998

Third Amendment to add Statutes 1997, Chapter 637 adding Education Code Section 48900.8, filed on June 28, 1999

Fourth Amendment to add Statutes 1999, Chapter 646 and Statutes 2001, Chapter 484, amending Education Code Sections 48900 and 48900.3, filed on June 2, 2002

by the San Juan Unified School District,
Claimant

TEST CLAIM:

Education Code Sections 48915, 48916,
48916.1, 48926

Statutes 1995, Chapter 972, Statutes 1995,
Chapter 974, Statutes 1996, Chapter 937,
Statutes 1996, Chapter 1052, filed on
December 29, 1997

By the Kern County Superintendent of
Schools, Claimant

First Amendment filed on December 3, 2001 to
substitute Kern County Superintendent of
Schools with the San Juan Unified School
District

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in
the above-entitled matter.



Drew Bohan

Executive Director

Dated: May 20, 2011

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48916.2, 48917 (& former 48907.5), 48918

Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965, Statutes 1978, Chapter 668, Statutes 1979, Chapter 1014, Statutes 1982, Chapter 318, Statutes 1983, Chapter 498, Statutes 1984, Chapter 23, Statutes 1984, Chapter 536, Statutes 1984, Chapter 622, Statutes 1985, Chapter 318, Statutes 1986, Chapter 1136, Statutes 1987, Chapter 383, Statutes 1987, Chapter 942, Statutes 1989, Chapter 1306, Statutes 1990, Chapter 1231, Statutes 1990, Chapter 1234, Statutes 1992, Chapter 152, Statutes 1992, Chapter 909, Statutes 1993, Chapter 1255, Statutes 1993, Chapter 1256, Statutes 1993, Chapter 1257, Statutes 1994, Chapter 146, Statutes 1994, Chapter 1017, Statutes 1994, Chapter 1198, Statutes 1995, Chapter 95, Statutes 1995, Chapter 972, Statutes 1996, Chapter 15, filed on December 23, 1996; and

First Amendment to add Education Code Sections 48916.1 & 48918.5, and to delete 48916.2 & 48915.7, and to add Statutes 1995, Chapter 974, Statutes 1996, Chapter 915, Statutes 1996, Chapter 937, Statutes 1996, Chapter 1052, filed on June 6, 1997

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Third Amendment to add Education Code sections 48918 (as amended), 48919, 48919.5, and to add Statutes 1997, Chapter 417, Statutes 1998, Chapter 489, filed on June 28, 1999

Case Nos. 96-358-03, 03A, 03B,
98-TC-22, 01-TC-18

Pupil Expulsions II

Case Nos. 96-358-04, 04A, 04B,
98-TC-23, 01-TC-17

Pupil Suspensions II

Case No. 97-TC-09

***Educational Services Plan for
Expelled Pupils***

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SECTION 17500 ET SEQ.; TITLE 2,
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*(Adopted on August 1, 2008; corrected and
issued on May 20, 2011)*

Fourth Amendment to add Education Code Sections 48900, 48900.3, 48915, 48916.1, 48918, 48919, 48923, Statutes 1998, Chapter 489, Statutes 1999, Chapter 332, Statutes 1999, Chapter 646, Statutes 2000, Chapter 147, Statutes 2001, Chapter 484, filed on June 3, 2002

By the San Juan Unified School District,
Claimant

TEST CLAIM:

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5, 48911 Statutes 1977, Chapter 965, Statutes 1978, Chapter 668, Statutes 1980, Chapter 73, Statutes 1982, Chapter 318, Statutes 1983, Chapter 498, Statutes 1983, Chapter 1302, Statutes 1984, Chapter 536, Statutes 1985, Chapter 318, Statutes 1985, Chapter 856, Statutes 1985, Chapter 907, Statutes 1986, Chapter 1136, Statutes 1987, Chapter 134, Statutes 1987, Chapter 383, Statutes 1989, Chapter 1306, Statutes 1990, Chapter 1234, Statutes 1992, Chapter 909, Statutes 1992, Chapter 1360, Statutes 1994, Chapter 146, Statutes 1994, Chapter 1017, Statutes 1994, Chapter 1198, Statutes 1995, Chapter 972, filed on December 23, 1996; and

First Amendment to add Statutes 1996, Chapter 915 amending Education Code Section 48900, filed on June 6, 1997

Second Amendment to add Statutes 1997, Chapters 405 and 637, adding or amending Education Code Sections 48900.7 and 48900, filed on March 2, 1998

Third Amendment to add Statutes 1997, Chapter 637 adding Education Code Section 48900.8, filed on June 28, 1999

Fourth Amendment to add Statutes 1999, Chapter 646 and Statutes 2001, Chapter 484, amending Education Code Sections 48900 and 48900.3, filed on June 2, 2002

by the San Juan Unified School District,
Claimant

TEST CLAIM:

Education Code Sections 48915, 48916,
48916.1, 48926

Statutes 1995, Chapter 972, Statutes 1995,
Chapter 974, Statutes 1996, Chapter 937,
Statutes 1996, Chapter 1052, filed on
December 29, 1997

By the Kern County Superintendent of
Schools, Claimant

First Amendment filed on December 3, 2001 to
substitute Kern County Superintendent of
Schools with the San Juan Unified School
District

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in
the above-entitled matter.



Drew Bohan

Executive Director

Dated: May 20, 2011

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48916.2,¹ 48917 (& former 48907.5), 48918

Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965, Statutes 1978, Chapter 668, Statutes 1979, Chapter 1014, Statutes 1982, Chapter 318, Statutes 1983, Chapter 498, Statutes 1984, Chapter 23, Statutes 1984, Chapter 536, Statutes 1984, Chapter 622, Statutes 1985, Chapter 318, Statutes 1986, Chapter 1136, Statutes 1987, Chapter 383, Statutes 1987, Chapter 942, Statutes 1989, Chapter 1306, Statutes 1990, Chapter 1231, Statutes 1990, Chapter 1234,² Statutes 1992, Chapter 152, Statutes 1992, Chapter 909, Statutes 1993, Chapter 1255, Statutes 1993, Chapter 1256, Statutes 1993, Chapter 1257, Statutes 1994, Chapter 146, Statutes 1994, Chapter 1017, Statutes 1994, Chapter 1198, Statutes 1995, Chapter 95, Statutes 1995, Chapter 972, Statutes 1996, Chapter 15, filed on December 23, 1996; and

First Amendment to add Education Code Sections 48916.1 & 48918.5, and to delete 48916.2 & 48915.7, and to add Statutes 1995,

Case Nos. 96-358-03, 03A, 03B,
98-TC-22, 01-TC-18

Pupil Expulsions II

Case Nos. 96-358-04, 04A, 04B,
98-TC-23, 01-TC-17

Pupil Suspensions II

Case No. 97-TC-09

***Educational Services Plan for
Expelled Pupils***

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

*(Adopted on August 1, 2008; corrected and
issued on May 20, 2011)*

¹ In the June 1997 amendment to the *Pupil Expulsions II* test claim, claimant withdrew Education Code sections 48915.7 (repealed by Stats. 1995, ch. 974) and 48916.2 (added by Stats. 1995, ch. 15, repealed by its own terms). Based on claimant's withdrawal, the Commission does not have jurisdiction over those statutes.

² In a January 1997 letter regarding *Pupil Expulsions II*, claimant pled Statutes 1990, chapter 1234. The subject matter of this statute, however, was withdrawn by claimant in its letter of August 5, 1997, by stating: "there was no intent or interest in alleging reimbursement within the scope of these claims for special education pupils." Therefore, the Commission does not have jurisdiction over section 48917 as amended by Statutes 1990, chapter 1234.

Chapter 974, Statutes 1996, Chapter 915,
Statutes 1996, Chapter 937, Statutes 1996,
Chapter 1052, filed on June 6, 1997

Second Amendment to add Education Code
Section 48900.7, and to add Statutes 1997,
Chapter 405, and Statutes 1997, Chapter 637,
filed on March 2, 1998

Third Amendment to add Education Code
sections 48918 (as amended), 48919, 48919.5,
and to add Statutes 1997, Chapter 417, Statutes
1998, Chapter 489, filed on June 28, 1999

Fourth Amendment to add Education Code
Sections 48900, 48900.3, 48915, 48916.1,
48918, 48919, 48923, Statutes 1998, Chapter
489, Statutes 1999, Chapter 332, Statutes 1999,
Chapter 646, Statutes 2000, Chapter 147,
Statutes 2001, Chapter 484, filed on June 3,
2002

By the San Juan Unified School District,
Claimant

TEST CLAIM:

Education Code Sections 48900, 48900.2,
48900.3, 48900.4, 48900.5, 48911 Statutes
1977, Chapter 965, Statutes 1978, Chapter 668,
Statutes 1980, Chapter 73, Statutes 1982,
Chapter 318, Statutes 1983, Chapter 498,
Statutes 1983, Chapter 1302, Statutes 1984,
Chapter 536, Statutes 1985, Chapter 318,
Statutes 1985, Chapter 856, Statutes 1985,
Chapter 907,³ Statutes 1986, Chapter 1136,
Statutes 1987, Chapter 134, Statutes 1987,
Chapter 383, Statutes 1989, Chapter 1306,
Statutes 1990, Chapter 1234, Statutes 1992,
Chapter 909, Statutes 1992, Chapter 1360,
Statutes 1994, Chapter 146, Statutes 1994,
Chapter 1017, Statutes 1994, Chapter 1198,

³ In a January 1997 letter, claimant clarified the pleading on Statutes 1985, chapter 907, Statutes 1990, chapter 1234, and Statutes 1992, chapter 1360. But the subject matter of these statutes was withdrawn by claimant via its letter of August 5, 1997. Therefore, the Commission does not have jurisdiction over Statutes 1985, chapter 907, Statutes 1990, chapter 1234, and Statutes 1992, chapter 1360.

Statutes 1995, Chapter 972, filed on December 23, 1996; and

First Amendment to add Statutes 1996, Chapter 915 amending Education Code Section 48900, filed on June 6, 1997

Second Amendment to add Statutes 1997, Chapters 405 and 637, adding or amending Education Code Sections 48900.7 and 48900, filed on March 2, 1998

Third Amendment to add Statutes 1997, Chapter 637 adding Education Code Section 48900.8, filed on June 28, 1999

Fourth Amendment to add Statutes 1999, Chapter 646 and Statutes 2001, Chapter 484, amending Education Code Sections 48900 and 48900.3, filed on June 2, 2002

by the San Juan Unified School District, Claimant

TEST CLAIM:

Education Code Sections 48915, 48916, 48916.1, 48926

Statutes 1995, Chapter 972, Statutes 1995, Chapter 974, Statutes 1996, Chapter 937, Statutes 1996, Chapter 1052, filed on December 29, 1997

By the Kern County Superintendent of Schools, Claimant

First Amendment filed on December 3, 2001 to substitute Kern County Superintendent of Schools with the San Juan Unified School District

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on August 1, 2008. Keith Petersen appeared on behalf of claimants San Juan Unified School District. Art Palkowitz appeared on behalf of San Diego Unified

School District. Nicolas Schweizer and Susan Geanacou appeared on behalf of the Department of Finance.

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 staff analysis to approve the test claim at the hearing by a vote of 6-0.

Summary of Findings

For the reasons discussed in the analysis, the Commission finds that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for all of the following activities:

- Effective January 1, 1996 (the § 48911 suspension procedures⁴ are part of these activities, as well as the § 48918 expulsion hearing procedures):⁵
 - For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person. (§ 48915, subd. (c)(2), Stats. 1995 ch. 972.)
 - For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
 - For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil's expulsion, and for the governing board to order a pupil's expulsion for selling or furnishing a firearm unless the pupil had obtained

⁴ As discussed below, the suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil (defined to include "a pupil's parent or guardian or legal counsel" § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

⁵ All statutory references are to the Education Code unless otherwise indicated.

prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972.)

- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil's expulsion, and for the governing board to order the pupil's expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
- Also effective January 1, 1996:
 - For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) The section 48918 expulsion hearing procedures are part of this activity.
 - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)
- Operative July 1, 1996:
 - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
 - For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.⁶ This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)

⁶ Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the

- To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
- For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, ch. 974):
 - Review the pupil for readmission. (§ 48916, subd. (a).)
 - Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
 - If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall

governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

include the determination of the education program for the expelled pupil.
(§ 48916, subd. (e).)

- If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (Stats. 1995, ch. 974.)
- Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
 - Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 - Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.)
 - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
- From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):
 - Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
 - Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.

- Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
- Effective September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
 - (A) The number of pupils recommended for expulsion. (B) The grounds for each recommended expulsion. (C) Whether the pupil was subsequently expelled. (D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective January 1, 1997:
 - For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined.⁷ (§ 48915, subs. (c)(4) & (d), Stats. 1996, ch. 1052.) The section 48911 suspension procedures listed on pages 27-28 are part of this activity, as well as the expulsion hearing procedures in section 48918.
 - For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
 - For the one-time activity of amending the school district's rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
 - A complaining witness shall be given five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony (*Ibid.*).
 - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section

⁷ A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code. (§ 48900, subd. (n).)

868.5 of the Penal Code⁸ at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. (*Ibid.*)
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. (*Ibid.*)
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)

⁸ Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
- The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
- For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)

- For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
 - At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
 - Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - If the hearing is to be conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
 - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or

persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁹ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony.” (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- Effective January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)). (§ 48900.8, Stats. 1997, ch. 637.)
- Effective January 1, 1999, for the school district to amend its expulsion rules and regulations as follows (§ 48918, subd. (a), Stats. 1998, ch. 498): This is a one-time activity.
 - If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.
- Effective January 1, 2000:
 - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser; and (2) revising the pupil notification to include the right to be represented by legal

⁹ The corpus delicti is the basic element or fact of a crime.

counsel or a nonattorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332.) These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.

- Effective January 1, 2001:
 - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for any expulsion.
 - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing); (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k).) (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).
- Effective January 1, 2002, for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds. (§ 48915, subs. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures listed on pages 27-28 are part of this activity.

The Commission also finds that the remaining test claim statutes over which the Commission has jurisdiction do not constitute reimbursable state-mandates within the meaning of article XIII B, section 6.

BACKGROUND

The Test Claim Statutes

The test claim statutes add or amend Education Code sections that govern the grounds and procedures for handling pupil expulsions¹⁰ suspensions,¹¹ rehabilitations, readmissions, and expulsion appeals, as well as county office of education plans for educational services to expelled pupils.

Section 48915 classifies pupil expulsions into three categories of offenses: (1) the most serious acts in subdivision (c) for which the principal or superintendent must immediately suspend pursuant to section 48911, and recommend the pupil for expulsion, and for which the governing board must order expulsion;¹² (2) those acts in subdivision (a) for which a pupil must be recommended for expulsion unless the principal or superintendent finds that expulsion is inappropriate due to the circumstances;¹³ and (3) the less serious acts in subdivisions (b) and (e) for which a pupil may be expelled if either (i) other means of correction are not feasible or have repeatedly failed to bring about the proper conduct, or (ii) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.¹⁴ Section 48915, subdivision (d), requires expelled pupils to be referred to programs of study that meet specified conditions.

Whenever the principal or superintendent recommends a pupil for expulsion, the pupil is entitled to a hearing pursuant to the procedures in section 48918.¹⁵

¹⁰ An expulsion means “removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in Section 46300.” (§ 48925, subd. (b).) As discussed below, however, a school district must refer a pupil to an educational program, and ensure an educational program is provided to an expelled pupil. (§§ 48916.1, 48915, subds. (d) & (f).)

¹¹ A suspension means “removal of a pupil from ongoing instruction for adjustment purposes.” The statutory definition also includes what suspension “does not mean.” (§ 48925, subd. (d).)

¹² Subdivision (d) of section 48915 requires expulsion for the subdivision (c) offenses, which are: possessing a firearm without permission, brandishing a knife at another person, unlawfully selling a controlled substance, committing or attempted commission of a sexual assault or sexual battery, or possession of an explosive (§ 48915, subd. (c)).

¹³ Those offenses are: causing serious physical injury to another person, except in self defense, possessing a knife, explosive, or other dangerous object of no reasonable use to the pupil, possession of a controlled substance (except first offense of possession for one ounce or less of marijuana), robbery or extortion, or assault or battery or threat thereof on a school employee (§ 48915, subd. (a)).

¹⁴ Other offenses are listed, all referring to those in section 48900 et seq. for which suspension or expulsion may be imposed.

¹⁵ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 870. The principal or superintendent is required to recommend expulsion for the offenses in subdivisions (c) and (a) of section 48915.

Section 48900 details 18 separate grounds for pupil suspension or expulsions (a number that has varied with the test claim filing and its amendments). This section prohibits a pupil suspension or expulsion, “unless the superintendent or the principal of the school ... determines that the pupil has committed an act as defined ...” Subsequent sections add more grounds for suspensions or expulsions: 48900.2 (sexual harassment), 48900.3 (hate violence), 48900.4 (harassment, threats, or intimidation) and 48900.7 (terroristic threats).

The test claim also alleges section 48900.5, which states that “suspension shall be imposed only when other means of correction fail to bring about the proper conduct.” This section also authorizes suspension for a first offense based on any of the grounds listed in section 48900 if the principal or superintendent of schools makes a determination as specified.

Section 48911 details the procedure for effecting a suspension, and section 48900.8 requires identification in official pupil records of each suspension or expulsion of that pupil for specified offenses.

Sections 48915.1, 48915.2, 48916, 48916.1, and 48916.5 were also pled. Section 48915.1 specifies the hearing procedure and criteria for an expelled pupil to enroll in another school district, except for pupils expelled for offenses in section 48915, subdivisions (a) or (c). Section 48915.2 prohibits a pupil expelled for offenses in section 48915, subdivisions (a) or (c), from enrolling in any other school or school district during the expulsion except for specified programs under specified conditions.

Section 48916 covers readmission procedures after expulsion, and section 48916.1 outlines the educational program requirements for expelled pupils. Section 48916.5 authorizes a school district to require a pupil expelled for reasons related to controlled substances to enroll in a drug rehabilitation program (with parental consent).

Section 48917 specifies how expulsion orders may be suspended, and that assignment of the pupil to a school, class, or rehabilitation program is a condition of the expulsion order’s suspension of enforcement.

Section 48918 states that school districts “shall establish rules and regulations governing procedures for the expulsion of pupils” which must include notice, a hearing, and other procedural protections. Section 48918.5 states procedures required for expulsions based on allegations of sexual assault or attempted sexual assault, or sexual battery. Section 48919 specifies procedures for appealing a school board’s expulsion decision to the county board of education, and requires county boards of education to adopt rules and regulations to govern procedures for expulsion appeals. Section 48919.5 outlines procedures for a county board of education to use a hearing officer or impartial administrative panel to hear expulsion appeals.

Section 48923 authorizes, upon making certain findings, a county board of education to remand an expulsion matter to the school district or grant a new hearing. It also states that the county board “shall enter an order either affirming or reversing the [expulsion] decision of the governing board.”

Section 48926 requires counties that operate community schools (pursuant to section 1980) to develop a plan for providing education services to expelled pupils in the county, in conjunction with the county’s school district superintendents. Adoption by the county board of education

and each of the county's school districts is required. The plan is to include specified criteria, and must be submitted to the Superintendent of Public Instruction, and updated triennially.

Prior Commission Decisions

Pupil Suspensions (CSM 4456): After its October 1996 hearing, the Commission adopted in December 1996 the *Pupil Suspensions from School* Statement of Decision, on Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48911 (as added or amended between 1977 and 1994).¹⁶ The Commission found that many of the sections are not reimbursable because they were enacted to extend the federal requirements of procedural due process to California public school pupils facing suspension. Pupil suspension procedures in section 48911, subdivisions (b) and (e), however, were found to impose requirements outside the scope of federal due process and thus were found reimbursable. The reimbursable activities are attendance at the pre-suspension conference and a report of the cause of each suspension to the district office.

Pupil Expulsions (CSM 4455): The *Pupil Expulsions* test claim was heard by the Commission on October 31, 1996, with supplemental hearings held on December 19, 1996 and March 27, 1997. In a Statement of Decision adopted May 29, 1997, effective May 4, 1998, and corrected August 10, 1998, the Commission found that Education Code sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918 (added or amended between 1975 and 1994) impose a partially reimbursable mandate on school districts.¹⁷ The decision was challenged by the San Diego Unified School District. In *San Diego Unified School Dist. v. Commission on State Mandates*, the California Supreme Court described the Commission's actions as follows:

In August 1998, after holding hearings on the District's claim (as amended in April 1995, to reflect legislation that became effective in 1994) the Commission issued a "Corrected Statement of Decision" in which it determined that Education Code section 48915's requirement of suspension and a mandatory recommendation of expulsion for firearm possession constituted a "new program or higher level of service," and found that because costs related to some of the

¹⁶ This test claim, filed March 9, 1994 and April 7, 1995, alleged the following Statutes and chapters: Statutes 1977, chapter 668, Statutes 1978, chapter 73, Statutes 1980, chapter 318, Statutes 1982, chapter 498, Statutes 1983, chapter 536, Statutes 1984, chapter 318, Statutes 1985, chapter 856, Statutes 1986, chapter 1136, Statutes 1987, chapter 134, Statutes 1987, chapter 383, Statutes 1989, chapter 1306, Statutes 1992, chapter 909, Statutes 1994, chapter 146, Statutes 1994, chapter 1017, Statutes 1994, chapter 1198.

¹⁷ The *Pupil Expulsions* (CSM 4455) test claim alleged the following: Statutes 1975, chapter 1253, Statutes 1977, chapter 965, Statutes 1978, chapter 668, Statutes 1979, chapter 1014, Statutes 1982, chapter 318, Statutes 1983, chapter 498, Statutes 1984, chapter 23, Statutes 1984, chapter 536, Statutes 1984, chapter 622, Statutes 1985, chapter 318, Statutes 1986, chapter 1136, Statutes 1987, chapter 383, Statutes 1987, chapter 942, Statutes 1989, chapter 1306, Statutes 1990, chapter 1234, Statutes 1992, Chapter 152, Statutes 1992, chapter 909, Statutes 1993, chapter 1255, Statutes 1993, chapter 1256, Statutes 1993, chapter 1257, Statutes 1994, chapter 146, Statutes 1994, chapter 1198, and Statutes 1994, chapter 1017.

resulting hearing provisions set forth in Education Code section 48918 (primarily various notice, right of inspection, and recording provisions) exceeded the requirements of federal due process, those additional hearing costs constituted reimbursable state-mandated costs. As to the vast majority of the remaining hearing procedures triggered by Education Code section 48915’s requirement of suspension and a mandatory recommendation of expulsion for firearm possession—for example, procedures governing such matters as the hearing itself and the board’s decision; a statement of facts and charges; notice of the right to representation by counsel; written findings; recording of the hearing; and the making of a record of the expulsion—the Commission found that those procedures were enacted to comply with federal due process requirements, and hence fell within the exception set forth in Government Code section 17556, subdivision (c), and did not impose a reimbursable state mandate. The Commission further found that with respect to Education Code section 48915’s *discretionary* expulsions, there was no right to reimbursement for costs incurred in holding expulsion hearings, because such expulsions are not *mandated* by the state, but instead represent a choice by the principal and the school board.¹⁸

In the *Pupil Expulsions* (CSM 4455) decision, the Commission also found the following:

- Section 48916 was reimbursable for activities related to readmission to a district school.
- For determining whether a pupil expelled by another district would pose a potential danger to pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the expulsion. This is limited to applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district. (§ 48915.1.)
- Section 48915.1 is reimbursable for responding to a receiving district’s request for recommendation, but only (from Jan. 1994 to present) if the expulsion was for possession of a firearm.
- For districts without an interdistrict transfer agreement, notice and record keeping activities, as well as allowing a pupil or parent or guardian to inspect and obtain copies of specified documents to be used at the admission hearing are reimbursable.

San Diego Unified School Dist .v. Commission on State Mandates case

In October 1999, the San Diego Unified School District (claimant in the original Pupil Expulsions decision) filed a petition for writ of mandate to overturn the Commission’s findings on Education Code sections 48915 and 48918 in the *Pupil Expulsions* (CSM 4455) test claim. The California Supreme Court heard the case in 2004, summarizing its decision as follows:

We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a “higher level of service” under article XIII B, section 6, and imposes a

¹⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872-873. [Emphasis in original.]

reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law. ... [¶]...[¶] We also conclude that *no* hearing costs incurred in carrying out those expulsions that are *discretionary* under Education Code section 48915—including costs related to hearing procedures claimed to exceed the requirements of federal law—are reimbursable. ...[T]o the extent that statute makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated, for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.¹⁹

Based on the Supreme Court’s remand in the *San Diego Unified School Dist.* case, the Commission adopted an Amended Statement of Decision in May 2005.

At its July 2006 hearing, the Commission adopted amended and consolidated parameters and guidelines for *Pupil Suspensions, Expulsions and Expulsion Appeals*, as well as parameters and guidelines on *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*.

Pupil Expulsion Appeals (CSM 4463): The *Pupil Expulsion Appeals* test claim was heard by the Commission on October 31, 1996 and March 27, 1997. In a Statement of Decision adopted March 27, 1997, the Commission found that Education Code sections 48919, 48920, 48921, 48922, 48923, and 48924 (as added or amended by Stats. 1975, ch. 965, Stats. 1978, ch. 668, & Stats. 1983, ch. 498) impose a partially reimbursable state mandate on school districts. Specifically, the Commission found that the following activities are reimbursable state mandates on county boards of education under article XIII B, section 6:

- Notifying appellants of the procedures for conducting the appeal hearing, as part of the county board of education’s notice to the pupil regarding the appeal. (§ 48919, 4th par.)
- Reviewing the appeal and record of the expulsion. (§§ 48921-48922.)
- Conducting an initial hearing on an appeal and rendering a decision, limited to appeals which result in a hearing de novo. (§§ 48919, 2d par. & 48923.)
- Preserving the record of the appeal. (§ 48919, 4th par.)
- Notifying appellants of the final order of the county board, in writing, either by personal service, or by certified mail. (§ 48924.)

¹⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 867. Emphasis in original.

- Adopting rules and regulations establishing procedures for expulsion appeals. (§ 48919, 4th par.)

Also, the Commission found the following activities are reimbursable state mandates on school districts when a pupil appeals an expulsion for possession of a firearm, knife, or explosive:²⁰

- Providing copies of supporting documents and records, other than the transcript, to an appellant who is less than 18 years of age. (§ 48919, 5th par.)
- Participating in the county board of education’s initial hearing on the appeal of an expulsion when the appeal results in a hearing de novo. (§ 48919, 1st & 2d pars.)
- Sending notice, conducting a supplemental hearing, and rendering a modified decision of an expulsion pursuant to a county board of education’s remand of an expulsion appeal. (§ 48923, subd. (a)(1).)
- Expunging the pupil’s and district’s records of an expulsion if so ordered by the county board of education. (§ 48923, subd. (b).)

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable mandate under article XIII B section 6 of the California Constitution. In the test claims submitted in December 1996, claimant alleges costs “for school districts to suspend and expel pupils, suspend expulsion orders and readmit expelled pupils, for specified reasons according to specified procedures.”²¹ Claimant pled many activities and closely followed the statutory language in its pleadings.

Claimant acknowledges the original *Pupil Expulsions* and *Pupil Suspensions* test claims (CSM 4455 & 4456) alleged reimbursable activities enacted between January 1, 1975 and December 31, 1993, but incorporates by reference the allegations of reimbursable mandates in the original test claim and the request to amend it. In August 1997, Commission staff was notified that claimant is not alleging reimbursable activities for special education pupils.²²

Claimant filed comments on the draft staff analysis in May 2008, disagreeing that expulsion for possession of an explosive and some reporting activities are federal mandates under No Child Left Behind or (for explosive possession only) the Gun-Free Schools Act of 1994. Claimant argues that staff has misapplied the *City of Sacramento*²³ and *Hayes*²⁴ cases in concluding that the state statute imposes a federal mandate. Claimant also argues that the school official’s extension of a suspension during the expulsion process (§ 48911, subd. (g)) should be

²⁰ Possession of a firearm (on or after Oct. 11, 1993) (Stats. 1993, ch. 1256); possession of a knife of no reasonable use to the pupil, or an explosive at school (on or after Oct. 11, 1993 until Dec. 31, 1993) (Stats. 1993, ch. 1255).

²¹ *Pupil Expulsions II* test claim, filed December 23, 1996, page 2.

²² Letter from Diana Halpenny, San Juan Unified School District, August 5, 1997.

²³ *City of Sacramento v. State of California (City of Sacramento)* (1990) 50 Cal.3d 51.

²⁴ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564.

reimbursable because it is part of the requirement to provide safe schools. Claimant also asserts that a school district issuing a subpoena in an expulsion hearing is a necessary part of the section 48918 due process hearing as a means of forcing witnesses to attend, and is an alternative method of performing the mandate. Claimant states: “the fact that the local education agencies have a choice of methods does not mean they have the choice not to implement the mandate.” And according to claimant, section 48919.5 should be reimbursable when a county office of education uses an administrative hearing panel to conduct expulsion appeal hearings because it is an alternative method of performing the mandate to have a hearing. These comments are addressed in the analysis below.

Interested Party Position

San Diego Unified School District (SDUSD) filed comments in May 2008 on the draft staff analysis, arguing that the conclusion that No Child Left Behind is a federal mandate on school districts to expel for possession of an explosive conflicts with the Supreme Court’s *San Diego Unified School District* decision. SDUSD also asserts that issuing a subpoena in an expulsion hearing is a cost designated to satisfy the minimum requirements of federal due process and should be reimbursable. These comments are addressed in the analysis below.

Department of Finance Position

The Department of Finance submitted comments on both the *Pupil Expulsions II* and *Pupil Suspensions II* test claims in November 1997, April 1998 (on the first amendment), and October 1999 (on the third amendment). The comments generally focus on keeping decisions consistent with the original *Pupil Suspensions* and *Pupil Expulsions* test claim decisions, and on differentiating between discretionary (non reimbursable) and mandatory (reimbursable) duties, and those required by federal due process. Finance’s position was briefed and considered by the California Supreme Court in the *San Diego Unified School District* case.

In its July 2008 comments on the draft staff analysis, Finance comments that two activities would result in one-time, negligible costs: (1) clarifying notice for pupil representation in section 48918, subdivision (b)(5), and (2) a county office of education’s plan for educational services to expelled pupils in section 48926.

And as discussed further below, Finance disagrees that section 48923, subdivision (b), is a reimbursable mandate for the school district to adopt findings for an expulsion on remand from the county office of education when it determines that the school district’s decision is not supported by the findings, but evidence supporting the required findings exists in the record of the proceedings. Finance argues that it is the school district’s decision to not include the evidence that support the expulsion in the findings, so it should not be reimbursable on remand from the county office of education.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution²⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁶ “Its

²⁵ Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁷ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁸

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.²⁹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.³¹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”³²

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

²⁶ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁷ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

²⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁹ *San Diego Unified School Dist. v. Commission on State Mandates*,, *supra*, 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

³⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

³¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³³

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁵

Issue 1: Over which Test Claim Statutes does the Commission have jurisdiction?

The first issue is which statutes the Commission has jurisdiction over, since many of the statutes the claimant pled and the Commission already determined in the prior test claims were re-alleged in the current consolidated claim.

An administrative agency does not have jurisdiction to rehear a decision that has become final.³⁶ Since *Pupil Expulsions* (CSM 4455) was decided in November 1997, and became effective May 4, 1998, it became final upon mailing to the parties.³⁷ Likewise, *Pupil Suspensions* (CSM 4456) was decided in December 1996, the same month it became final. And the *Pupil Expulsion Appeals* (CSM 4463) decision became final after its March 27, 1997 adoption. Since two of the statutes in the *Pupil Expulsions* decision (§§ 48915 & 48918) were litigated and decided by the California Supreme Court on August 2, 2004,³⁸ that decision was final 30 days after the court’s decision was filed.³⁹

Given these prior final decisions, the test claim statutes for each initial claim are reviewed to determine whether they have already been adjudicated by the Commission as discussed below.

The Commission has jurisdiction over all versions of code sections that were amended after the Commission’s original Statements of Decision if the claimant pled the amendment in question.

³³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

³⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁶ *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

³⁷ California Code of Regulations, title 2, section 1188.2. The only exception would be for a reconsideration within 30 days of the decision (see Gov. Code, § 17559 & Cal. Code Regs., tit. 2, § 1188.4), but no reconsideration request was filed.

³⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859. The statutes the court decided were sections 48915 and 48918.

³⁹ California Rules of Court, rule 8.532 (b).

Claimant did not plead 2002 and later amendments to the test claim statutes. The following chart summarizes the statutes over which the Commission has jurisdiction:

Prior Commission Statement of Decision	Ed. Code §§ Pled in Claim	NO JURISDICTION Version previously adjudicated	JURISDICTION
(or pleading, see Note) <i>Pupil Expulsions</i> CSM 4455	48900	Stats. 1977, ch. 965 Stats. 1978, ch. 668 Stats. 1982, ch. 318 Stats. 1983, ch. 498 Stats. 1984, chs. 23, 536 Stats. 1985, ch. 318 Stats. 1986, ch. 1136 ⁴⁰ Stats. 1987, ch. 383 Stats. 1989, ch. 1306 Stats. 1992, ch. 909 Stats. 1994, ch. 1198	Stats. 1995, ch. 972 Stats. 1996, ch. 915 Stats. 1997, ch. 637 Stats. 2001, ch. 484 (2002 & 2003 amendments not pled)
	48900.2	Stats. 1992, ch. 909	None
	48900.3 ⁴¹	Stats. 1994, ch. 1198	Stats. 1999, ch. 646 (technical)
	48900.4	Stats. 1994, ch. 1017	None (2002 amendment not pled)
	48900.7	N/A (no prior determination)	Stats. 1997, ch. 405
	48900.8	N/A (no prior determination)	Stats. 1997, ch. 637 (2005 amendment not pled)
	48915	Stats. 1983, ch. 498 Stats. 1984, ch. 23 Stats. 1992, ch. 909 Stats. 1993, chs. 1255 & 1256 Stats. 1994, ch. 1198 ⁴²	Stats. 1995, ch. 972 Stats. 1996, chs. 915 & 1052 Stats. 2001, ch. 116
	48915.1	Stats. 1987, ch. 942 Stats. 1990, ch. 1231 Stats. 1993, ch. 1257	Stats. 1996, ch. 937

⁴⁰ Although decided by the Commission, Stats. 86, ch. 1136, was mistyped as Stats. 85, ch. 1136 in the Statement of Decision for *Pupil Expulsions* CSM 4455.

⁴¹ Statutes 1994, chapter 1198 added section 48900.3 regarding hate violence (defined in Ed. Code, § 233, subd. (e)). The *Pupil Expulsions* CSM 4455 and *Pupil Suspensions* CSM 4456 Statements of Decision determined that section 48915 (Stats. 1993, ch. 1255 & 1256) does not constitute a reimbursable mandate, but did not discuss the amendment to section 48915 by Statutes 1994, chapter 1198 that added a reference to section 48900.3. However, the *San Diego Unified School Dist.* decision indicated that the Statutes 1994, chapter 1198 amendment to section 48915 was a discretionary expulsion that is not a new program or higher level of service (*San Diego Unified School Dist., supra*, 33 Cal.4th 859, 871, 884-885). Thus, the Commission does not have jurisdiction over section 48900.3 (Stats. 1994, ch. 1198) but does have jurisdiction over section 48900.3 as amended by Statutes 1999, chapter 646.

⁴² The court took jurisdiction over this statute in *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 871, fn. 9, although the statute made only nonsubstantive amendments.

Prior Commission Statement of Decision	Ed. Code §§ Pled in Claim	NO JURISDICTION Version previously adjudicated	JURISDICTION
<i>Pupil Expulsions</i> CSM 4455 (con'd)	48915.2	Stats. 1993, ch. 1257	Stats. 1995, chs. 972 & 974
	48915.7	Stats. 1993, ch. 1256 (withdrawn)	None.
	48916	Stats. 1983, ch. 498	Stats.1992, ch. 152 Stats.1995, chs. 972 & 974 (2003 amendment not pled)
	48916.1	N/A (no prior determination)	Stats. 1995, ch.974 Stats. 1996, ch.937 Stats. 1999, ch.646 (2005 amendment not pled)
	48916.2	Stats. 1996, ch. 15 (withdrawn)	None.
	48917 (& former § 48907.5)	N/A (no prior determination) (Stats. 1990, ch.1234 withdrawn)	Stats.1979, ch.1014 (§ 48907.5) Stats. 1983, ch. 498 Stats.1995, ch. 95
	48918	Stats. 1975, ch. 1253 Stats. 1976, ch. 1010 Stats. 1977, ch. 965 Stats. 1978, ch. 668 Stats. 1982, ch. 318 Stats. 1983, ch. 498 Stats. 1984, ch. 622 Stats. 1990, ch. 1231 Stats. 1994, ch.146 ⁴³	Stats.1995, chs. 937, 972 & 974 Stats.1996, ch. 915 Stats.1998, ch. 489 Stats. 1999, ch. 332 (2003 amendment not pled)
	48918.5	N/A (no prior determination)	Stats. 1996, ch.915
<i>Pupil Suspensions from School</i> CSM 4456 §§ 148900, 48900.2, 48900.3, 48900.4, 48900.7 & 48900.8 are listed above.	48900.5	N/A (no prior determination) (Stats. 1985, ch. 907 withdrawn)	Stats. 1983, chs.498 & 1302
	48911, Subds. (f) & (g) ⁴⁴	Stats. 1977, ch.965 Stats. 1978, ch.668 Stats. 1980, ch.73 Stats. 1983, ch. 498 Stats. 1985, ch. 856 Stats. 1987, ch.134 (Stats. 1990, ch.1234 withdrawn) (Stats. 1992, ch.1360	Stats. 1983, ch.1302 Stats. 1994, ch.146 (only subds. (f) & (g) after Stats. 1976, ch. 1010) (2002 amendment not pled)

⁴³ The court took jurisdiction over this statute in *San Diego Unified School Dist., supra*, 33 Cal.4th 859,871, fn. 9, although the statute made only nonsubstantive amendments.

⁴⁴ The Commission's *Pupil Suspensions* (CSM 4456) decision expressly made no findings on subdivisions (f), (g), and (h), of section 48911. The current claim includes section 48911, subdivisions (f) and (g), so the Commission has jurisdiction over these subdivisions as they existed after Statutes 1976, chapter 1010 was enacted (but not the amendment of Stats. 2002, ch. 492, which claimant did not plead).

Prior Commission Statement of Decision	Ed. Code §§ Pled in Claim	NO JURISDICTION	JURISDICTION
		Version previously adjudicated withdrawn) ⁴⁵	
<i>Pupil Expulsion Appeals</i> CSM 4463	48919	Stats. 1983, ch. 498	Stats. 1997, ch. 417 Stats. 2000, ch. 147
	48919.5	N/A (no prior determination)	Stats. 1997, ch. 417
	48923	Stats. 1983, ch. 498	Stats. 2000, ch. 147
<u>No Prior Decision for</u> <i>Educational Services Plan</i> <i>for Expelled Pupils</i> (97-TC-09)	48926	N/A (no prior determination)	Stats. 1995, ch. 974
	§§48915, 48916 & 48916.1 are listed above.		

Filing a test claim establishes reimbursement eligibility starting in the fiscal year before the fiscal year in which the test claim is filed.⁴⁶ Thus, claimant’s *Pupil Expulsions II and Pupil Suspensions II* test claims, filed on December 23, 1996, establish reimbursement eligibility beginning July 1, 1995, unless the alleged statute has a later effective date.

Similarly, the *Educational Services Plan for Expelled Pupils (97-TC-09)* test claim was filed in December 1997, thereby establishing reimbursement eligibility beginning July 1, 1996 (but only for § 48926, as the other statutes pled in 97-TC-09 have an earlier reimbursement eligibility date because they were pled in the earlier test claims).

Issue 2: Do the Test Claim Statutes Constitute a Program within the Meaning of Article XIII B, Section 6 of the California Constitution?

In order for the test claim statutes to be subject to article XIII B, section 6 of the California Constitution, the statutes must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁴⁷ Only one of these findings is necessary to trigger article XIII B, section 6.⁴⁸

The Commission finds that the test claim statutes constitute a program. The California Supreme Court, in the *San Diego Unified School Dist.* case, held that the suspension and expulsion statutes constitute a program because they provide an enhanced service to the public in the form of safer schools for the vast majority of students. What the court stated regarding section 48915 could apply to all the test claim statutes:

Providing public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the

⁴⁵ In original test claim, claimant mistyped this as Stats. 1993, ch. 1360.

⁴⁶ Government Code section 17557, subdivision (e).

⁴⁷ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁴⁸ *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

public. Moreover, here ... the law implementing this state policy applies uniquely to local public schools.⁴⁹

The test claim statutes generally concern pupil safety and the rights of suspended and expelled pupils, and the statutes apply uniquely to public schools, school districts, or county offices of education, and not generally to all residents and entities in the state. Thus, the Commission finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6.

Issue 3: Do the Test Claim Statutes Impose a State-Mandated New Program or Higher Level of Service?

Each activity in the test claim statutes is analyzed to determine whether it: (1) is state mandated, and (2) is a new program or higher level of service. For those that do, Issue 4 will address whether they impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556.

Section 48915 classifies pupil expulsions into three categories of greater to lesser offenses. The first category is the most serious offenses listed in subdivision (c), for which pupils are immediately suspended, recommended for expulsion, and expelled pursuant to subdivision (d).

A. Suspension and Expulsion for Most Serious Offenses (§ 48915 subds. (c) & (d))

Section 48915, subdivisions (c) and (d) (as amended by Stats. 1995, ch. 972, Stats. 1996, ch. 1052, and Stats. 2001, ch. 116) provide:

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. ... [without prior written permission]

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance [as defined].

(4) Committing or attempting to commit a sexual assault as defined ... or committing a sexual battery as defined in subdivision (n) of Section 48900.

(5) Possession of an explosive.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)

Read together, subdivisions (c) and (d) indicate that for each subdivision (c) offense, there is a three-step process involving: (1) the principal or superintendent immediately suspending the pupil pursuant to Section 48911, (2) the principal’s or superintendent’s recommendation to expel the pupil, and (3) the governing board’s expulsion order. These, in turn, trigger the suspension procedures in section 48911, and the expulsion hearing procedures in section 48918.

The test claim statutes add the following offenses to Education Code section 48915, subdivision (c): (1) Brandishing a knife at another person (Stats. 1995, ch. 972); (2) Unlawfully selling a controlled substance (Stats. 1995, ch. 972); (3) Committing or attempting to commit a sexual

⁴⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878-879.

assault as defined or committing a sexual battery as defined (Stats. 1996, chs. 1052, sec. 2); and (4) Possession of an explosive (Stats. 2001, ch. 116).

As to the requirement to “immediately suspend, pursuant to section 48911” in section 48915, subdivision (c), this expressly incorporates all the required suspension procedures in section 48911 as follows:

- Precede the suspension with an informal conference conducted by the principal or the principal’s designee or the superintendent of schools between the pupil⁵⁰ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal’s designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
- At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil’s parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
- A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)⁵¹

The first issue is whether the activities in subdivisions (c) and (d) of section 48915 (to immediately suspend, recommend for expulsion, and expel) are reimbursable for each of the offenses added to subdivision (c) by the test claim statutes.

In the *San Diego Unified School Dist.* case, the California Supreme Court interpreted section 48915. The court recognized that “a compulsory suspension and a mandatory recommendation of expulsion under Education Code section 48915, in turn trigger a mandatory expulsion hearing.”⁵² The court also observed that, in the absence of the operation of Education Code section 48915’s mandatory provision, a school district would not automatically incur the due process hearing costs mandated by federal law for expulsion under the subdivision (c) offenses.⁵³

Instead, a district would incur such hearing costs only if a school principal first were to exercise discretion to recommend expulsion. Accordingly, *in its mandatory aspect, Education Code section 48915 appears to constitute a state*

⁵⁰ Pupil is defined to include “a pupil’s parent or guardian or legal counsel.” (§ 48925, subd. (e).)

⁵¹ The Commission’s *Pupil Suspensions* decision CSM-4456 found that the following activities are reimbursable: “1. The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable. 2. A report of the cause of each school suspension to the district office.”

⁵² *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 879. The court was referring to the mandatory expulsion provision of section 48915, subdivision (c) (former subd. (b)).

⁵³ *Id.* at page 880.

mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.⁵⁴ [Emphasis added.]

Suspension, expulsion recommendation and expulsion order for brandishing a knife or unlawfully selling a controlled substance: Statutes 1995, chapter 972, added to section 48915, subdivision (c), (former subd. (b)) the following offenses to “possession of a firearm” for which a pupil must be immediately suspended and recommended for expulsion: (1) brandishing a knife⁵⁵ at another person, and; (2) unlawfully selling a controlled substance.⁵⁶ Chapter 972 also amended subdivision (d) to add: “The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)”

The Commission finds that the principal or superintendent immediately suspending and recommending expulsion, and the governing board ordering a pupil expelled for brandishing a knife at another person, or for unlawfully selling a controlled substance, is a state mandate. As the Supreme Court stated regarding section 48915, former subdivision (b) (now subd. (c)):

This provision ... *did* require immediate suspension followed by a mandatory expulsion recommendation (and it provided that a student found by the governing board to have possessed a firearm would be removed from the school site by limiting disposition to either expulsion or “referral” to an alternative school). Moreover ... whenever expulsion is recommended a student has a right to an expulsion hearing. Accordingly, it is appropriate to characterize the former provision [now § 48915 subd. (c)] as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing*.⁵⁷

Additionally, the plain language of subdivision (c) of section 48915 states: “The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at a school or at a school activity off school grounds.” Similarly, subdivision (d) states that “the governing board shall order a pupil expelled upon finding that the pupil committed” the act listed in subdivision (c). The word ‘shall’ in these provisions indicates that the suspension, expulsion recommendation, and expulsion order are mandatory.⁵⁸ Therefore, the Commission

⁵⁴ *Ibid.*

⁵⁵ Subdivision (g) of section 48915 defines ‘knife’ as, “any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3 ½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.”

⁵⁶ Prior law required a principal or superintendent to recommend a pupil’s expulsion for this offense, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstances, which shall be set out in the report of the incident. (Former § 48915, subd. (a), Stats. 1994, ch. 1198.)

⁵⁷ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 870. Emphasis in original.

⁵⁸ Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.”

finds that it is a state mandate, upon determining that a pupil brandished a knife at another person or unlawfully sold a controlled substance, for the principal or superintendent to immediately suspend and recommend expulsion, and for the governing board to order the pupil expelled.

The next issue is whether immediate suspension, recommended expulsion, and the governing board expulsion order for brandishing a knife or unlawfully selling a controlled substance constitute a new program or higher level of service. Under prior law (§ 48915, subd. (b), Stats. 1994, ch. 1198) the principal or superintendent's immediate suspension and expulsion recommendation, and the governing board's expulsion order was only required for possession of a firearm.

As to brandishing a knife, preexisting law authorizes suspending or expelling a pupil for threatening physical injury to another person, (§ 48900, subd. (a) & former 48915, subd. (b)), and was required for a pupil possessing a knife unless the principal finds that expulsion is inappropriate due to the particular circumstance (§ 48915, subd. (a)(2)).

Preexisting law did not, however, specify "brandishing" a knife as grounds for pupil suspension or expulsion. Therefore, the Commission finds that effective January 1, 1996, section 48915, subdivision (c), constitutes a new program or higher level of service for the principal or superintendent to immediately suspend pursuant to section 48911 and recommend expulsion, and for the governing board to order expulsion, for a pupil who brandishes a knife at another person. (§ 48915, subd. (c)(2), Stats. 1995 ch. 972.)

As to unlawfully selling controlled substances, under the prior version of section 48915 (Stats. 1994, ch. 1198) a pupil must be recommended for expulsion as follows:

- (a) The principal or the superintendent of schools shall recommend a pupil's expulsion for any of the following acts, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstance, which shall be set out in the report of the incident: [¶]...[¶] (3) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

Thus, recommending expulsion was required under prior law, but not immediate suspension or issuing the expulsion order. The Statement of Decision for *Pupil Expulsions* (CSM 4455) found a reimbursable activity for recommending a pupil for expulsion for unlawful sale of a controlled substance, except the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.⁵⁹

⁵⁹ The amended and consolidated parameters and guidelines for the *Pupil Suspensions, Expulsions and Expulsion Appeals* test claims currently reimburse recommending expulsion and an expulsion hearing for unlawfully selling a controlled substance, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. See Commission on State Mandates, "Amended and Consolidated Parameters and Guidelines: *Pupil Suspensions, Expulsions, and Expulsion Appeals*." amended July 28, 2006, pp. 6-7.

Because the test claim statute adds the requirement for the pupil to be immediately suspended pursuant to section 48911, and in subdivision (d) of section 48915, the requirement to expel the pupil, the Commission finds that immediate suspension, pursuant to section 48911, and issuing an expulsion order for selling a controlled substance is a state-mandated new program or higher level of service, effective January 1, 1996.

The test claim statute removes the phrase “unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstance.” Although the test claim statute removes the principal’s or superintendent’s requirement to report to the governing board when expulsion is not recommended, and removes the discretion *not* to recommend the pupil’s expulsion, the Commission finds that these changes are not a new program or higher level of service because they do not require a new activity of the school district or increase the level or quality of service provided.

Moreover, the test claim statute removes the exception for the principal or superintendent to recommend expulsion for the “first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.” By removing the exception, the Commission finds that a new program or higher level of service is created for the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil’s expulsion, and for the governing board to order the pupil’s expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, effective January 1, 1996. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)

Expulsion recommendation and expulsion order for possessing an explosive: Statutes 2001, chapter 116 amended subdivision (c) of section 48915 as follows (underline text added):

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: [¶]...[¶] (5) Possession of an explosive.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)... [¶]...[¶].

(h) As used in this section, the term “explosive” means “destructive device” as described in Section 921 of Title 18 of the United States Code.

Former section 48915, subdivision (a)(2), from 1983 (Stats. 1983, ch. 498) until 2001 (Stats. 2001, ch. 116) required the principal or superintendent to recommend expulsion of a pupil for possession of “any firearm, knife, explosive, or other dangerous object” “unless the principal or the superintendent finds ... that expulsion is inappropriate, due to the particular circumstances.” The 2001 amendment placed explosive possession into the list of mandatory expellable offenses in section 48915, subdivision (c), thereby removing the principal’s or superintendent’s discretion to not recommend expulsion for explosive possession. The state statute was enacted, according to the legislative findings, because the state was notified in August 2000 that it was out of compliance with the federal Gun-Free Schools Act of 1994.⁶⁰

⁶⁰ Statutes 2001, chapter 116, section 1, subdivision (c).

The issue is whether the principal or superintendent recommending an expulsion (suspension is discussed separately below) and the governing board ordering an expulsion of a pupil for possessing an explosive constitutes a federal mandate, which would mean that there is no reimbursable state mandate.⁶¹ The Commission finds that Statutes 2001, chapter 116's amendment to section 48915 that adds explosive possession is a federal mandate on the state to require school districts "to expel from school for a period of not less than one year a student who is determined to have brought a firearm to a school."⁶² Firearm is defined to include an explosive.

The federal statutes at issue, the Gun-Free Schools Act of 1994, and its successor, the No Child Left Behind Act of 2001 (NCLB), require states that receive federal funds to have a state law requiring expulsion of a pupil who possesses a firearm. The federal definition of "firearm" includes an explosive. The applicable provision from the Gun-Free Schools Act of 1994 (or the gun-free provision) is as follows with nonsubstantive amendments made by NCLB as indicated:

~~Except as provided in paragraph (3),~~⁶³ Each State receiving Federal funds under ~~this Act~~ any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a ~~weapon~~ firearm to a school [or to have possessed a firearm at a school] under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis ~~if such modification is in writing.~~⁶⁴ [¶]...[¶]

(3) DEFINITION.--For the purpose of this section, the term '~~weapon~~' means a firearm as such term is defined in section 921 of title 18, United States Code. 'firearm' has the same meaning given such term in section 921(a) of title 18.⁶⁵

The 1994 version of 18 USCA section 921 (a)(3) and (a)(4) contains the following definitions:

⁶¹ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 879-880. "[A]rticle XIII B, section 6, and the implementing statutes ... by their terms, provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs." See also California Constitution, article XIII B, section 9, subdivision (b).

⁶² Former 20 USCA section 8921 (b)(1). Current 20 USCA section 7151 (b). Firearm is defined in subdivision (b)(3) as "the same meaning given such term in section 921 (a) of Title 18."

⁶³ Former 20 USCA section 8921 (b)(3) stated: "(A) Any State that has a law in effect prior to the date of enactment of the Improving America's Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement described in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement."

⁶⁴ Former 20 USCA section 8921 (b)(1). Current 20 USCA section 7151 (b). Firearm is defined in subdivision (b)(3) as "the same meaning given such term in section 921 (a) of Title 18."

⁶⁵ Former 20 USCA section 8921 (b)(1).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means-- (A) any explosive, incendiary, or poison gas-- (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses; (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

Enacted effective January 1, 2002, the test claim statute (Stats. 2001, ch. 116, eff. Jan. 2002) expressly states its purpose is to implement the federal Gun-Free Schools Act, as stated in the Legislative findings and declarations in section 1:

- (a) The Gun-Free Schools Act of 1994, contained in Part F (commencing with Section 8921) of Subchapter XIV of Chapter 70 of Title 20 of the United States Code, requires each state receiving Elementary Secondary Education Act (ESEA) funds to have in effect a state law requiring expulsion from school, for not less than one year, a student who is determined to have brought a weapon to school.⁶⁶
- (b) The term weapon is defined in the Gun-Free Schools Act of 1994 to include explosives. (20 U.S.C. Sec. 8921 (b)(4)); 18 U.S.C. Sec. 921(a)(3).)
- (c) In August of 2000, the State Department of Education was notified that state law does not currently require mandatory expulsion of a pupil who brings an explosive to school and therefore may be in violation of the Gun-Free Schools Act of 1994.
- (d) Failure to comply with the Gun-Free Schools Act of 1994 has the potential to jeopardize over 1 billion dollars in federal funds.

Although the federal gun-free provision, effective July 1, 1995, was considered by the Supreme Court in *San Diego Unified School District* case, it made no decision on the Act. The court addressed only the statutes on which the Commission had issued a decision, which was section 48915 as amended through 1994. The court stated that its conclusion does "not foreclose the

⁶⁶ The current federal statute uses the term "firearm" instead of "weapon." See 20 U.S.C.A. 7151 (b). Subdivision (b)(3) states "For purposes of this section, the term "firearm" has the same meaning given such term in section 921(a) of Title 18."

possibility that ... [the federal statute] may lead to a different conclusion when applied to versions of Education Code section 48915 effective in years 1995 and thereafter.”⁶⁷

The California Supreme Court discussed the issue of what constitutes a federal mandate under article XIII B in *City of Sacramento v. State of California*.⁶⁸ The issue in that case was whether the state statute extending mandatory coverage under the state’s unemployment insurance law to include state and local governments and nonprofit corporations constituted a state mandate. The court noted that states that failed to alter their unemployment compensation laws to include employees of public agencies faced loss of the federal tax credit and administrative subsidy.⁶⁹ The court held that the federal unemployment insurance law implemented by the test claim statute was not a state mandate because it was not unique to local government.

The court went on, however, to discuss whether the test claim statute constituted a federal mandate. The city and county argued that the treatment of federal mandates in article XIII B, section 9, required clear legal compulsion in the federal statute. The state, on the other hand, argued that, “the consequences of California’s failure to comply with the federal ‘carrot and stick’ scheme were so substantial that the state had no realistic ‘discretion’ to refuse.”⁷⁰ The court agreed with the state’s argument, noting:

[T]he vast bulk of cost-producing federal influence on government at the state and local levels was by inducement or incentive rather than direct compulsion. That remains so to this day. Thus, if article XIII B’s reference to ‘federal mandates’ were limited to strict legal compulsion by the federal government, it would have been largely superfluous. ... As the drafters and adopters of article XIII B must have understood, certain regulatory standards imposed by the federal government under ‘cooperative federalism’ schemes are coercive on the states and localities in every practical sense.⁷¹

The court then listed the following five factors as to whether a test claim statute qualifies as a federal mandate on the states:

[W]e here attempt no final test for “mandatory” versus “optional” compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of

⁶⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 883-884.

⁶⁸ *City of Sacramento*, *supra*, 50 Cal.3d 51.

⁶⁹ *Id.* at page 58.

⁷⁰ *Id.* at page 71.

⁷¹ *Id.* at pages 73-74.

article XIII B, section 9(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.⁷²

The court recognized that these factors are consistent with the statutory scheme, including Government Code section 17513's definition of "costs mandated by the federal government."⁷³ The court also stressed the penalties for not implementing the test claim statute by finding: (1) California businesses would face full, double unemployment taxation by the state and federal governments; (2) an intolerable expense against the state's economy on its face; and (3) placing California employers at a serious competitive disadvantage against those in other states.⁷⁴ The court held that these penalties were "certain and severe"⁷⁵ so the state statute was adopted "under federal coercion tantamount to compulsion."⁷⁶ Thus, as a federal mandate, the state statute was excluded from the spending limits in article XIII B.

In the Gun-Free Schools Act of 1994, and NCLB⁷⁷ the "federal influence on government at the state and local levels [is] by inducement or incentive [e.g., federal funding] rather than direct compulsion."⁷⁸ In the absence of direct legal compulsion, the factors from the *City of Sacramento* case are applied to determine whether the federal statutes constitute a federal mandate on the state.

As to the first factor, the nature and purpose of the Gun-Free Schools Act, it was enacted to prevent school-related violence.⁷⁹ The express purpose of the test claim statute (Stats. 2001, ch.

⁷² *Id.* at page 76.

⁷³ *Id.* at pages 75-76. The *City of Sacramento* court cited former Revenue and Taxation Code section 2206, which is nearly identical to current Government Code section 17513, defining "costs mandated by the Federal Government" as: "[A]ny increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. 'Costs mandated by the federal government' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements imposed upon the state would result in substantial monetary penalties or loss of funds to public or private persons in the state whether the federal law was enacted before or after the state law, regulation, or executive order. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district."

⁷⁴ *Id.* at page 74.

⁷⁵ *Ibid.*

⁷⁶ *Id.* at page 57.

⁷⁷ Former 20 U.S.C. section 8921 (a), currently at 20 U.S.C. section 7151.

⁷⁸ *City of Sacramento, supra*, 50 Cal.3d 51, 73.

⁷⁹ *Colvin ex rel. Colvin v. Lowndes County, Mississippi School Dist.* (1999) 114 F. Supp. 2d 504 N. Dist. Miss., 506, fn 1.

116) regarding expulsion for possession of an explosive, is to comply with the Gun-Free Schools Act of 1994, of which the gun-free provision was reenacted by NCLB in January 2002.

The second factor is whether the design of the federal program suggests an intent to coerce. As amended by NCLB in January 2002, failure to comply with the federal gun-free provision would jeopardize “Federal funds under any subchapter of this chapter ...”⁸⁰ which is “Chapter 70 - Strengthening and Improvement of Elementary and Secondary Schools.” The state statute (Stats. 2001, ch. 116) was also effective in January 2002.

A large portion of Title I funding is aimed at schools serving students living in poverty.⁸¹ The Elementary and Secondary Education Act (ESEA) was enacted in 1965, so states have received Title I funds for over 40 years.⁸² NCLB reauthorized ESEA effective in January 2002. Participation in NCLB is tied to continued receipt of Title I funds.⁸³

When Utah considered opting out of NCLB, the U.S. Department of Education opined that forfeiting Federal Title I funding would also jeopardize other funding under the Elementary and Secondary Education Act.⁸⁴ The U.S. Department of Education’s interpretation, as an agency charged with enforcement of NCLB, is entitled to deference.⁸⁵

⁸⁰ 20 USCA 7151 (b): “Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school ... a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school ...”

⁸¹ This is according to EdSource, an independent, nonpartisan, not-for-profit organization whose mission is to clarify complex education issues and to promote thoughtful policy decisions about public school improvement. See <<http://www.californiaschoolfinance.org/FinanceSystem/DollarstoDistricts/NoChildLeftBehindNCLB/tabid/96/Default.aspx>> as of September 14, 2007, on page 1444 of the record.

⁸² Elementary and Secondary Education Act of 1965, Public Law 89-10. See *Alexander v. Califano* (1977) 432 Fed. Supp. 1182, 1190, fn. 9: “[Former] Cal.Ed.Code Sec. 551 states that “The people of the State of California accept the provisions of, and each of the funds provided by, the act of Congress entitled . . . ” Elementary and Secondary Education Act of 1965. See also, [former] Cal.Ed.Code Sec. 6456.”

⁸³ 20 USCA 6303(g) (4) and *passim*: “Each state educational agency that desires to receive funds under this subsection shall...” This phrase prefaces the NCLB provisions that require a local activity. See also the website of the National Conference on State Legislatures: <<http://www.ncsl.org/statefed/nclblegal.htm>> as of April 4, 2008, on page 1452 of the record.

⁸⁴ Letter from Eugene Hickok, Acting Deputy Secretary, U.S. Department of Education to Dr. Steven O. Laing, Utah Superintendent of Public Instruction, February 6, 2004. See: <<http://www.ccsso.org/content/pdfs/USDEdLettertoUtah.pdf>> as of April 4, 2008. The letter states in part:

Utah may choose not to participate in one or more titles of the ESEA. Utah’s nonparticipation under Title I, Part A, [Improving Basic Programs Operated by Local Educational Agencies] however, would have serious consequences for

In fiscal year 2006-07, California budgeted \$1.76 billion in federal Title I funds.⁸⁶ Losing Title I funding could affect California educational programs such as the Reading First⁸⁷ (\$143.8 million in California's 2006-07 Budget Act⁸⁸), Even Start (\$27.7 million in the 2005-06 Budget Act),⁸⁹ and Comprehensive School Reform⁹⁰ (\$27.7 million in the 2005-06 Budget Act).⁹¹ All of these programs are within Chapter 70 - Strengthening and Improvement of Elementary and Secondary Schools, of the Federal Education Code.

The third factor is when state and/or local participation began. In the *City of Sacramento* case, the court said that the state had afforded unemployment insurance protection to its private sector

funding under other ESEA programs. For example, a number of the formulas for allocating federal funds are linked to the State's funding under the Title I, Part A program. As a result, if Utah chooses not to participate under Title I, Part A, Utah's formula funds under the following programs would be negatively affected:

- Even Start (Title I, Part B, Subpart 3)
- Comprehensive School Reform (Title I, Part F)
- State and Local Technology Grants (Title II, Part D, Subpart 1)
- Safe and Drug Free Schools and Communities (Title IV, Part A)
- 21st Century Community Learning Centers (Title IV, Part B)
- Education for Homeless Children and Youth (Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act)

Of course, if Utah does not receive funds under these programs, its local educational agencies [school districts] would also not be able to participate.

⁸⁵ *Contract Management v. Rumsfeld* (2006) 434 F.3d 1145, 1147. "If ... the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. [Citation omitted.] If so, we defer to the agency's interpretation."

⁸⁶ Statutes 2006, chapter 47 and 48, Item 6110-136-0890, Schedule 1.

⁸⁷ Reading First is a federally funded program that provides districts with a minimum of \$6,500 per K-3 teacher for reading professional development. Reading First was authorized by Title I, Part B, Subpart I of the Elementary and Secondary Education Act, as amended by NCLB.

⁸⁸ Statutes 2006, chapter 47 and 48, Item 6110-126-0890.

⁸⁹ Even Start funds local educational agencies (LEAs) and community-based organizations to plan and coordinate services to help parents gain the skills needed to become full partners in the education of their young children. Even Start integrates (1) early childhood education, (2) adult literacy or adult basic education, (3) parenting education and (4) parent-child interactive literacy activities into a unified, four-component family literacy program.

⁹⁰ Comprehensive School Reform is a federal program that gives schools and their districts the opportunity to implement schoolwide, research-based reform strategies designed to increase student learning and academic achievement.

⁹¹ See <http://www.lao.ca.gov/analysis_2006/education/ed_14_anl06.html> as of September 14, 2007.

workers for over 40 years before the test claim statute was adopted.⁹² The federal Gun-Free Schools Act was enacted effective July 1, 1995,⁹³ and had thus been in place almost six years before the 2001 test claim statute was enacted. And although both the state statute and NCLB were effective in January 2002, the state could jeopardize federal Title I funds it has received since 1965 for noncompliance with the federal gun-free provision of NCLB.

Claimant, in May 2008 comments on the draft staff analysis, disagrees that the test claim statute is a federal mandate on the state and argues that the analysis provides no factual basis for this conclusion. Claimant first notes that the *City of Sacramento* case concluded that where economic penalties were certain and severe, the federal coercion was tantamount to compulsion. Claimant asserts that the loss of Title I funds is neither certain, nor are the consequences severe, arguing that if the Title I programs go away, so do the costs, so there is no fiscal penalty to the state.

The Commission disagrees. The loss of the Title I educational programs themselves (not merely the loss of funds for them) would be a certain and severe penalty on California. The legislative findings and declarations cited above (especially the finding that over \$1 billion in federal funds would be jeopardized), indicates the Legislature's opinion that the consequences of not enacting Statutes, 2001, chapter 116 would be certain and severe. And the legislative history of chapter 116 states:

The Office of Inspector General, U.S. Department of Education, issued a Final Audit Report, February 2001, notifying the California Department of Education that California state law may not be in compliance with the Gun-Free Schools Act of 1994. Failure to comply with the Gun-Free Schools Act puts students' safety at risk and may jeopardize over \$1 billion California receives in federal education funding.

Federal law requires states receiving funds under the Elementary and Secondary Education Act to require local educational agencies to expel students who bring explosives to school for at least one year. Under existing California law, students who bring explosives on campus may be expelled, but it is not required, and there is no mandatory length of expulsion. State officials have known about the state's non-compliance since August 2000.

Senate Bill 166 will amend existing law to make sure California is in full compliance with the Gun-Free Schools Act of 1994, which requires a zero-tolerance policy for explosives on campus. Senate Bill 166 will put California in full compliance with the Gun-Free Schools Act of 1994 by requiring local educational agencies to expel students who bring explosives on campus for at least one year.⁹⁴

⁹² *City of Sacramento, supra*, 50 Cal.3d 51, 74.

⁹³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 883.

⁹⁴ Assembly Committee on Education, Analysis of Senate Bill No. 166 (2001-2002 Reg. Sess.) as amended May 15, 2001, pages 2-3.

Claimant also states that the February 6, 2004 letter from the U.S. Department of Education to the Utah Superintendent of Public Schools, cited above, postdates Statutes 2001, chapter 116, so it cannot have influenced the California legislation. It is true that the letter to Utah did not influence the test claim statute. Rather, the letter shows U.S. Department of Education's interpretation of the law, which is entitled to deference. It also shows federal coercion and "serious consequences" for failure to comply with the Gun-Free Schools Act (later NCLB). Based on this interpretation of the law by the U.S. Department of Education, the Commission finds that the penalty for noncompliance is certain and severe.

SDUSD, in May 2008 comments on the draft staff analysis, also argues that chapter 116 is not a federal mandate, asserting that such a conclusion conflicts with the case *San Diego Unified School District v. Commission on State Mandates*⁹⁵ based on the Supreme Court's rejection of the argument that the statute requiring expulsion for firearm possession (§ 48915) was a federal mandate. The Commission disagrees. Although the court did reject this argument, it did so based on the fact that the 1994 test claim statute predated the federal statute.⁹⁶ That is not the case here where the federal statute (the Gun Free Schools Act of 1994) predated the 2001 test claim statute by several years, and the test claim statute was enacted in response to the federal statute. SDUSD's comments fail to mention the following in the *San Diego Unified School District* decision: "[W]e do not foreclose the possibility that 20 United States Code section 7151 or its predecessor, 20 United States Code section 8921, may lead to a different conclusion when applied to versions of Education Code section 48915 effective in years 1995 and thereafter."⁹⁷

In sum, because the test claim statute (Stats. 2001, ch. 116) recognized that the amount (in excess of \$1 billion) of federal funds in jeopardy for failure to comply with the federal statute, and because federal Title I funding has been relied on by states for over 40 years, the Commission finds that the 2001 amendment to section 48915 is a federal mandate on the state.

In *Hayes v. Commission on State Mandates*, the court cited the *City of Sacramento* analysis for determining whether there is a federal mandate on the state, but said further analysis is required to determine whether there is a state mandate on the local entities.⁹⁸ Thus, the next issue is whether California's enactment of Statutes 2001, chapter 116 -- the principal or superintendent to recommend a pupil be expelled, and the governing board to order a pupil expelled, for possession of an explosive -- constitutes a mandate on school districts.

The *Hayes* court⁹⁹ held that the federal Education of the Handicapped Act (now Individuals with Disabilities Education Act) was a federal mandate on the state. The court then laid out the following test for determining whether the state imposes a mandate on local entities:

⁹⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

⁹⁶ *Id.* at pages 882-884.

⁹⁷ *Id.* at page 884.

⁹⁸ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564, 1593. We assume, for purposes of this analysis, that the reference to local agencies includes school districts, which are treated the same under the statutory scheme (Gov. Code, § 17500 et seq.).

⁹⁹ *Hayes v. Commission on State Mandates*, *supra*, 11 Cal. App. 4th 1564.

If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.¹⁰⁰ (Emphasis added.)

In this case, the federal statute’s plain language requires that “Each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a firearm to a school.”¹⁰¹ Based on the plain language of this federal statute, the amount of funding the state could lose for noncompliance, and that Title I funding under ESEA has been distributed for over 40 years, the state did not freely choose to implement the Gun-Free Schools Act and NCLB by requiring school districts to expel pupils for possessing an explosive.

Claimant, in May 2008 comments on the draft staff analysis, asserts that “the federal statute does not require the state to require the local agency to bear the cost of the expulsions. The State has chosen to pass these costs along to the local education agencies by failing to fund this alleged federal mandate.” Claimant argues that there is a state-mandated program under the *Hayes* test. The Commission disagrees. According to the *Hayes* court, “the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state’s *voluntary choice in its implementation* of the federal program.”¹⁰² The plain language of the federal statute gives the state no choice in implementation. Rather, it requires “a State law *requiring local educational agencies* to expel from school for a period of not less than one year a student who is determined to have brought a firearm [including an explosive] to a school.”¹⁰³ Thus, the state has not freely chosen to impose the costs of these expulsions on the local educational agencies, in that the federal statute mandates how the state statute is implemented – by the local educational agency (school district).

Therefore, the Commission finds that the 2001 amendment to section 48915, subdivision (c) (Stats. 2001, ch. 116) is a federal mandate on school districts under the 20 USCA section 7151 (b), the federal gun-free provision. Consequently, a principal or superintendent recommending a pupil for expulsion, and the governing board ordering a pupil expelled for possession of explosives is not a state mandate that is subject to reimbursement under article XIII B, section 6.

Suspension for possessing an explosive: Although expulsion for possession of an explosive is a federal mandate as discussed above, the federal statute¹⁰⁴ does not require a pupil *suspension* for

¹⁰⁰ *Id.* at pages 1593-1594.

¹⁰¹ Former 20 USCA section 8921 (b)(1). Current 20 USCA section 7151 (b). Firearm is defined in (b)(3) as “the same meaning given such term in section 921 (a) of Title 18.”

¹⁰² *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564, 1595. [Emphasis added.]

¹⁰³ Emphasis added. Former 20 USCA section 8921 (b)(1). Current 20 USCA section 7151 (b). [Emphasis added.] Firearm is defined in (b)(3) as “the same meaning given such term in section 921 (a) of Title 18.”

¹⁰⁴ Former 20 USCA section 8921 (b)(1). Current 20 USCA section 7151 (b).

possession of an explosive (although “immediate” suspension is required under state law, in § 48915, subd. (c), Stats. 2001, ch. 116). Thus, the issue is whether the principal or superintendent’s suspension of a pupil for possession of an explosive is a federal mandate or a state mandate. The Commission finds that the suspension activity is a state mandate, not a federal one.

Here, the federal law does not require the pupil’s suspension, only the pupil’s expulsion.¹⁰⁵ It is the state law that triggers the suspension and exceeds federal law.¹⁰⁶ Therefore, the Commission finds that suspending a pupil for possession of an explosive is not a federal mandate. Based on the plain language of subdivision (c) of section 48915 that the principal or superintendent shall “immediately suspend” the pupil, the Commission finds that this provision is a state mandate.¹⁰⁷

Preexisting law authorizes but does not require a principal or superintendent to immediately suspend a pupil for possessing an explosive. Enacted in 1983, section 48900, subdivision (b), states, “A pupil may not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has ... possessed ... any ... explosive.” At least one court has interpreted section 48900 to authorize pupil suspension and expulsion.¹⁰⁸ Therefore, because suspension for possession of an explosive was not previously required, the Commission finds that effective January 1, 2002, it is a state-mandated new program or higher level of service for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds. (§ 48915, subd. (c), Stats. 2001, ch. 116.)

Suspension, expulsion recommendation, and expulsion order for selling or furnishing a firearm:

In 1995 section 48915, subdivision (c) (Stats. 1995, ch. 972) was amended as follows:

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: [¶]...[¶]

(5) ... selling or otherwise furnishing a firearm. ...[Except for cases of prior written permission, as specified.]

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)

As a threshold matter, the Commission finds that immediately suspending a pupil and recommending a pupil for expulsion for selling or furnishing a firearm is a state mandate because

¹⁰⁵ 20 U.S.C.A. section 7151 (b).

¹⁰⁶ See *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 881; and Government Code section 17513.

¹⁰⁷ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

¹⁰⁸ See *T.H. v. San Diego Unified School Dist.* (2004) 122 Cal. App.4th 1267, 1276. Cf. *Fremont Union High School Dist. v. Santa Clara County Board of Education* (1991) 235 Cal.App.3d 1182, 1185-1188.

the plain language of subdivision (c) of section 48915 uses the mandatory “shall”¹⁰⁹ in requiring the principal or superintendent to “recommend expulsion of a pupil” for committing those offenses.

The Commission also finds that this 1995 amendment (Stats. 1995, ch. 972) to section 48915, subdivision (c) (former subd. (b)) is not a federal mandate. As in *San Diego Unified School Dist.* case,¹¹⁰ it is the state law and not the federal law that requires a pupil expulsion or suspension for selling or furnishing a firearm. The federal statute applies to “a student who is determined to have brought a firearm to a school or to have possessed a firearm at school”¹¹¹ but not to *selling* or *otherwise furnishing* a firearm. Since the federal law does not require pupil discipline for selling or furnishing a firearm, it is the state law that triggers the pupil suspension and expulsion. Therefore, the Commission finds that immediately suspending and recommending a pupil for expulsion, as well as the governing board expelling a pupil for selling or otherwise furnishing a firearm, are state-mandated activities.

As to whether these activities are a new program or higher level of service, the prior version of section 48915 (Stats. 1994, ch. 1198) required immediate suspension, an expulsion recommendation, and expulsion for firearm possession (former § 48915, subd. (b)). Selling or otherwise furnishing a firearm was an offense for which suspension, recommending expulsion, and expelling the pupil were authorized but not required. (§ 48900, subd. (b).)

Therefore, the Commission finds that it is a state-mandated new program or higher level of service, effective January 1, 1996, for a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil’s expulsion, and for the governing board to order a pupil’s expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. (§ 48915, subs. (c)(1) & (d), Stats. 1995, ch. 972.)

Suspension, expulsion recommendation, and expulsion order for sexual assault or sexual battery: Section 48915, subdivision (c), was amended by Statutes 1996, chapter 1052, to add to the immediate suspension and mandatory expulsion recommendation provision, the following in subdivision (c)(4):

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: [¶]...[¶]

¹⁰⁹ Education Code section 75.

¹¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

¹¹¹ 20 USCA section 7151 (b).

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.¹¹² [¶]...[¶]

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)

The Commission finds that it is a state mandate to immediately suspend and recommend expulsion for a pupil for committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. The use of “shall”¹¹³ in section 48915, subdivisions (c)(4) and (d), requires the principal or superintendent to immediately suspend and recommend expulsion, as well as the governing board to order expulsion, for a pupil who commits or attempts to commit a sexual assault, as defined, or sexual battery, as defined.

Because it was not required under prior law, the Commission finds that the principal or superintendent suspending, pursuant to section 48911, and recommending expulsion, and the governing board ordering expulsion, for pupils who commit or attempt to commit a sexual assault, or commit a sexual battery, as defined,¹¹⁴ is a new program or a higher level of service, effective January 1, 1997 (§ 48915, subs. (c)(4) & (d), Stats. 1996, ch. 1052). The Commission finds that the section 48911 suspension procedures listed above are also part of this activity.

B. Immediate Suspensions for the Most Serious Offenses (§§ 48915 (c) & 48911)

Most of the suspension procedures in section 48911 were addressed in the *Pupil Suspensions* test claim (CSM-4456) and were denied reimbursement because the Commission determined that the test claim statutes were enacted to extend to public school pupils who face suspension the federal procedural due process requirements the U.S. Supreme Court specified in *Goss v. Lopez*.¹¹⁵ In the *Pupil Suspensions* test claim (CSM-4456) the claimant did not plead, and the Commission did not make findings on, the activities in subdivisions (f), (g) and (h) of section 48911, which are addressed in this analysis.

The Commission also has jurisdiction over the amendment to section 48911 by Statutes 1983, chapter 1302, which substituted “Section 48914”¹¹⁶ for “Section 48904”¹¹⁷ at the end of former

¹¹² Chapter 915 also amended section 48900 to add in subdivision (n) the following new offense for which a pupil may be suspended and recommended for expulsion: “Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.”

¹¹³ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

¹¹⁴ A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code (§ 48900, subd. (n)).

¹¹⁵ *Goss v. Lopez*. (1975) 419 U.S. 565, 581-582.

¹¹⁶ This section authorizes the school district to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended pupil.

¹¹⁷ This section, added by Statutes 1977, chapter 965, relating to parental meetings with superintendent on suspensions, was repealed by Statutes 1983, chapter 498. The reference to 48914 was removed, and subdivision (d) was rewritten, by Statutes 1987, chapter 134.

subdivision (d)(3) in section 48911 relating to a notice of a statement of a parent's or pupil's right to request a meeting with the superintendent. Because this amendment is technical and imposes no activities on school districts, the Commission finds it is not a state mandate within the meaning of article XIII B, section 6.

Additionally, the Commission has jurisdiction over the amendment by Statutes 1994, chapter 146 (a code maintenance bill) but also finds that this only technically amended section 48911 and therefore does not constitute a state mandate within the meaning of article XIII B, section 6.

Extend suspension & parent meeting (§ 48911, subd. (g)): Section 48911, subdivisions (g), contains a procedure for extending suspensions as follows:

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent ...[or designee] may extend the suspension until the governing board has rendered a decision in the action. However, an extension may be granted only if the school district superintendent ... [or designee] has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

The Commission finds that extending the suspension is not a state mandate. The provision is permissive in that it states that the superintendent "may" extend the suspension, and there is nothing in the statute or the record to indicate that extension is practically compelled by the state.

Claimant, in May 2008 comments on the draft staff analysis, argues as follows:

The purpose of these extensions is to remove the student from the campus pending the decision on the expulsion to prevent repeated dangerous or unsafe behaviors. The Commission has determined that school districts are required by law to provide a safe school environment [citations omitted] and this is a method of meeting that requirement.

Claimant's argument regarding a safe school environment applies to nearly all the activities in the test claim. The goal of safe schools, however, may also be accomplished by making an expulsion decision within the suspension period, thereby avoiding the need to extend the suspension. It is local officials, rather than the state, that make the decision requiring a school district to incur the costs.¹¹⁸ Therefore, the Commission finds that extending the suspension, as provided by subdivision (g) of section 48911, is not a state mandate within the meaning of article XIII B, section 6.

¹¹⁸ Cf. *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

Moreover, the Commission finds that extending the suspension is not a new program or higher level of service. Prior law also authorized extending the suspension:

In a case where an action is pending in juvenile court in regard to a student, or where expulsion is being processed by the governing board, a superintendent or other person designated by him in writing, may extend the suspension until such time as the juvenile court or other governing board has rendered a decision in the action.¹¹⁹

Claimant's May 2008 comments assert that this statute does not apply because it was enacted after 1975, the measurement date provided by Government Code section 17514. In determining whether there is a new program or higher level of service, however, the test claim statute is compared to the legal requirements in effect immediately before enacting the test claim statute.¹²⁰ Claimant pled section 48911 as far back as Statutes 1977, chapter 965. The legal requirements for suspensions in effect immediately before this statute was Statutes 1976, chapter 1010, and section 48903 of Statutes 1977, chapter 965. Since those statutes also authorized extending a suspension, the Commission finds that doing so is not a new program or higher level of service.

The last sentence of subdivision (g) calls for a parent meeting as follows:

If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

Section 48914 authorizes but does not require school districts to have a policy regarding meeting with parents of suspended pupils.¹²¹ If the section 48914 suspension policy is not required, then the parent meeting is also not required, since school officials are not required to respond to the parent's request for a second meeting. Moreover, section 48911, subdivision (b), calls for an informal conference on the merits of the suspension with the pupil, the principal or principal's designee or superintendent, and the teacher or school employee who referred the pupil for suspension. Because section 48925, subdivision (e), defines "pupil" to include the parent or guardian or legal counsel, this initial suspension meeting is to include the parent or guardian. Thus, if the meeting with the parent in subdivision (g) is "to challenge the original suspension"

¹¹⁹ Former section 48911 (Stats. 1976, ch. 1010). Former section 48903, subdivision (h) (Stats. 1977, ch. 965).

¹²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹²¹ Section 48914 states "Each school district is authorized to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended pupil to discuss the causes, the duration, the school policy involved, and other matters pertinent to the suspension." Section 48914 is not part of this test claim, and the Commission makes no finding on it.

then it is already provided for in subdivision (b) of section 48911 and is not a state-mandated new program or higher level of service.¹²²

On the other hand, if the parent meeting in subdivision (g) is to extend the suspension, it is a downstream activity resulting from the discretionary decision to extend the suspension. As such, the following rule stated by the Supreme Court in the *Kern High School Dist.* case applies:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.¹²³

Thus, the Commission finds that the parent meeting in subdivision (g) of section 48911 is not a state mandate within the meaning of article XIII B, section 6.

The *Pupil Suspension from School* Statement of Decision (CSM 4456) only provides reimbursement for the referring school employee's attendance at the parent meeting. The principal's or superintendent's attendance, however, was required under prior law. Claimant pled section 48911 back to Statutes 1977, chapter 965. Prior law (former § 48910, Stats. 1976, ch. 1010) stated in part:

On or before the third consecutive schoolday of any given period of suspension, the parent or guardian of the pupil involved shall be asked to attend a meeting with school officials, at which time the causes, the duration, the school policy involved, and other matters pertinent to the suspension shall be discussed.

Therefore, the Commission finds that the principal's or superintendent's attendance at the parent meeting is not a new program or higher level of service. (§ 48911, subd. (g).)

Penalizing pupils and appointing a designee (§ 48911 (f) & (h)): Subdivision (f) of section 48911 requires a pupil's parent or guardian to respond "without delay" to any request from school officials to attend a conference regarding the pupil's behavior. It also prohibits penalizing the pupil for the failure of, or making a suspended pupil's reinstatement contingent on, the pupil's parent or guardian attending a conference with school officials. Claimant pled the activity of not imposing a penalty for failure of pupil's parent or guardian to attend the conference.

This subdivision merely prohibits penalizing the pupil for the inaction of the parent or guardian, but does not mandate an activity. Thus, the Commission finds that section 48911, subdivision (f), is not a state mandate within the meaning of article XIII B, section 6.

Subdivision (h) of section 48911 defines a "principal's designee" and authorizes the designee's selection as follows:

¹²² In the *Pupil Suspensions from School* (CSM 4456) Statement of Decision, one of the reimbursable activities is: "The attendance of the referring school employee in the pre-suspension conference between the principal (or designee, or superintendent) and the pupil, whenever practicable. (§ 48911, subd. (b).)

¹²³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

For the purposes of this section, a "principal's designee" is any one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for the purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

This section is not an exception to, nor does it place any limitation on, Section 48903.¹²⁴

The Commission finds that subdivision (h) of section 48911 does not mandate an activity of a school district. It defines 'principal's designee' and authorizes but does not require school principals to select designees for purposes of school discipline. Therefore the Commission finds that selecting a "principal's designee" in section 48911, subdivision (h), is not a state mandate within the meaning of article XIII B, section 6.

C. Expulsion Recommendation and Order for Serious Offenses (§ 48915 subds. (a) & (b))

Second in the hierarchy of pupil expulsion offenses after those in section 48915, subdivision (c), are the serious offenses in section 48915, subdivision (a), which states (test claim statute amendments are marked):

(a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

- (1) Causing serious physical injury to another person, except in self defense.
- (2) Possession of any knife or other dangerous object of no reasonable use to the pupil.

¹²⁴ Section 48903 states: (a) Except as provided in subdivision (g) of Section 48911 and in Section 48912, the total number of days for which a pupil may be suspended from school shall not exceed 20 schooldays in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of schooldays for which the pupil may be suspended shall not exceed 30 days in any school year.

(b) For the purposes of this section, a school district may count suspensions that occur while a pupil is enrolled in another school district toward the maximum number of days for which a pupil may be suspended in any school year.

(3) Unlawful possession of any controlled substance ... except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(5) Assault or battery, as defined ... upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) ... A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. [Emphasis added.]

The activities at issue are first, the principal's or superintendent's recommendation to expel, and second, the governing board issuing an expulsion order, each of which is discussed below. The only offenses at issue here are those added to subdivision (a) by the test claim statutes: possession of a controlled substance (Stats. 1995, ch. 972), and assault or battery on a school employee (Stats. 1996, ch. 1052).

Expulsion recommendation for possession of a controlled substance and assault or battery on a school employee: Statutes 1995, chapter 972 amended section 48915, subdivision (a)(3), by adding "unlawful possession of any controlled substance" as specified, to the list of offenses for which a principal or superintendent shall recommend a pupil's expulsion unless a finding is made that expulsion is inappropriate under the circumstances. Subdivision (a)(3) excepts from the requirement to recommend expulsion for "the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis."

The 1996 amendments (Stats. 1996, ch. 1052, § 2) add to section 48915, subdivision (a), assault or battery, as defined,¹²⁵ on any school employee to the list of offenses for which a principal or superintendent shall recommend a pupil's expulsion unless a finding is made that expulsion is inappropriate under the circumstances.

The Commission finds that adding 'unlawful possession of any controlled substance' as specified, to the offenses for which a principal or superintendent recommends the pupil for expulsion is a state mandate. The plain language of subdivision (a) of section 48915 is mandatory: "the principal or the superintendent of schools shall¹²⁶ recommend the expulsion of a pupil for any of the following acts..." Although the recommendation is not made if expulsion is found inappropriate due to the circumstances, the principal or superintendent has no control over the existence of "inappropriate circumstances." If the facts or circumstances call for an expulsion, the principal or superintendent must recommend one. Therefore, the Commission finds that, effective January 1, 1996, it is a state mandate for the principal or superintendent to

¹²⁵ As defined in sections 240 and 242 of the Penal Code.

¹²⁶ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

recommend expulsion for a pupil who possesses a controlled substance, as defined, (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis).

Similarly, the Commission finds that adding ‘assault or battery on any school employee’ to the offenses for which a principal or superintendent recommends a pupil for expulsion is a state mandate. The plain language of subdivision (a) of section 48915 is mandatory: “[T]he principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts...”¹²⁷ Therefore, the Commission finds it is a state mandate on the principal or superintendent to recommend the expulsion of a pupil who commits an assault or battery on a school employee, effective January 1, 1997.

Preexisting law authorizes the principal to suspend or expel a pupil for possession of a controlled substance (former § 48915, subd. (c) & § 48900, subd. (c)). Section 48900 actually prohibits suspension or expulsion *unless* the principal or superintendent of the school determines that the pupil possesses a controlled substance (§ 48900, subd. (c)). One court has interpreted this section as giving discretion to suspend or expel a pupil.¹²⁸ Prior law did not, however, require the principal or superintendent to recommend expulsion for possession of a controlled substance. Therefore, the Commission finds, effective January 1, 1996, that it is a new program or higher level of service for the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.)

As to whether recommending expulsion for assault or battery on a school employee is a new program or higher level of service, preexisting law required the principal or superintendent to recommend expulsion for causing serious physical injury to another person. (§ 48915, subd. (a)(1).) But according to the following rules of statutory construction, ‘causing serious physical injury to another’ is not the same as ‘assault or battery on a school employee.’

Every word and phrase employed is presumed to be intended to have meaning and perform a useful function ... [and] a construction rendering some words in the statute useless or redundant is to be avoided.¹²⁹

Where the same word or phrase might have been used in the same connection in different portions of a statute but a different word or phrase having different meaning is used instead, the construction employing that different meaning is to be favored.¹³⁰

Given these rules, the Commission finds effective January 1, 1997, it is a state-mandated new program or higher level of service for the principal or superintendent of schools to recommend

¹²⁷ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

¹²⁸ *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1276.

¹²⁹ *People v. Contreras* (1997) 55 Cal.App.4th 760, 764.

¹³⁰ *Kray Cabling Co. v. County of Contra Costa* (1995) 39 Cal.App.4th 1588, 1593.

the expulsion of a pupil who commits assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052, § 2.)

Expulsion order for possession of a controlled substance or assault/battery on a school employee:

As discussed above, Statutes 1995, chapter 972 and Statutes 1996, chapter 1052, added two offenses to subdivision (a) of section 48915 for which a principal or superintendent must recommend a pupil's expulsion unless doing so is inappropriate under the circumstances. The two offenses are assault or battery, as defined, on any school employee, and possession of a controlled substance, as defined.

Unlike the principal's requirement to recommend expulsion discussed above, subdivision (b) of section 48915 states that "the governing board *may* order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a)." [Emphasis added.] Thus, the question is whether the district governing board is mandated by the state to issue an expulsion order for assault or battery, as defined, on any school employee, or possession of a controlled substance, as defined. The Commission finds that it is not state-mandated because the governing board is not legally compelled by the state to expel pupils for these offenses, nor is there evidence in the record the board is practically compelled by the state to expel a pupil for these offenses.

As to legal compulsion, the case *T.H. v. San Diego Unified School Dist.*,¹³¹ provides some guidance. In it, the court upheld a facial constitutional challenge to a school district's "zero tolerance" regulations that required a referral to the governing board for an expulsion hearing. The *T.H.* court analyzed the statutory scheme, including section 48915, comparing the more serious expulsion offenses in subdivisions (c) and (a) to the lesser expulsion offenses in subdivisions (b) and (e). In doing so, the *T.H.* court used the following rules:

[W]e independently determine the meaning of the relevant statutes and ascertain the Legislature's intent. In so doing, we 'consider first the words of the statute because they are generally the most reliable indicator of legislative intent.' [Citation omitted.] We must construe the language 'in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.' [Citation omitted.] Statutory construction rules 'are not to be rigidly applied in isolation ... the correct construction of a statute is not divorced from its context. [Citations omitted.]¹³²

Applying these rules to the test-claim statute amendments to subdivision (a) of section 48915, the words state: "Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel ..., the governing board *may* order a pupil expelled ... [Emphasis added.]" The use of the word "may" in the statute means that the governing board has discretion as to whether or not to expel the pupil. "'Shall' is mandatory and 'may' is permissive."¹³³ So the plain language of the statute does not require an expulsion order.

¹³¹ *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1278.

¹³² *Id.* at page 1280.

¹³³ Education Code section 75.

The Commission, like a court, also abides by the following rules of statutory construction: “Where the same word or phrase might have been used in the same connection in different portions of a statute but a different word or phrase having different meaning is used instead, the construction employing that different meaning is to be favored.”¹³⁴ And a “construction should not be given to a statute, if it can be avoided, which will lead to absurd results or to a conclusion plainly not contemplated by the legislature.”¹³⁵

Applying these rules, the use of “may” in subdivision (b) instead of “shall” demonstrates that the Legislature intended different meaning, and potentially a different outcome, for pupils who commit subdivision (a) offenses, as opposed to the more serious offenses in subdivision (c).¹³⁶ Construing the “may” in subdivision (b) the same as the “shall” in subdivision (c) would lead to a result that was not contemplated by the Legislature, which is deemed aware of the preexisting definition in Education Code 75: “[s]hall’ is mandatory and ‘may’ is permissive.”

The *T.H.* court interpreted section 48915 as the Legislature making specific “the circumstances for triggering an expulsion hearing and the findings that must be made at these hearings. These circumstances [are] grouped in three primary categories.”¹³⁷ The *T.H.* court labeled the offenses in subdivision (c), discussed above, as the “Most Serious Offenses,” and proceeded to discuss the others as the “non-Most Serious Offenses.”¹³⁸ Of these most serious offenses in subdivision (c), the Supreme Court, in the *San Diego Unified School Dist.* case, said the following:

Accordingly, in its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.¹³⁹

By contrast, of the lesser offenses in subdivision (e) (discussed below), the *T.H.* court characterized the principal or superintendent’s role by stating, “the Legislature *did not provide a mandatory or presumptive referral requirement*, and instead stated: ‘Upon recommendation by the principal, superintendent of schools, . . . , the governing board may order a pupil expelled upon finding [the identified statutory expulsion ground.]’”¹⁴⁰ Interpreting these lesser pupil expulsion offenses as having the same mandatory effect as those offenses in subdivision (c) would “lead to absurd results or to a conclusion plainly not contemplated by the legislature.”¹⁴¹

¹³⁴ *Kray Cabling Co. v. County of Contra Costa*, *supra*, 39 Cal.App.4th 1588, 1593.

¹³⁵ *Reuter v. Board of Sup’rs of San Mateo County* (1934) 220 Cal. 314, 321.

¹³⁶ Also see *Forster v. Superior Court* (1992) 11 Cal.App.4th 782, 791: “Since the Legislature used the words both “shall” and “may” in the different subdivisions of [Code Civ. Proc.] section 396, it presumably did so to distinguish between mandatory and directory provisions.”

¹³⁷ *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1277.

¹³⁸ *Id.* at page 1278 and *passim*.

¹³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

¹⁴⁰ *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1278. Emphasis added.

¹⁴¹ *Reuter v. Board of Sup’rs of San Mateo County* (1934) 220 Cal. 314, 321.

In creating the three-part hierarchy of expulsion offenses, the Legislature clearly intended to give flexibility and increasing levels of discretion to school principals, superintendents and district governing boards in dealing with pupil expulsions. As the *T.H.* court recognized, school districts have “broad authority to carry on activities and programs [that] are necessary or desirable in meeting their needs.”¹⁴² School districts also have “diverse needs unique to their individual communities and programs,” and “should have the flexibility to create their own unique solutions.”¹⁴³ As the Attorney General of California stated in a decision that a school may not adopt a “zero tolerance” policy to expel pupils for drug possession: “Other than with respect to the four extremely serious offenses listed in section 48915, subdivision (c)(3), a district may not refuse to exercise the discretionary authority granted to it under the statutory scheme.”¹⁴⁴

Moreover, because the school district governing board (rather than the state) makes the decision requiring a school district to incur the costs of the expulsion order, as well as associated downstream activities, the activity is not legally compelled.¹⁴⁵

Legal compulsion aside, in the *Kern High School Dist.* case, the California Supreme Court found that state mandates could be found in cases of practical compulsion on the local entity when a statute imposes “certain and severe penalties such as double taxation or other draconian consequences”¹⁴⁶ for not participating in the programs. The court also described practical compulsion as “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”¹⁴⁷

Here, nothing on the face of the statute imposes “certain and severe penalties such as double taxation or other draconian consequences”¹⁴⁸ for not expelling a pupil who possessed a controlled substance or committed an assault or battery on a school employee.

In the *San Diego Unified School Dist.* case,¹⁴⁹ the Supreme Court discussed section 48918’s requirement for a due process hearing prior to a discretionary expulsion. The court cited the school district’s and amici curiae briefs in the opinion’s footnote 22, noting their argument of an obligation to suspend and expel pupils based on the safe school’s provision of the state

¹⁴² Education Code section 35160; *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1281.

¹⁴³ Education Code section 35160.1, subdivision (a); *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1281.

¹⁴⁴ 80 Opinions of the Attorney General 348, 353 (1997). Since the opinion, possession of an explosive was added to the four offenses in subdivision (c) of section 48915.

¹⁴⁵ Cf. *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

¹⁴⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

¹⁴⁷ *Id.* at p. 731.

¹⁴⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751. In another part of the opinion, the court stated an example of practical compulsion as a substantial penalty (independent of the program funds at issue) for not complying with the statute. (*Id.* at p. 731).

¹⁴⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888.

constitution (Cal. Const. art. I, § 28, subd. (c)), as well as a right to an education (Ed. Code, § 48200 et seq. & Cal. Const. art. IX, § 5).¹⁵⁰ The court recognized the possibility of practical compulsion to expel pupils when it stated: “The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any school program.”¹⁵¹ Deciding the issue on alternative grounds, the Supreme Court expressly did not extend the holding of the *City of Merced* case to pupil expulsions.¹⁵²

The record for these test claims, however, contains no evidence or legal argument that school districts are practically compelled by the state to expel pupils for possession of controlled substances, or assault or battery on school district employees.

Since the expulsion order is a discretionary act by the school district governing board, the following rule articulated by the Supreme Court in the *Kern High School Dist.* case applies:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.¹⁵³

Therefore, the Commission finds section 48915, subdivisions (a)(3),¹⁵⁴ (a)(5),¹⁵⁵ and (b), that authorizes a governing board to issue an expulsion order for a pupil who either possesses a controlled substance, as defined, or commits an assault or battery, as defined, on any school employee, is not a state mandate within the meaning of article XIII B, section 6, and consequently is not reimbursable (§ 48915, subd. (a)(3), (a)(5) & (b), Stats. 1995, ch. 972, & Stats. 1996, ch. 1052).

D. Expulsion Order and Findings for Lesser Offenses (§ 48915 subds. (b) & (e))

Lowest in the three-part hierarchy of pupil expulsion offenses are those referenced in section 48915, subdivisions (b)¹⁵⁶ and (e),¹⁵⁷ which states (with test-claim statute amendments marked):

¹⁵⁰ *Id.* at page 887.

¹⁵¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887, fn. 22.

¹⁵² *Id.* at page 887-888, citing *City of Merced v. State of California* (1984) 153 Cal.App.3d 777. The *San Diego Unified School Dist.* court agreed with the Commission’s decision that found that the provision is not a new program or higher level of service based on the prior law’s definition of ‘good cause’.

¹⁵³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

¹⁵⁴ As amended by Statutes 1995, chapter 972.

¹⁵⁵ As amended by Statutes 1996, chapters 915 & 1052.

¹⁵⁶ Subdivision (b) cites the offenses in section 48900, (a) through (e), which are: (a) attempting to cause, or threatening to cause physical injury to another person, or willfully using force or violence on another, except in self defense; (b) possessing, selling or otherwise furnishing any firearm, knife, explosive, or other dangerous object unless the pupil has permission, as specified;

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

- (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- (2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. [¶]...[¶]

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

- (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- (2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.
[Emphasis added.]

The issue is whether the principal or superintendent’s expulsion recommendation and the governing board’s expulsion order for any of the following offenses added by the test claim statutes (to § 48915, subs. (b) & (e)) impose a state mandate:

- Possess an imitation firearm (§ 48900, subd. (m)): Statutes 1995, chapter 972 added “possession of an imitation firearm,” as defined, to those in subdivision (e) of section 48915 for which a pupil may be expelled.

(c) unlawfully possessing, using, selling, or otherwise furnishing, or being under the influence of, any controlled substance; (d) unlawfully offering, arranging, or negotiating to sell any controlled substance (as specified) an alcoholic beverage, or an intoxicant of any kind; and (e) committing or attempting to commit a robbery or extortion.

¹⁵⁷ Subdivision (e) cites the offenses in section 48900, subdivisions (f) through (m), and sections 48900.2 (sexual harassment), 48900.3 (hate violence) and 48900.4 (harassment, threats, or intimidation). The section 48900, subdivisions (f) – (m) offenses are: (f) cause or attempt to cause damage to school or private property; (g) steal or attempt to steal school or private property; (h) possess or use tobacco products, except prescription products; (i) commit an obscene act or engage in habitual profanity or vulgarity; (j) unlawful possession or unlawful offering, arranging or negotiating to sell drug paraphernalia; (k) disrupt school activities or otherwise willfully defy the valid authority of supervisors, teachers, administrators, school personnel engaged in the performance of their duties; (l) knowingly receiving stolen school or private property; (m) possess an imitation firearm, as defined.

Chapter 972 also amended subdivision (b) of section 48915,¹⁵⁸ by requiring the governing board to find one or both of the following: “(1) Other means of correction are not feasible or have repeatedly failed to bring about the proper conduct. (2) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.”

- Harass, threaten or intimidate school personnel or pupils (§ 48900.4): Statutes 1996, chapter 1052 amended the expulsion provision of subdivision (e) of section 48915 by adding the offense in section 48900.4, which is a pupil in grades 4 through 12 who intentionally engages in:

[H]arassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

- Willful use of force on another (§ 48900, subd. (a)(2)): Statutes 1997, chapter 637 amended section 48900 by adding, in subdivision (a)(2): “Willfully use force or violence upon the person of another, except in self-defense” as an offense for which a pupil may be suspended or expelled. Section 48915, subdivision (b), incorporates section 48900, subdivision (a), by reference. It authorizes expulsion for this offense based on finding one or both of the following: other means of correction are not feasible or have repeatedly failed to bring about proper conduct or, due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

- Aid or abet physical injury of another person (§ 48900, subds. (s) & (a)): Statutes 2001, chapter 484 added the following to subdivision (q) (now in subd. (s)) of section 48900:

A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion, pursuant to the provisions of this section.¹⁵⁹

Except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury *shall be subject to discipline pursuant to subdivision (a)*. [Emphasis added.]

¹⁵⁸ The subdivision (b) offenses referenced those in section 48900, subdivisions (a) through (e), which at the time chapter 972 was enacted, were: (a) caused, attempted to cause, or threatened to cause physical injury to another person; (b) possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object without permission; (c) unlawfully offered, arranged, or negotiated to sell any controlled substance or alcoholic beverage or an intoxicant of any kind; (e) committed or attempted to commit robbery or extortion.

¹⁵⁹ Statutes 2003, chapter 21 removed the phrase “the provisions of” in this sentence. The Commission makes no finding on this amendment.

As an expulsion provision, the last sentence above indicates that a pupil adjudged by a juvenile court to have aided or abetted a crime of physical violence, as specified, is “subject to discipline pursuant to subdivision (a).”¹⁶⁰ This puts the offense in the same category as those in section 48915, subdivision (b) (which incorporates the offenses in § 48900, subd. (a)) for which a pupil may be expelled.

Subdivisions (b) and (e) of section 48915 are the operative provisions containing the authority to suspend or expel. The statutory provisions incorporated into these subdivisions, cited above, describe the expulsion offenses. According to the plain language of both subdivisions (b) and (e) (“the governing board may order a pupil expelled”) the decision of the governing board in ordering an expulsion is discretionary - there is no legal compulsion to expel the pupil.¹⁶¹

As to the principal or superintendent’s role in recommending expulsion for subdivision (e) offenses, the court in *T.H. v. San Diego Unified School Dist.* stated, “the Legislature did not provide a mandatory or presumptive referral requirement, and instead stated: ‘Upon recommendation by the principal, superintendent of schools, . . ., the governing board may order a pupil expelled upon finding [the identified statutory expulsion ground.]’”¹⁶² Moreover, the Supreme Court in *San Diego Unified School Dist.*, characterized subdivision (e) (and by extension, subd. (b), which is nearly identical) as giving the principal discretion to recommend a pupil’s expulsion.¹⁶³ In short, there is no legal compulsion to recommend expulsion or issue an expulsion order for these offenses.

Nor is there any evidence or legal argument in the record regarding practical compulsion to expel for these offenses. Therefore, the Commission finds that it is not a state mandate for a principal or superintendent or hearing officer or administrative panel to recommend, or for a governing board to order, expulsion for a pupil who is determined to have done any of the following: possessed an imitation firearm (§ 48900, subd. (m), Stats. 1995, ch. 972), harassed, threatened, or intimidated school personnel or pupils (§ 48900.4, incorporated into § 48915, subd. (e), by Stats. 1996, ch.-1052), willfully used force or violence upon the person of another (§ 48900, subd. (a)(2), Stats. 1997, ch. 637), has been adjudged by a juvenile court to have aided or abetted a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury. (§ 48900, subds. (s) & (a), Stats. 2001, ch. 484.)

As to the governing board’s findings when issuing the expulsion order, before Statutes 1995, chapter 972, there was no requirement in subdivision (b) of section 48915 for the governing board (regarding the offenses in § 48915, subd. (b)) to find one or both of the following: “(1) Other means of correction are not feasible or have repeatedly failed to bring about the proper conduct. (2) Due to the nature of the act, the presence of the pupil causes a continuing

¹⁶⁰ Subdivision (a) of section 48900 authorizes expulsion or suspension for a pupil who: “(a)(1) Caused, attempted to cause, or threatened to cause physical injury to another person. (2) Willfully used force or violence upon the person of another, except in self-defense.”

¹⁶¹ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

¹⁶² *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1278. Emphasis added.

¹⁶³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 870.

danger to the physical safety of the pupil or others.”¹⁶⁴ As discussed above, the decision to recommend the expulsion is discretionary. The consideration of these two factors is a downstream activity that occurs only after the discretionary expulsion recommendation, and would not occur without the principal’s or superintendent’s recommendation to expel the pupil. As the Supreme Court stated regarding downstream requirements that are triggered by a discretionary activity:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.¹⁶⁵

Therefore, the Commission finds that it is not a state mandate within the meaning of article XIII B, section 6, upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel, for a district governing board, when ordering a pupil expelled under subdivision (b) of section 48915, to find one or both of the following: “(1) Other means of correction are not feasible or have repeatedly failed to bring about the proper conduct. (2) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.”

E. Suspension or Expulsion for Other Offenses (§§ 48900.3, 48900 (o) & 48900.7)

The following offenses in the test claim statutes (§§ 48900.3, 48900.7 and 48900, subd. (o)) may also subject a pupil to an expulsion.

Expel or suspend for hate violence (§ 48900.3): Also incorporated into section 48915, subdivision (e), is section 48900.3, which authorizes suspension or expulsion for hate violence, as defined,¹⁶⁶ if other means of correction are not feasible or have repeatedly failed to bring about the proper conduct, or due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others (§ 48915, subd. (e)). Section 48900.3 was technically amended by Statutes 1999, chapter 646 as follows:

In addition to the reasons ~~specified~~ *set forth* in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of hate violence, as defined in subdivision (e) of Section ~~33032.5~~ 233.

¹⁶⁴ Before being rewritten by Statutes 1995, chapter 972, this governing board finding was only made for the offenses listed in section 48900, subdivisions (f) through (l) (former § 48915, subd. (d)). The findings were not required for expulsions for offenses listed section 48900, subdivisions (a) through (e) (former § 48915, subd. (c), Stats. 1994, ch. 1198).

¹⁶⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

¹⁶⁶ Hate violence is defined in Education Code section 233, subdivision (e), as “any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.”

Given that the 1999 changes are nonsubstantive, the Commission finds that section 48900.3, as amended by Statutes 1999, chapter 646, is not a state mandate because the amendment imposes no activities on school districts.

Two additional offenses in the test claim statutes are not among the expulsion offenses listed in section 48915: “harass, threaten or intimidate a pupil witness” and “terroristic threats.”

Expel or suspend for harassing, threatening, or intimidating a pupil witness (§ 48900, subd. (o)) or for terroristic threats (§ 48900.7): Statutes 1996, chapter 915 added to section 48900 a new subdivision (o) regarding harassing, threatening, or intimidating a pupil witness. It states:

A pupil may not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) through (q), inclusive. [¶]...[¶] (o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.¹⁶⁷

Statutes 1997, chapter 405 added section 48900.7 to the Education Code, which states:

In addition to the reasons specified in Sections 48900, 48900.2, 48900.3, and 48900.4, a pupil *may be* suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats^[168] against school officials or school property, or both. (Emphasis added.)

The plain meaning of section 48900 prohibits a suspension or an expulsion recommendation “unless” the principal or superintendent makes a determination regarding the pupil’s offense. Sections 48900 and 48900.7 require no suspension or expulsion recommendation. Rather, the statute’s use of ‘may not’ (in 48900) indicates that suspension or expulsion is prohibited unless

¹⁶⁷ Statutes 1996, chapter 915 amended section 48915 to add this offense to the discretionary expulsion provisions in subdivision (e), but this amendment did not become effective because Statutes 1996, chapter 1052, section 2, which did not refer to subdivision (o) of section 48900, was enacted and took precedence.

¹⁶⁸ Terroristic threat, as defined in subdivision (b) of section 48900.7, “shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.”

the principal or superintendent makes the requisite determinations. Similarly, the use of ‘may’ in section 48900.7 indicates that suspension or an expulsion recommendation is discretionary.¹⁶⁹

In *T.H. v. San Diego Unified School Dist.*, the court interpreted section 48900 as discretionary, stating: “Education Code section 48900 states a student may be ‘suspended from school or recommended for expulsion’ for committing one of 18 identified offenses.”¹⁷⁰ Thus, there is no legal compulsion to suspend or expel a pupil for harassing, threatening or intimidating a pupil who is a complaining witness or witness in a school disciplinary proceeding. And based on the permissive language of section 48900.7, there is no legal compulsion to suspend or recommend the expulsion of a pupil for making terroristic threats.

Nor is there evidence or argument in the record regarding practical compulsion, as the statute contains no “certain and severe penalties such as double taxation or other draconian consequences”¹⁷¹ for not suspending or recommending expulsion of a pupil who harasses, threatens, or intimidates a pupil witness, or for not suspending or expelling a pupil who makes terroristic threats.

Therefore, the Commission finds that it is not a state mandate for a principal or superintendent to suspend or recommend expulsion of a pupil who harassed, threatened or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding, (§ 48900, subd. (o), added by Stats. 1996, ch. 915) or who made terroristic threats, as defined. (§48900.7, added by Stats. 1997, ch. 405.)

F. Procedures in Expulsion Hearings (§ 48918)

As the Supreme Court observed in the *San Diego Unified School Dist.* case, “whenever expulsion is recommended a student has a right to an expulsion hearing.”¹⁷²

Section 48918 requires school districts to establish rules and regulations governing expulsion procedures. The rules and regulations must include the following: an expulsion hearing within 30 days of the alleged offense, with exceptions; an expulsion decision within 10 days after the hearing, with exceptions; notice of the hearing, as specified, including notice that the pupil may be represented by legal counsel or a nonattorney adviser. For allegations of sexual assault or attempted sexual assault, or sexual battery, there are additional expulsion procedures (in §§ 48918 & 48918.5) that are discussed separately below.

Since the Commission’s original *Pupil Expulsions* decision only made findings on section 48918 as last amended by Statutes 1990, chapter 1231,¹⁷³ the issue is whether the subsequent

¹⁶⁹ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is discretionary.”

¹⁷⁰ *T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th 1267, 1276.

¹⁷¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751. In another part of the opinion, the court stated an example of practical compulsion as a substantial penalty (independent of the program funds at issue) for not complying with the statute. (*Id.* at p. 731).

¹⁷² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 870.

amendments pled (Stats. 1995, chs. 937, 972 & 974, Stats. 1996, ch. 915, Stats. 1998, ch. 489, Stats. 1999, ch. 332) impose a state-mandated, new program or higher level of service. The activities that were amended into the test claim statutes are issuing a subpoena in the expulsion hearing process, postponing the expulsion hearing, and clarifying the pupil notice provision.

Issue subpoena and postpone hearing: Section 48918 states: “The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following: ...”

Statutes 1995, chapter 974, inserted a new subdivision (i) into section 48918 authorizing the district governing board to issue subpoenas for the personal appearances of witnesses at the expulsion hearing.

Statutes 1998, chapter 489, amended subdivision (a) of section 48918 by adding that if compliance with the time requirements for conducting an expulsion hearing is impractical due to a summer recess for more than two weeks, the days during the recess are not counted as schooldays in meeting the time requirements, not to exceed 20 schooldays. Unless the pupil requests postponement, the hearing shall not be held later than 20 days before the first day of school.

Because section 48918 states that each “school district shall establish rules and regulations”¹⁷⁴ the Commission finds that the one-time activity of amending the school district’s expulsion rules and regulations to incorporate the subpoena authority and hearing postponement, as described above, are mandated by the state. The Commission also finds that, since it was not previously required, adding these procedures to the rules and regulations is a new program or higher level of service.

Therefore, the Commission finds that, effective January 1, 1996,¹⁷⁵ and operative July 1, 1996 (Stats. 1995, ch. 974, § 9) section 48918, subdivision (i) (Stats. 1995, ch. 974, § 7.5), is a state-mandated new program or higher level of service for the one-time activity of school districts amending their expulsion rules and regulations to provide for the issuing of subpoenas, as follows:

(i) (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the

¹⁷³ Although the Supreme Court took jurisdiction over the amendment to section 48918 made by Statutes 1994, chapter 146, (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859,871, fn. 9) this 1994 amendment was merely a code maintenance bill that made no substantive changes.

¹⁷⁴ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

¹⁷⁵ See Statutes 1995, chapter 974, sections 7.5 and 10.

pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.¹⁷⁶

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

The Commission also finds that exercising this subpoena power is not a state mandate because doing so is a discretionary act of the governing board. Section 48918, subdivision (i)'s plain language provides school districts with discretion: "the governing board *may* issue subpoenas."¹⁷⁷ [Emphasis added.]

Claimant, in comments on the draft staff analysis submitted May 2008, argues as follows:

The hearing is a necessary part of the expulsion due process. The school district is required to adopt all of the due process rules specified in Section 48918 and each of these methods becomes a tool for implementing the state mandated due process for expulsions. Witnesses are integral to satisfy the "minimum requirements of federal due process" contemplated by the *San Diego* decision. If the witnesses do not attend voluntarily, the school district needs to utilize the subpoena power.

Similarly, the SDUSD, in May 2008 comments on the draft staff analysis, asserts that issuing a subpoena is a hearing cost designed to satisfy the minimum requirements of federal due process.

¹⁷⁶ This was amended to section 11455.20 of the Government Code by Statutes 2003, chapter 552. The Commission makes no finding on this 2003 amendment.

¹⁷⁷ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

Both claimant and SDUSD ignore the Fourth District Court of Appeal decision that found the subpoena power in section 48918 is discretionary. In the 2003 case *Woodbury v. Brown-Dempsey*,¹⁷⁸ the court examined the subpoena power in section 48918, first concluding that “Based solely on the language of the statute, we would conclude that Education Code section 48918, subdivision (i)(1) prescribes a permissive, rather than a mandatory, act.”¹⁷⁹ The court then analyzed the legislative history of subdivision (i) of section 48918, noting that the bill had originally required a school board to issue subpoenas, but was amended to make subpoenas discretionary. The court concluded that this amendment demonstrated legislative intent that the statute not be mandatory.¹⁸⁰ According to the court, requiring mandatory issuance of subpoenas on request “would foreseeably embroil school boards in protracted prehearing proceedings solely concerning contested rulings on the issuance of subpoenas” and would “do little to enhance effectiveness of expulsion hearings.”¹⁸¹ The court also rejected the notion that a mandatory subpoena power is necessary to satisfy due process requirements.¹⁸²

Therefore, the Commission finds that issuing subpoenas for expulsion hearings (§ 48918, subd. (i), Stats. 1995, chs. 937 & 974) is not a mandate on school districts within the meaning of article XIII B, section 6, and consequently, is not reimbursable.

For the same reasons discussed above, the Commission also finds that the one-time activity of amending the school district’s expulsion rules and regulations to incorporate the hearing postponement changes of Statutes 1998, chapter 489, is a state mandate, effective January 1, 1999. Additionally, the Commission finds that, since it was not previously required, adding these procedures to the rules and regulations is a new program or higher level of service. Therefore, the Commission finds that, effective January 1, 1999, section 48918, subdivision (a) (Stats. 1998, ch. 489), is a state-mandated new program or higher level of service for the school district to amend its expulsion rules and regulations to include the following:

If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.

¹⁷⁸ *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App4th 421, 433-437.

¹⁷⁹ *Id.* at page 433.

¹⁸⁰ *Id.* at pages 434-436

¹⁸¹ *Id.* at page 437.

¹⁸² *Ibid.*

The Commission also finds that exercising this authority to postpone the hearing is not a state mandate. This 1998 amendment to subdivision (a) of section 48918 merely provides flexibility in meeting statutory deadlines and does not otherwise require a school district activity. Therefore, the Commission finds that it does not impose a state mandate on school districts and is not reimbursable.

Clarify notice for pupil representation: Statutes 1999, chapter 332 amended subdivision (b)(5) of section 48918 as follows (amendments in ~~strikeout~~ or underline):

The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following: [¶]...[¶]

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following: [¶]...[¶]

(5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or ~~employ~~ ~~or to~~ be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents..."

Chapter 332 also added definitions of "legal counsel" and "nonattorney advisor" and stated: "Nothing in this section is intended to require a pupil or the pupil's parent or guardian to be represented by legal counsel or by a nonattorney adviser at the hearing."

Claimant pled the activity, as of January 1, 2000, of notifying and advising pupils of their opportunity to appear and be represented by counsel.

The Commission finds that amending the district's rules and regulations to provide for this notice, as well as amending the notice to the pupil of his or her right to be represented by legal counsel or a nonattorney adviser, are state mandates, effective January 1, 2000.

In the *San Diego Unified* case, the California Supreme Court discussed procedural costs for mandatory expulsions as follows:

Because it is state law (Education Code section 48915's mandatory expulsion provision) and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows ... that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), *all* such hearing costs—those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements—are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.¹⁸³

¹⁸³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 881-882.

As discussed above, pupil expulsions for the mandatory offenses in section 48915, subdivision (c) are state-mandated. Applying the holding from the *San Diego Unified* case quoted above, because these expulsions are based on state and not federal law, the hearing and notice costs are state mandated and not federally mandated.

Also, the amended notice provision is a new program or higher level of service. Prior law only required notice of the opportunity to be represented by “counsel.” This was amended by the test claim statute to “legal counsel or by a nonattorney adviser.” The amended notice, therefore, is a new program or higher level of service in that it was not required before the test claim statute.

Therefore, the Commission finds effective January 1, 2000, that the amendment to subdivision (b)(5) of section 48918 by Statutes 1999, chapter 332, is a state-mandated new program or higher level of service for the one-time activities of (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney advisor when the governing board orders the pupil expelled for certain offenses specified below.

The next issue is to which expulsion offenses this notice revision applies. It is a state mandate for the principal or superintendent to recommend an expulsion for a pupil who committed an offense in subdivision (c) of section 48915, as discussed above, and this recommendation entitles the pupil to a hearing.¹⁸⁴ Therefore, the Commission finds, effective January 1, 2000 (except for one later-enacted offense effective in 2002), that the amended notice in (b)(5) of section 48918 (Stats. 1999, ch. 332) is a state-mandated new program or higher level of service when the principal or superintendent recommends the pupil for expulsion for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subds. (c)(2) & (d), Stats. 1995, ch. 972).
- Unlawfully sells a controlled substance. (§ 48915, subd. (c)(3) & (d)).
- Possessing, selling or furnishing a firearm without permission (§ 48915, subds. (c)(1) & (d)).
- Committed or attempted to commit a sexual assault, as defined, or committed a sexual battery, as defined (§§ 48900, subd. (n) & 48915, subds. (c)(4) & (d)).
- Effective January 1, 2002, possessing an explosive (§ 48915, subds. (c)(5) & (d)).

Even though expulsion for possession of an explosive is a federal mandate, as discussed above, the Commission finds that it is reimbursable to notify the pupil of his or her right to a nonattorney advisor when a pupil is expelled for this offense. In *Long Beach Unified School Dist. v. State of California*,¹⁸⁵ the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal

¹⁸⁴ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 870.

¹⁸⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155.

constitutional or case law because the state requirements went beyond federal requirements.¹⁸⁶ The reasoning of *Long Beach Unified School Dist.* is instructive in this case. Although expelling a pupil for possession of an explosive is a federal mandate, the notice of legal counsel or a nonattorney advisor is an activity, like in *Long Beach Unified School Dist.*, that goes beyond the federal requirement to expel the pupil.¹⁸⁷ Moreover, the state freely chose to impose this notice activity on school district governing boards that expel pupils for possession of an explosive, making the activity a state and not a federal mandate.¹⁸⁸

The Commission also finds that because it is mandatory for a principal or superintendent to recommend expulsion when a pupil commits an offense listed in subdivision (a) of section 48915, and that recommendation triggers the right to an expulsion hearing,¹⁸⁹ effective January 1, 2000, that the amended notice in (b)(5) of section 48918 (Stats. 1999, ch. 332) is a state-mandated new program or higher level of service when the principal or superintendent recommends the pupil for expulsion for any of the following offenses:

- Unlawfully possesses a controlled substance, as defined, (except for the first offense of possession of not more than one anvoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972).
- Commits assault or battery, as defined, on a school employee (§ 48915, subd. (a)(5), Stats. 1996, ch. 1052).
- Causes serious physical injury to another person, except in self defense. (§ 48915, subd. (a)(1)).
- Possession of any knife or other dangerous object of no reasonable use to the pupil (§ 48915, subd. (a)(2)).
- Robbery or extortion (§ 48915, subd. (a)(4)).

G. Expulsion Procedures for Alleged Sexual Assault or Sexual Battery (§§ 48918 (b)(c) & (h), & 48918.5)

Statutes 1996, chapter 915 added expulsion procedures (in §§ 48918 & 48918.5) that apply exclusively when the governing board conducts an expulsion hearing for a pupil who allegedly commits or attempts to commit a sexual assault, or commits a sexual battery. Section 48918 requires the school district to establish rules and regulations governing procedures for expelling pupils. Section 48918 was amended to add to the rules and regulations the following that apply only in cases where sexual assault or attempted sexual assault, or sexual battery, are alleged:

[A] complaining witness shall be given five days' notice prior to being called to testify, and shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during their testimony.

¹⁸⁶ *Id.* at page 173.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564, 1593-1594.

¹⁸⁹ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 870.

Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code¹⁹⁰ shall be followed for the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)

[E]vidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the

¹⁹⁰ This Penal Code provision authorizes up to two support person for prosecuting witnesses for certain crimes. Subdivision (b) and (c) of Penal Code section 868.5 provide:

(b) If the person or persons so chosen [as support persons] are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

Statutes 1996, chapter 915 also added section 48918.5 to the Education Code, discussed below, which details further procedures when the expulsion hearing is based on allegations of sexual assault or attempted sexual assault or sexual battery, such as:

- (1) Providing the complaining witness with a copy of the applicable disciplinary rules.
- (2) Advising him or her of the right to receive five days' notice of scheduled testimony.
- (3) Having up to two adult support persons at the time the complaining witness testifies, and
- (4) Having the hearing closed when the complaining witnesses' testimony is presented.

Other provisions include postponement of the hearing and conduct at the hearing, and requiring the complaining witness and accused pupil to refrain from contacting each other.

Witness & hearing procedures for sexual assault or battery in § 48918: The Commission finds amending the school district's expulsion rules and regulations is a state mandate for all of the amendments in section 48918 made by Statutes 1996, chapter 915, based on the language in section 48918 that states that the, "school district shall establish rules and regulations."¹⁹¹ Specifically, the Commission finds that section 48918 (Stats. 1996, ch. 915) imposes a state mandate on school districts for the one-time activity of including in their expulsion rules and regulations all of the following when the pupil is alleged to have committed or attempted to commit a sexual assault, or committed a sexual battery:

- A complaining witness shall be given five days' notice prior to being called to testify (§ 48918, subd. (b), Stats. 1996, ch. 915).
- A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. (*Ibid.*)
- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. (*Ibid.*)
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code^[192] shall be followed for the hearing. (*Ibid.*)

¹⁹¹ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

¹⁹² Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

The Commission also finds that including these in the school district's expulsion rules and regulations is a new program or higher level of service effective January 1, 1997, since they were not required to be in the policies and procedures under prior law.

The next issue is which of these activities are a state-mandated new program or higher level of service to implement.

Implementation of at least some of these witness procedures is a state-mandated new program or higher level of service for the following reasons. First, the legislative history of the test claim statute indicates that the intent of the witness procedures was to "provide protections for a complaining witness."¹⁹³ Second, it is a mandate to immediately suspend and expel a pupil for sexual assault or attempted sexual assault, or sexual battery, which automatically triggers the hearing procedures in section 48918 that apply to expulsions for those offenses. Regarding similar statutes that trigger section 48918 expulsion procedures, the Supreme Court stated, "it is appropriate to characterize the ... provision as *mandating* an immediate suspension, a recommendation of expulsion *and hence, an expulsion hearing.*"¹⁹⁴ Therefore, not only is putting these procedures in the school district's expulsion rules and regulations a state-mandated new program or higher level of service, but implementing at least some of them is also.

The Commission finds that giving the complaining witness five days notice to testify, as well as admonishing the support persons that the hearing is confidential, are state mandates. Subdivision (b) of section 48918¹⁹⁵ (Stats. 1996, ch. 915) uses "shall"¹⁹⁶ to require both activities, as follows:

In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or committing a sexual battery as defined ... a complaining witness shall be given five days' notice prior to being called to testify, and shall be entitled to have up to two adult support persons, ... Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential.

Preexisting law did not require notice for complaining witnesses; only for the accused pupil 10 calendar days before the expulsion hearing. (§ 48918, subd. (b).) Preexisting law also did not require a witness' support person(s) receiving admonishment regarding confidentiality. Therefore, the Commission finds that giving the complaining witness five days' notice before testifying, and admonishing the witness' support person(s) that the hearing is confidential, is a new program or higher level of service when a pupil is recommended for an expulsion involving

¹⁹³ "The sections of the bill providing protections for a complaining witness are modeled after Penal and California Evidence Code sections relating to the treatment of witnesses and evidence in judicial proceedings relating to sexual misconduct." Senate Committee on Education, Analysis of Assembly Bill No. 692 (1995-1996 Reg. Sess.) amended May 1, 1996, page 6.

¹⁹⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 870. Emphasis in original.

¹⁹⁵ This provision is currently in subdivision (b)(5) of section 48918.

¹⁹⁶ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

allegations of committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined, effective January 1, 1997. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

As to the complaining witness' right to have two adult support persons in section 48918, subdivision (b) (now subd. (b)(5)) the Commission finds that having these support persons is not a state mandate because it does not require a school district activity. There is an exception, however, if one or both of the support persons is also a witness, in which case the provisions of Section 868.5 of the Penal Code are required to be followed at the hearing. This section 868.5 procedure includes: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti¹⁹⁷ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

As to the right to closed session testimony for a witness complaining of sexual assault or alleged sexual assault, or sexual battery (§ 48918, subd. (c)) the Commission finds that this is a state mandate to have the testimony in closed session "when testifying at a public meeting would threaten serious psychological harm to the complaining witness, and there are no alternative procedures to avoid the threatened harm,"¹⁹⁸ as described. Subdivision (c) states the alternative procedures as follows:

If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900, a complaining witness *shall have the right* to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (Emphasis added.)

¹⁹⁷ The corpus delicti is the basic element or fact of a crime.

¹⁹⁸ Section 48918, subdivision (c), as amended by Statutes 1996, chapter 915.

Preexisting law, in the first paragraph of paragraph (c), states that the hearing is closed to the public unless the pupil being expelled requests in writing that it be conducted at a public meeting at least five days before the hearing date, but contained no mention of the complaining witness' rights. Because this was not required under prior law, the Commission finds that it is a new program or higher level of service for the school district to allow the complaining witness to have closed session testimony if the specified conditions (threaten serious psychological harm and no alternative procedures to avoid it) are met.

The Commission also finds that the prohibition in subdivision (h) of section 48918 (Stats. 1996, ch. 915) of introducing a complaining witness' prior sexual conduct does not mandate an activity on school districts. If the person conducting the hearing makes a determination that extraordinary circumstances exist requiring the evidence of specific instances of the witness' prior sexual conduct to be heard, the person does so at his or her own discretion, so any resulting notice and opportunity for opposition is not mandated by the state. As to the witness' right to representation in subdivision (h), there is no indication that this requires a school district activity. Therefore, the Commission finds that witness representation is not a state mandate. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

In sum, the Commission finds that effective January 1, 1997, the amendments of Statutes 1996, chapter 915, to section 48918 impose a state-mandated new program or higher level of service on school districts to do the following in expulsion hearings when a pupil is recommended for expulsion for committing or attempting a sexual assault, as defined, or committing a sexual battery, as defined:

- Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the

evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti¹⁹⁹ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§§ 48918, subd. (c), Stats. 1996, ch. 915.)

Witness & hearing procedures for sexual assault or battery (§ 48918.5): Statutes 1996, chapter 915 added section 48918.5, which requires, for expulsions based on allegations of sexual assault or attempted sexual assault, or sexual battery, as defined, the school district to establish rules and regulations governing procedures, to include, but not be limited to, the following:

At the time that the expulsion hearing is recommended, the complaining witness shall be provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)

The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness where the allegations arise under subdivision (n) of section 48900. (§ 48918.5, subd. (b).)

The district shall provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness shall be allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining

¹⁹⁹ The corpus delicti is the basic element or fact of a crime.

witness's support persons to accompany him or her to the witness stand.
(§ 48918.5, subd. (c).)

[C]omplaining witnesses and accused pupils are to be advised immediately to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d).)

The Commission finds that all of the provisions above are mandated to be in the district's rules and regulations governing expulsion procedures, according to the plain language of section 48918.5:

In expulsion hearings involving allegations brought pursuant to subdivision (n) of Section 48900, the governing board of each school district shall establish rules and regulations governing procedures. The procedures shall include, but are not limited to, all of the following:²⁰⁰

The Commission also finds that putting these procedures in the district's rules and regulations is a new program or higher level of service, since the district was not required to have them under prior law. Therefore, the Commission finds that, effective January 1, 1997, it is a state-mandated new program or higher level of service for the school district to insert all of the above into its expulsions rules and regulations. (§ 48918.5, Stats. 1996, ch. 915.)

Thus, the Commission finds that section 48918.5 is a state mandate to amend the school district's rules and regulations to include the language above regarding complaining witnesses and hearing postponement (in subds. (a),(b), (c) & (d) of § 48918.5).

The use of "may" in section 48918.5 indicates which procedures are discretionary and not mandated by the state.²⁰¹ For example, the authorization to postpone the hearing is discretionary because subdivision (b) states that the hearing "may" be postponed for one schoolday to accommodate the pupil's needs. Part of subdivision (c) is also discretionary because it lists activities based on "the discretion of the person conducting the hearing," such as: allowing the complaining witness reasonable periods of relief from examination and cross-examination to leave the hearing room, arranging the seating in the hearing room to facilitate a less intimidating environment for the complaining witness, limiting the time for taking the testimony of a complaining witness to the hours he or she is normally in school if there is no good cause to take testimony during other hours, and permitting the complaining witness to have one support person accompany him or her to the witness stand. The Commission finds that implementing these discretionary activities in subdivisions (b) and part of (c) are not mandated by the state.

Even though the Supreme Court, in *San Diego Unified School Dist.*, held that all hearing procedures that flow from mandatory expulsions are reimbursable, the court's reasoning does not apply to these discretionary, non-federal procedures. First, the discussion of the procedures in *San Diego Unified School Dist.* focused on *federal* due process law, which is not implicated in the discretionary provisions of subdivisions (b) and (c). Second, the court's conclusion was based on "the statutes existing at the time of the test claim in this case (state legislation in effect

²⁰⁰ According to Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

²⁰¹ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

through mid-1994).”²⁰² There were no discretionary hearing procedures at issue in *San Diego Unified School Dist.* except the decision to expel (which the court considered). Therefore, because discretionary non-federal procedures were added by section 48918.5 (Stats. 1996, ch. 915) the reasoning of *San Diego Unified School Dist.* regarding reimbursable procedures for hearing costs does not apply.

For the same reasons discussed above for the 48918 procedures, the Commission also finds that implementation of some of these procedures in subdivisions (a), (c) and (d) of section 48918.5, is mandated by the state based on the legislative history of the test claim statute²⁰³ as well as the requirement to expel for these offenses,²⁰⁴ which automatically triggers the hearing procedures²⁰⁵ in section 48918.5 that apply to expulsions for those offenses. Thus, the Commission finds that based on the plain language in section 48918.5, implementing the following is state-mandated in hearings involving allegations brought pursuant to subdivision (n) of section 48900 (sexual assault or attempted sexual assault, or sexual battery):

- At the time the expulsion hearing is recommended, to provide the complaining witness with a copy of the applicable disciplinary rules and advise him or her of various rights regarding the hearing. (§ 48918.5, subd. (a).)
- For the district to provide a nonthreatening environment for a complaining witness, as specified. (§ 48918.5, subd. (c).)
- To advise the complaining witness and accused pupil(s) to immediately refrain from personal or telephonic contact with each other during the pendency of the expulsion process. (§ 48918.5, subd. (d).)

The Commission also finds that these mandatory activities above in section 48918.5 are a new program or higher level of service, in that school districts were not required to implement them before Statutes 1996, statutes 915. Therefore, the Commission finds, effective January 1, 1997, that it is a state-mandated new program or higher level of service for school districts to implement the following when a pupil is recommended for expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined:

- At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days’ notice of the complaining witness’s scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) “have the hearing closed during the time

²⁰² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 881-882.

²⁰³ “The sections of the bill providing protections for a complaining witness are modeled after Penal and California Evidence Code sections relating to the treatment of witnesses and evidence in judicial proceedings relating to sexual misconduct.” Senate Committee on Education, Analysis of Assem. Bill No. 692 (1995-1996 Reg. Sess.) amended May 1, 1996, page 6.

²⁰⁴ Education Code Section 48915, subdivision (c)(4) requires expulsion for sexual assault or sexual battery.

²⁰⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 870.

they [sic] testify pursuant to subdivision (c) of section 48918.” (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)

- Provide a nonthreatening environment for a complaining witness in order to better enable them [sic] to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915).

H. Suspend Enforcement of Expulsion Order & Reinstate Pupil (§ 48917, former § 48907)

At the time it issues an expulsion order, the school district governing board does several things. It can suspend enforcement of the expulsion order. It recommends a plan of rehabilitation to the pupil²⁰⁶ and refers the pupil to a program of study that meets specified conditions.²⁰⁷ It also sets a date upon which the pupil will be reviewed for readmission (except for pupils who commit offenses listed in § 48915, subd. (c), for which the date for readmission is set at one year from the expulsion).²⁰⁸ The governing board also ensures an education program is provided to the expelled pupil,²⁰⁹ notifies the pupil’s parent or guardian of this placement,²¹⁰ as well as the right to appeal the expulsion,²¹¹ and maintain records of expulsions.²¹² The parent or guardian is required, upon enrolling the pupil in a new school district, to notify the new district of the expulsion.²¹³

Section 48917 governs suspending enforcement of the expulsion order. It was enacted as section 48907.5 in 1976 (Stats. 1976, ch. 1010)²¹⁴ and amended in 1979 (Stats. 1979, ch. 1014). It was

²⁰⁶ Education Code section 48916, subdivision (b).

²⁰⁷ Education Code section 48915, subdivision (d).

²⁰⁸ Education Code section 48916, subdivision (a).

²⁰⁹ Education Code section 48916.1, subdivision (a), which states: “Except for pupils expelled pursuant to subdivision (d) of Section 48915, the governing board of a school district is required to implement the provisions of this section only to the extent funds are appropriated for this purpose in the annual Budget Act or other legislation, or both.”

²¹⁰ Education Code section 48918, subdivision (j)(2).

²¹¹ Education Code section 48918, subdivision (j)(1).

²¹² Education Code sections 48918, subdivision (k) & 48916.1, subdivision (e).

²¹³ Education Code section 48918, subdivision (j)(3).

²¹⁴ It was originally enacted as section 10605.1 in the 1959 Education Code by Statutes 1975, chapter 1253, effective January 1, 1976. Article XIII B, section 6 is not a bar to reimbursement,

renumbered section 48917 in 1983 (Stats. 1983, ch. 498) and amended in 1990 and 1995 (Stats. 1990, ch. 1234, Stats. 1995, ch. 95). No determination was made on sections 48917 or 48907.5 in the original *Pupil Expulsions* (CSM 4455) or *Pupil Suspensions* (CSM 4456) decisions.

Section 48917, subdivision (a), states in part:

The governing board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and ... as a condition of the suspension of enforcement, assign the pupil to a school, class, or program that is deemed appropriate for the rehabilitation of the pupil.

Because the plain language of subdivision (a) is permissive,²¹⁵ the Commission finds that it is not a mandate to suspend enforcement of an expulsion order or, as a condition of suspending enforcement, to assign the pupil to a school, class, or program deemed appropriate for rehabilitation of the pupil.

Subdivision (b) of section 48917 (as of Stats. 1990, ch. 1234) states: “the governing board shall apply the criteria for suspending the enforcement of the expulsion order equally to all pupils.” But since suspending the expulsion order itself is discretionary, requiring it to be applied equally is conditional on (and downstream to) the discretionary act of suspending enforcement. Therefore, the Commission finds that equally applying the criteria for suspending enforcement of the expulsion order is also not a state-mandated activity.

During the period of suspension of the expulsion order, the pupil is deemed to be on probationary status. (§ 48917, subd. (c).)

The governing board may also revoke the suspension of an expulsion order “if the pupil commits any of the acts enumerated in Section 48900 or violates any of the district’s rules and regulations governing pupil conduct.” (§ 48917, subd. (d).) If the pupil does so, he or she may be expelled under the original expulsion order. Expunging the records of the expulsion proceeding is also authorized. The Commission finds that these activities in subdivision (d) are not state-mandated, both as discretionary activities themselves, and as downstream activities from a discretionary activity.

Subdivision (e) of section 48917 states: “Upon satisfactory completion of the rehabilitation assignment of a pupil, the governing board shall reinstate the pupil in a school of the district and may also order the expungement of any or all records of the expulsion proceedings.” Although subdivision (e) appears to require readmission, it is a downstream activity resulting from the discretionary decisions to both suspend the enforcement of the expulsion order and assign the pupil to rehabilitation. And the language of subdivision (e) indicates that expunging the pupil’s expulsion record is not required. Therefore, the Commission finds that subdivision (e) of section 48917 (Stats. 1983, ch. 498 & Stats. 1995, ch. 95) is not a state mandate.

which provides that the Legislature need not provide a subvention of funds for statutes enacted before January 1, 1975.

²¹⁵ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

In sum, every version of section 48917 and former section 48907.5²¹⁶ is permissive and discretionary, and therefore, not mandated by the state. These statutes establish conditions under which local school officials, rather than the state, decide to suspend enforcement of the expulsion order.²¹⁷ Nor does the statute on its face impose “certain and severe penalties such as double taxation or other draconian consequences”²¹⁸ for not suspending the expulsion order, and the record is silent on evidence or legal argument regarding practical compulsion. In the *Kern High School Dist.* case, the California Supreme Court stated:

[A]ctivities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.²¹⁹

Therefore, the Commission finds that section 48917 and former section 48907.5 (Stats. 1976, ch. 1010, Stats. 1979, ch. 1014, Stats. 1983, ch. 498, Stats. 1990, ch. 1234, & Stats. 1995, ch. 95) do not impose a state mandate on schools or school districts within the meaning of article XIII B, section 6 of the California Constitution.

I. Recommend a Rehabilitation Plan to Expelled Pupil (§ 48916 (b))

Subdivision (b) of section 48916 specifies a rehabilitation plan for the expelled pupil as follows:

The governing board shall recommend a plan of rehabilitation for the pupil at the time of the expulsion order, which may include, but not be limited to, periodic review as well as assessment at the time of review for readmission. The plan may also include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs.

The issue is whether the post-1983 amendments to subdivision (b) of section 48916 (Stats. 1992, ch. 152, Stats. 1995, ch. 974, since the *Pupil Expulsions* CSM 4455 decision)²²⁰ impose a state mandate to recommend a plan of rehabilitation to the expelled pupil.

²¹⁶ Section 48907.5 (Stats. 1976, ch. 1010), amended by Statutes 1979, chapter 1014, renumbered section 48917 by Statutes 1983, chapter 498, and amended in 1990 and 1995 (Stats. 1990, ch. 1234, Stats. 1995, ch. 95).

²¹⁷ Cf. *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

²¹⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751. In another part of the opinion, the court stated an example of practical compulsion as a substantial penalty (independent of the program funds at issue) for not complying with the statute. (*Id.* at p. 731).

²¹⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th at page 742.

²²⁰ Statutes 2003 chapter 552 is an amendment that clarifies when the pupil would be reviewed for readmission if the expulsion is ordered during the summer session. Since claimant did not plead chapter 552, the Commission makes no finding on it.

As amended by Statutes 1992, chapter 152, section 48916 stated, “The governing board may recommend a plan of rehabilitation for the pupil” In other words, it authorized but did not require the school district to recommend a rehabilitation plan to the pupil. Therefore, since recommending the plan was discretionary, the Commission finds that section 48916 (as amended by Stats. 1992, ch. 152) is not a state mandate within the meaning of article XIII B, section 6.

As amended by Statutes 1995, chapter 974, however, section 48916 reads “the governing board *shall* recommend a plan of rehabilitation for the pupil.” (Emphasis added.) Use of the word ‘shall’ makes a provision mandatory.²²¹

Therefore, the Commission finds that section 48916, subdivision (b) (as amended by Stats. 1995, ch. 974, eff. July 1, 1996) is a state mandate to recommend a plan of rehabilitation for the pupil at the time of the expulsion order.²²²

As to whether recommending a plan of rehabilitation for a pupil is a new program or higher level of service, the prior version of section 48916 (Stats. 1992, ch. 152) stated:

The governing board may recommend a plan of rehabilitation for the pupil, which may include, but not be limited to, periodic review as well as assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service, or other rehabilitative programs.

Thus, the Commission finds that, operative July 1, 1996 (or later, depending on the offense), it is state-mandated new program or higher level of service for a school district to recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when the pupil commits an act in section 48915, subdivision (c), as discussed below.

The Commission finds that recommending a rehabilitation plan to the pupil at the time of the expulsion order is a state-mandated new program or higher level of service only when the governing board orders the pupil expelled under subdivision (d) of section 48915 for any of the most serious ‘mandatory’ expulsion offenses in subdivision (c) of section 48915, that the pupil commits at school or at a school activity off school grounds.²²³ These offenses apply to recommending a rehabilitation plan because the school district is legally compelled to expel a

²²¹ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²²² Statutes 1995, chapter 974, section 9, subdivision (b) states: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act [including § 48916] shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.” This provision was deleted, however, effective September 26, 1996, by Statutes 1996, chapter 937, section 6 (but as explained below, the rehabilitation plan is only required for pupils expelled pursuant to § 48915, subd. (d), so this provision has no effect).

²²³ These offenses are: (1) brandishing a knife at another person; (2) Possessing, selling or furnishing a firearm without permission; (3) Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined; (4) Possessing an explosive and, (5) Unlawfully possessing a controlled substance, as defined.

pupil for any of these offenses, i.e., the governing board has no discretion but to expel the pupil who commits one of them.

Although expulsion for possession of an explosive is a federal mandate, as discussed above, the Commission finds that recommending a rehabilitation plan is state-mandated new program or higher level of service when a pupil is expelled for possessing an explosive. In *Long Beach Unified School Dist. v. State of California*,²²⁴ the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.²²⁵ The reasoning of *Long Beach Unified School Dist.* is instructive in this case. Although expelling a pupil for possession of an explosive is a federal mandate, recommending a rehabilitation plan is an activity, like in *Long Beach Unified School Dist.*, that goes beyond the federal requirement to expel the pupil.²²⁶ Moreover, the state freely chose to impose recommending a rehabilitation plan on governing boards that expel pupils for possession of an explosive, making the activity a state and not a federal mandate.²²⁷ Therefore, the Commission finds that when the pupil is expelled for possessing an explosive, it is a state-mandated new program or higher level of service to recommend a plan of rehabilitation of the pupil. (§ 48915, subs. (c)(1) & (c)(5).)

Next to consider are the offenses in subdivision (a) of section 48915, for which the “governing board may order a pupil expelled” (§ 48915, subd. (b).) As discussed above, these offenses are possession of a controlled substance, as defined, and committing an assault or battery, as defined, on a school district employee.²²⁸ Because it is not mandatory for the governing board to expel for these offenses, they are discretionary for purposes of this analysis. Therefore, recommending a rehabilitation plan is not a state mandate when a pupil is expelled for an offense listed in subdivision (a) of section 48915.

For the same reason, the Commission finds that recommending a rehabilitation plan is not a state mandate when a pupil is expelled for the other offenses under the discretionary expulsion provision, as discussed above (offenses in § 48915, subs. (b) & (e): possessing an imitation firearm; assault or battery, as defined, on a school district employee; unlawfully possessing any controlled substance, as defined; harassing, threatening, or intimidating school district personnel or pupils, as defined; and aiding or abetting the infliction or attempted infliction of physical injury to another person, as specified).

This finding is consistent with an earlier Supreme Court case, *Kern High School Dist.*, in which the court rejected the argument that the downstream activities (notice and agenda costs) were

²²⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155.

²²⁵ *Id.* at page 173.

²²⁶ *Ibid.*

²²⁷ *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564, 1593-1594.

²²⁸ Although these are not the only offenses in subdivision (a), they are the ones over which the Commission has jurisdiction to make expulsion findings, as discussed above.

legally compelled “without regard to whether a claimant’s participation in the underlying program is voluntary or compelled.”²²⁹ Here, the underlying program is the governing board’s discretionary order to expel the pupil.

Therefore, the Commission finds that when the governing board recommends a plan of rehabilitation to a pupil, it is *not* a state-mandated new program or higher level of service, when the pupil is expelled for any of the following offenses:

- Possess an imitation firearm, as defined. (§ 48900, subd. (m) & 48915, subd. (e).)
- Commits an assault or battery, as defined, on a school district employee. (§ 48915, subd. (a)(5).)
- Unlawfully possess any controlled substance, as defined, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
- Willfully uses force or violence upon the person of another, except in self-defense. (§ 48900, subd. (a)(2) & 48915 subd. (b).)
- Harrassment, threats or intimidation directed against school district personnel or pupils, as defined, for pupils in grades 4-12 inclusive. (§ 48900.4 & 48915 subd. (e).)
- Aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person, who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury. (§ 48900, subd. (s).)

The Commission also finds that the governing board recommending a plan of rehabilitation to a pupil (which may include, but not be limited to, periodic review as well as assessment at the time of review for readmission, recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs) is a state-mandated new program or higher level of service when the pupil is expelled for any of the following offenses (§ 48916, subd. (b), as amended by Stats. 1995, ch. 974, eff. July 1, 1996):

- Brandishing a knife at another person. (§ 48915, subs. (c)(2), (c)(3) & (d).)
- Possessing, selling or furnishing a firearm without permission. (§§ 48900, subd. (b) & 48915, subs. (c)(1), (c)(5) & (d).)
- Unlawfully selling a controlled substance, as defined. (§ 48915, subd. (c)(3) & (d), Stats. 1995, ch. 972.)
- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (eff. Jan. 1, 1997; §§ 48900, subd. (n) & 48915, subs. (c)(4) & (d).)
- Possessing an explosive. (eff. Jan. 1, 2002; § 48915, subs. (c)(5) & (d).)

²²⁹ *Kern School Dist.*, *supra*, 30 Cal.4th 727, 731.

For the remainder of this analysis, except as otherwise noted, the activities discussed apply only to these most serious mandatory expulsion offenses (in § 48915, subd. (c)), because they are downstream to the mandatory expulsion order.

J. Program of Study for Expelled Pupil (§§ 48915 (d), 48916.1, & 48918 (j))

Since 1993, pupils expelled for the most serious offenses in subdivisions (a) or (c) of section 48915 are prohibited from enrolling in school during the expulsion “unless it is a county community school ... or a juvenile court school ... or [added by Stats. 1995, ch. 974] a community day school”²³⁰

Effective January 1, 1996, the governing board is required to refer pupils expelled for the most serious offenses listed in section 48915, subdivision (c), to a program of study that: “(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems. (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school. (3) Is not housed at the schoolsite attended by the pupil at the time of suspension.”²³¹

Section 48916.1 provides, “at the time an expulsion of a pupil is ordered, the governing board of the school district shall ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion.” It further states:

Except for pupils expelled pursuant to subdivision (d) of Section 48915, the governing board of a school district is required to implement the provisions of this section only to the extent funds are appropriated for this purpose in the annual Budget Act or other legislation, or both. (§ 48916.1, subd. (a).)²³²

The expelled pupil’s educational program “may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools.” (§ 48916.1, subd. (b)). The program “may not be situated within or on the grounds of the school from which the pupil was expelled” and expelled pupils in kindergarten or grades 1 to 6 inclusive may not be combined or merged with pupils in grades 7 to 12 (§ 48916.1, subds. (b) & (c)). A county superintendent of schools may enter into an agreement with another county if it cannot serve the expelled pupils of a school district within its county. (§ 48916.1, subd. (f).)

After the expulsion hearing, the pupil must receive “a notice of the education alternative placement to be provided to the pupil during the time of expulsion.” (§ 48918, subd. (j).)

Refer pupil to program of study: Subdivision (d) of section 48915, as amended by Statutes 1995, chapter 972, states that the “governing board shall order a pupil expelled upon finding that the

²³⁰ Section 48915.2, subdivision (a).

²³¹ Section 48915, subdivision (d).

²³² This provision was codified by Statutes 1995, chapter 974. Section 9, subdivision (b), of Statutes 1995, chapter 974 (eff. July 1, 1996) states: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.”

pupil committed an act listed in subdivision (c) *and shall refer that pupil to a program of study that meets all of the following conditions... .*” [Emphasis added.]

Because the plain language of this subdivision uses the mandatory word ‘shall,’ it requires referring the pupil to the program of study for all the offenses listed in subdivision (c).²³³

Therefore, the Commission finds that, effective January 1, 1996, referring an expelled pupil to a program of study, as specified, is a state mandate for pupils expelled for the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).²³⁴

Preexisting law (§ 48915.2, subd. (a), added by Stats. 1993, ch. 1257, amended by Stats. 1995, ch. 974) provides that, during the period of expulsion a pupil who is expelled for any of the most serious offenses in section 48915, subdivision (c), may be permitted to enroll only in a county community school or a juvenile court school. Preexisting law did not require the expelled pupil be referred to a program of study, so the Commission finds that doing so is a new program or higher level of service.

Thus, the Commission finds, effective January 1, 1996, that subdivision (d) of section 48915 is a state-mandated new program or higher level of service to refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.) Referring the expelled pupil to this program of study is only a state-mandated new program or higher level of service when the governing board orders a pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).

Ensure an educational program is provided: Section 48916.1 was added by Statutes 1995, chapter 974 (eff. July 1, 1996) and amended by Statutes 1996, chapter 937, (eff. Sept. 26, 1996). Subdivision (a) states, with the 1996 amendments marked, as follows:

At the time an expulsion of a pupil is ordered, the governing board of the school district shall ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. *Except for pupils expelled pursuant to subdivision (d) of Section 48915, the governing board of a school district is required to implement the provisions of this section only to the extent funds are appropriated for this purpose in the annual Budget Act or other legislation, or both.*²³⁵

²³³ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²³⁴ Providing instruction to expelled pupils, however, is not required by section 48915. As stated in the legislative history of Statutes 1995, chapter 972 (S.B. 966) this bill “does not require that pupils be served in an alternative program.” Senate Rules Committee, Senate Floor Analysis of Senate Bill No. 966 (1995-1996 Reg. Sess.) as amended Sept. 11, 1995, page 4.

²³⁵ Statutes 1995, chapter 974, section 9, subdivision (b) stated: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act shall become operative only to the extent funds are appropriated for its purpose on the annual Budget Act, or

The legislative history indicates that the purpose of the bill (Stats. 1995, ch. 974, A.B. 922) according to the author, was “to require districts to take responsibility for the placement of all expelled students.”²³⁶

The mandatory language in subdivision (a) states that the school district “shall ensure that an educational program is provided to the pupil ... for the period of expulsion.”²³⁷ Therefore, the Commission finds that ensuring that an educational program is provided to a pupil expelled pursuant to subdivision (d) of section 48915 is a state mandate, operative July 1, 1996.²³⁸

The educational program may be provided through the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. (§ 48916.1, subd. (b), added by Statutes 1995, chapter 974.)

The educational program may not be situated within or on the grounds of the school from which the pupil was expelled, and grades kindergarten through 6 may not be combined with grades 7 to 12 in the educational program, except for community day schools offering instruction in any of grades kindergarten through 8th. (§ 48916.1, subds. (c) & (d).)²³⁹

For pupils in grades 7 through 12, the district was originally allowed to offer independent study to implement the educational program (§ 48916.1, subd. (e), Stats. 1995, ch. 974) but this was removed in 1996 (Stats. 1996, ch. 937). The school district is authorized to enter into an agreement with a county superintendent of schools in another county if the school district’s county superintendent cannot serve the county’s expelled pupils. (§ 48916.1, subd. (f).)

These provisions in section 48916.1 define the scope of the requirement to ensure the educational program is provided to the expelled pupil pursuant to subdivision (a) of section 48916.1, but do not impose additional state-mandated activities.

other legislation, or both.” Because this analysis only applies to pupils expelled pursuant to subdivision (d) of section 48915, neither this provision, nor the amendment to subdivision (a) of section 48916.1 by Statutes 1996, chapter 937, affects this analysis.

²³⁶ Assembly Committee on Education, Analysis of Assembly Bill No. 922 (1995-1996 Reg. Sess.) as amended March 27, 1995, page 2.

²³⁷ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²³⁸ Statutes 1995, chapter 974, section 9, subdivision (b) stated: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act shall become operative only to the extent funds are appropriated for its purpose on the annual Budget Act, or other legislation, or both.” Because this analysis only applies to pupils expelled pursuant to subdivision (d) of section 48915, neither this provision, nor the amendment to subdivision (a) of section 48916.1 by Statutes 1996, chapter 937, affects this analysis.

²³⁹ Statutes 1996, chapter 937 (eff. September 26, 1996) added the following to subdivision (d): “This subdivision, as it relates to the separation of pupils by grade levels, does not apply to community day schools offering instruction in any of kindergarten and grades 1 to 8, inclusive, and established in accordance with Section 48660.”

Because it was not required by prior law, the Commission finds that ensuring that this educational program is provided to the expelled pupil pursuant to section 48916.1, subdivision (a), as added by Statutes 1995, chapter 974, is a new program or higher level of service as of July 1, 1996.

Therefore, the Commission finds that operative July 1, 1996, section 48916.1 (Stats. 1995, ch. 974) is a state-mandated new program or higher level of service for ensuring that an educational program is provided to a pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)). The program must conform to the specifications in section 48916.1.

Notice of education alternative placement: Section 48918, subdivision (j), as amended by Statutes 1995, chapter 974, requires sending the expelled pupil's parent or guardian (in addition to other notices) "a notice of the education alternative placement to be provided to the pupil during the time of the expulsion."²⁴⁰

Because the plain language of subdivision (j) uses the mandatory "shall"²⁴¹ the Commission finds that providing a notice of an alternative placement to the expelled pupil is a state mandate. Prior law did not require this notice of the alternative placement, so the Commission also finds that providing it is a new program or higher level of service.

Therefore, the Commission finds that effective January 1, 1996²⁴² and operative July 1, 1996 (Stats. 1995, ch. 974, § 9), that section 48918, subdivision (j), is a state-mandated new program or higher level of service to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion for a pupil expelled for any of the most serious mandatory expulsion offenses listed in section 48915, subdivision (c). (§ 48918, subd. (j), Stats. 1995, ch. 974.)

K. Set Readmission Review Date and Procedures (§ 48916 (a) & (c))

An expulsion order "shall remain in effect until the governing board, in the manner prescribed in this article, orders the readmission of a pupil." (§ 48916, subd. (a).)

²⁴⁰ Statutes 1995, chapter 974, section 9, subdivision (b) states: "With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act [including § 48918, subd. (j)] shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both." This provision was deleted effective September 26, 1996, by Statutes 1996, chapter 937, section 6, but it has no effect on this analysis because the only state-mandated activity involves pupils expelled pursuant to subdivision (d) of Section 48915.

²⁴¹ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

²⁴² See Statutes 1995, chapter 974, sections 7.5 and 10.

For the mandatory expulsion offenses in section 48915, subdivision (c), the readmission review date is one year from the date the expulsion occurred, “except the governing board may set an earlier date for the readmission on a case-by-case basis.” (§ 48916, subd. (a).) A description of the readmission procedure must be made available to the pupil and his or her parent or guardian at the time the expulsion order is entered. (§ 48916, subd. (c).)

If the expulsion is ordered during the summer session or the intersession period of a year-round program, the readmission review date must be not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred.

The governing board “shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission and the process for the required review of all expelled pupils for readmission” (hereafter called the readmission process). (§ 48916, subd. (c).)

The 1995 amendment added the following to subdivision (a) of section 48916:

At the time an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil ~~may apply~~ shall be reviewed for readmission to a school maintained by the district, or to the school the pupil last attended. For a pupil who has been expelled pursuant to subdivision (c) of section 48915, the governing board shall set a date of one year from the date the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district, except that the governing board may set an earlier date for readmission on a case-by-case basis.

Also, subdivision (c) of section 48916 was amended in part (by Stats. 1995, ch. 974) as follows:

The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission and the process for the required review of all expelled pupils for readmission.

These amendments added activities required of a school district. Thus, the Commission finds the following in section 48916 (amended by Stats. 1995, ch. 974) are state mandates within the meaning of article XIII B, section 6 for pupils expelled pursuant to section 48915, subdivision (c), at the time the expulsion is ordered:

- Set a date when the pupil will be reviewed for readmission by the governing board. (§ 48916, subd. (a).)
- The one-time activity of adopting rules and regulations for the process for the review of expelled pupils for readmission. (§ 48916, subd. (c).)

To subdivision (a) was added: “the governing board may set an earlier date for readmission on a case-by-case basis.” The plain language of this provision indicates that setting an earlier readmission date on a case-by-case basis is a discretionary activity and not required.²⁴³ Thus, the Commission finds that setting an earlier readmission date is not a state mandate within the meaning of article XIII B, section 6.

²⁴³ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

As to whether setting a readmission date is a new program or higher level of service, the prior version of section 48916 stated, “At the time an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district.” (Former § 48916, 1st par., Stats. 1983, ch. 498.) This activity was found reimbursable in the *Pupil Expulsions* (CSM 4455) decision.²⁴⁴

Since setting a date for readmission was required under prior law, the Commission finds that this is not a new program or higher level of service in this test claim, even though as amended, the date calculation differs for pupils expelled for the most serious offenses listed in section 48915, subdivision (c). Setting a readmission date is not a new activity.

As to whether adopting rules and regulations for readmission is a new program or higher level of service, there was no prior requirement, in section 48916, or elsewhere to adopt rules and regulations establishing “the process for the required review of all expelled pupils for readmission.” (§ 48916, subd. (c), Stats. 1995, ch. 974.) Thus, the Commission finds that adopting these rules and regulations is a new program or higher level of service.

In sum, the Commission finds that section 48916, subdivision (c), (Stats 1995, ch. 974) is a state-mandated new program or higher level of service for school districts to adopt rules and regulations establishing the process for the required review of all expelled pupils for readmission, operative July 1, 1996.²⁴⁵

L. Appeal Expulsion Order to County Board of Education (§§ 48919, 48919.5 & 48923)

Section 48919 authorizes an expelled pupil or the pupil’s parent or guardian to file an appeal of the expulsion decision to a county board of education within 30 days following the decision of the governing board. It requires the county board of education (or hearing officer or administrative panel in class 1 or class 2 counties)²⁴⁶ to hold a hearing within 30 schooldays following the filing of a formal request.

Section 48919 further requires the appealing pupil to submit a written request to the school district for the transcript “simultaneously with the filing of the notice of appeal with the county board of education.” The district is required to provide the pupil with transcripts, supporting documents, and records within 10 schooldays following the pupil’s written request. On receipt of the records, the pupil is to file suitable copies of them with the county board of education.

²⁴⁴ The amended consolidated parameters and guidelines list one reimbursable activity as: “If the governing board expelled a pupil for possession of a firearm, then the following activities are reimbursable: 1. setting a date when the pupil may apply for readmission to a district school.”

²⁴⁵ Statutes 1995, chapter 974, section 9 (operative July 1, 1996). This provision was amended by, by Statutes 1996, chapter 937, section 6.

²⁴⁶ A class 1 county is a county with 1994-95 average daily attendance of more than 500,000. (Ed. Code, § 48915.5, subd. (e)(2).) A class 2 county is a county with 1994-95 average daily attendance of at least 180,000 but less than 500,000. (§ 48915.5, subd. (e)(3).)

Section 48919.5 (Stats. 1997, ch. 417) authorizes a class 1 or class 2 county board of education to use a hearing officer or an impartial administrative panel of three or more certificated persons appointed by the county board of education to hear expulsion appeals, as specified.

Section 48923 governs the introduction of relevant and material evidence at the expulsion hearing that could not have been produced without reasonable diligence or was improperly excluded by the school district. It authorizes the county board to either remand the matter to the governing board for consideration of the evidence, or grant a hearing upon reasonable notice to the pupil and the governing board.

Since the *Pupil Expulsion Appeals* (CSM 4463) Statement of Decision, section 48919 has been amended by Statutes 1997, chapter 417, and Statutes 2000, chapter 147. Section 48919.5 was added by Statutes 1997, chapter 417 and has not been amended. There is no Commission finding on section 48919.5. Section 48923 was amended by Statutes 2000, chapter 147. Since all of these amendments were pled by the claimant, the issue is whether they impose state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

Hearing officer or administrative panel expulsion appeal procedure: Section 48919.5, as added by Statutes 1997, chapter 417, authorizes county offices of education with 180,000 or more average daily attendance (a class 1 or class 2 county) to use a hearing officer or impartial administrative panel, as specified, to hear expulsion appeals. The hearing officer or panel applies the procedures in sections 48919, 48920, 48922, 48923, and 48925. (§ 48919.5, subd. (c).) The members of the impartial panel are prohibited from being members of the school district governing board or employees of the school district from which the pupil filing the appeal was expelled, and prohibits the hearing officer or members of the administrative panel from having been involved in the pupil's expulsion. The hearing officer or panel does not issue a final order, but prepares a recommended decision for the county board of education. (§ 48919.5, subd. (b).) The county office of education then reviews the recommended decision and record, and within 10 schooldays of receiving the recommended decision issues a final order. (§ 48919.5, subd. (d).)

The plain language of section 48919.5 states that the county offices of education “may” use the hearing officer or an impartial administrative panel to hear expulsion appeals.²⁴⁷

Claimant, in May 2008 comments on the draft staff analysis, argues that:

Alternative methods of performing a mandate do not make performing the mandate discretionary. The Legislature has declared the available methods to implement their intent, and the fact that the local education agencies have a choice of methods does not mean they have the choice not to implement the mandate.

The Commission agrees that the mandate to hear expulsion appeals is not discretionary, and is reimbursable based on the Commission's *Pupil Expulsion Appeals* decision (CSM 4463).²⁴⁸

²⁴⁷ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²⁴⁸ The Statement of Decision found, in addition to other hearing-related activities, that the following is reimbursable: “conducting an initial hearing on an appeal and rendering a decision, limited to appeals which result in a hearing de novo.” (§§ 48919, 2d par. & 48923.)

The alternative procedure to accomplish the hearing via an administrative panel or hearing officer, however, is discretionary and not mandated. As section 48919 states regarding adopting rules for the hearing officer procedures: “If the county board of education in a class 1 or class 2 county *elects to use the procedures in Section 48919.5*, then the board shall adopt rules and regulations establishing procedures for expulsion appeals under Section 48919.5.” (Emphasis added.) This language makes clear that the hearing officer procedure is discretionary. Moreover, it is the local school officials, rather than the state, that make the decision requiring the county office of education to incur the cost of a hearing officer procedure.²⁴⁹

Therefore, the Commission finds that section 48919.5 (added by Stats. 1997, ch. 417) does not mandate a new activity to use a hearing officer or administrative panel to hear expulsion appeals.

Adopt rules for alternative expulsion appeal procedure: Section 48919 (amended by Stats. 1997, ch. 417 & Stats. 2000, ch. 147) authorizes county offices of education with 180,000 or more average daily attendance to use the alternative procedure in section 48919.5, which calls for using a hearing officer or administrative panel hearing for expulsions appeals. The second paragraph of section 48919 was amended by Statutes 1997, chapter 417 to add underlined text as follows:

The county board of education shall adopt rules and regulations establishing procedures for expulsion appeals conducted under this section. If the county board of education in a class 1 or class 2 county elects to use the procedures in Section 48919.5, then the board shall adopt rules and regulations establishing procedures for expulsion appeals under Section 48919.5. The adopted rules and regulations shall include, but need not be limited to, the requirements for filing a notice of appeal, the setting of a hearing date, the furnishing of notice to the pupil and the governing board regarding the appeal, the furnishing of a copy of the expulsion hearing record to the county board of education, procedures for the conduct of the hearing, and the preservation of the record of the appeal.

The Statement of Decision for *Pupil Expulsion Appeals* (CSM 4463) determined that “[a]dopting rules and regulations establishing procedures for expulsion appeals” is reimbursable. (§ 48919, 4th par.)

The rules and regulations added by the test claim statute (for the “appeals under Section 48919.5”) are a downstream activity based on the discretionary decision to use the section 48919.5 alternative procedure. As a required activity resulting from a discretionary one, the following rule in the *Kern High School Dist.* case applies:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.²⁵⁰

²⁴⁹ Cf. *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

²⁵⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

In sum, the Commission finds that section 48919 does not impose a state-mandated new program or higher level of service to adopt rules and regulations for an alternative hearing procedure. (§ 48919, Stats. 1997, ch. 417 & Stats. 2000, ch. 147).

Transcript requests: The amendments to section 48919 made by Statutes 2000, chapter 147, in addition to nonsubstantive changes, require school districts to give the expulsion transcript records to the pupil within 10 days of the pupil's request, and clarify that the pupil's request must be written. Prior law gave the school district only five days to comply with the pupil's request. Because this provision gives the school district more time to comply with a pupil's request, the Commission finds that section 48919, as amended by Statutes 2000, chapter 147, does not impose a new program or higher level of service on school districts, so there is no reimbursable mandate within the meaning of article XIII B, section 6.

Remand to school district: Section 48923 (Stats. 1983, ch. 498) was decided by the Commission in the *Pupil Expulsion Appeals* (CSM 4463) decision. Claimant pled Statutes 2000, chapter 147, which added a new subdivision (b) to section 48923, as follows:

(b) If the county board determines that the decision of the governing board is not supported by the findings required to be made by Section 48915, but evidence supporting the required findings exists in the record of the proceedings, the county board shall remand the matter to the governing board for adoption of the required findings. This remand for the adoption and inclusion of the required findings shall not result in an additional hearing pursuant to Section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of Section 48918.

Thus, the issue is whether subdivision (b) of section 48923, as added by Statutes 2000, chapter 147, imposes a mandate on county boards of education or school district governing boards. The Commission finds that it does.

The Commission finds that subdivision (b) of section 48923 is a state mandate on the county board of education because the language indicates that the board "shall remand the matter to the governing board for adoption of the required findings" when the county board determines that the governing board decision is not supported by the findings that are supported by evidence in the record.

The Commission also finds that subdivision (b) constitutes a state mandate on the school district governing board, upon remand by the county board, to adopt the required findings and to comply with subdivisions (j) and (k) of section 48918. Section 48918, subdivision (j), requires giving notice of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion. Subdivision (k) of section 48918 requires maintaining a record of each expulsion and its cause.

Adopting the requisite findings is not discretionary for the county board or the school district. Not doing so could expose the county board or school district to a suit under Code of Civil Procedure 1094.5, subdivision (b), for abuse of discretion, which is established "if the respondent has not proceeded in a manner required by law, the order or decision is not supported

by the findings, or the findings are not supported by the evidence.” Education Code section 48922, subdivision (c), states that an abuse of discretion is established if “school officials have not met the procedural requirements of this article.”²⁵¹

Finance, in its July 11, 2008 comments on the draft staff analysis, disagrees that this activity is a mandate. According to Finance: “A district’s *choice* does not constitute a state-imposed mandate or a state-imposed consequence that would compel the district to action. It would not be prudent for a district not to include the evidence in the finding, but it is a risk and choice borne by the district and the district alone.” (Emphasis in original.)

The Commission disagrees with Finance. The county board’s remand is like an appeal in which the school district (like a trial court) must adopt the county board’s findings because it came to a different legal conclusion. The district has no discretion. It is legally required to adopt the requisite findings upon remand by the county board. The event that triggers the district’s adoption of findings is the county board of education’s decision to remand, a decision over which the district has no control. Therefore, the Commission finds that section 48923, subdivision (b) is a state mandate on the school district to adopt the expulsion finding(s) upon remand by the county board.

The Commission also finds that section 48923, subdivision (b), is a new program or higher level of service. Prior law did not require the county board to remand a matter under the specified circumstances, nor did it require the school district to adopt the remanded findings. The legislative history of Statutes 2000, chapter 147, discussed the state of the law before enacting subdivision (b):

County boards are not authorized to "retry" an expulsion case, but are to ensure that proper procedures were following [sic] during school district expulsion hearings. It is not uncommon for county boards to find that the school district has not properly prepared the findings of fact required for the expulsion, even though the necessary information is clearly a part of the record, which is available to the county board. Under current law, the only option usually available to the county board in this instance is to overturn the expulsion, and allow the student to return to school. Although there are differences of opinion amongst legal authorities as to this requirement, this bill would make clear that the county board could simply remand the case back to the school district, rather than overturning the expulsion.²⁵²

The Statement of Decision for *Pupil Expulsion Appeals* (CSM 4463) determined a school district is eligible for reimbursement when the pupil appeals an expulsion for possession of a firearm, knife or explosive, for “participating in the county board of education’s initial hearing on the

²⁵¹ See also 80 Opinions of the Attorney General 91 (1997).

²⁵² Assembly analysis of Assembly Bill No. 1721 (1999-2000 Reg. Sess.) as amended June 7, 2000, page 3.

appeal of an expulsion when the appeal results in a hearing de novo.”²⁵³ (§ 48919, 1st & 2d pars.) The school district requirement to adopt findings on remand in the test claim statute, however, is different than participation in the “initial” county board of education hearing.

Therefore, the Commission finds that, effective January 1, 2001, section 48923, subdivision (b), (added by Stats. 2000, ch. 147) imposes a state-mandated new program or higher level of service on a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district’s decision is not supported by the findings required by section 48915²⁵⁴ but evidence supporting the required findings exists in the record of the proceedings. The Commission also finds that this county board activity applies to any expulsion, and is not limited to those for offenses in section 48915, subdivision (c), because the county board of education must remand the matter regardless of what the expulsion was for, and has no discretion not to act.

The Commission also finds that section 48923, subdivision (b) (added by Stats. 2000, ch. 147) imposes a state mandate on a school district governing board, upon remand by the county board, to adopt the required findings and to expel the pupil, and that the remand “shall not result in an additional hearing pursuant to Section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of Section 48918.” This adoption of the required findings is also a new program or higher level of service, since it was not required under prior law.

This means that, effective January 1, 2001, it is a state-mandated new program or higher level of service for a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil’s parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil’s expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k).) The Commission finds that these activities are only a state-mandated new program or higher level of service when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).

M. Expelling District’s Readmission Review (§§ 48917 (e), & 48916 (a), (c) - (e))

Section 48916 governs how a pupil is readmitted to the expelling school district. Upon completion of the readmission review process, the governing board is required to readmit the pupil unless it finds that “the pupil has not met the conditions of the rehabilitation plan or

²⁵³ Possession of a firearm (on or after Oct. 11, 1993) (Stats. 1993, ch. 1256); possession of a knife of no reasonable use to the pupil, or an explosive at school (on or after Oct. 11, 1993 until Dec. 31, 1993). (Stats. 1993, ch. 1255.)

²⁵⁴ A decision to expel is based on a finding that either: “(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct. (2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.” (§ 48915, subds. (b) & (e).)

continues to pose a danger to campus safety or to other pupils or employees of the school district.” (§ 48916, subd. (c), Stats. 1995, ch. 974.)

Since the *Pupil Expulsions* (CSM 4455) decision, section 48916 has been amended by Statutes 1992, chapter 152, Statutes 1995, chapter 973, Statutes 1995, chapter 974, and Statutes 2003, chapter 552. Claimant pled all these amendments except for Statutes 1995, chapter 973 and Statutes 2003, chapter 552,²⁵⁵ upon which the Commission makes no findings.

The 1992 amendment to section 48916 (Stats. 1992, ch. 152), inserted the provision that the governing board is not required to readmit a pupil on completion of the readmission review process. Because this provision does not require a school district activity, the Commission finds that it does not impose a state mandate.

The 1995 amendments (ch. 974) rewrote section 48916,²⁵⁶ adding the following to subdivision (a):

At the time an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil ~~may apply~~ shall be reviewed for readmission to a school maintained by the district, or to the school the pupil last attended.

The 1995 amendment to subdivision (c) requires readmission of the pupil “unless the governing board makes a finding that the pupil has not met the condition of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district.”

If the governing board denies readmission to an expelled pupil:

[T]he governing board shall make a determination either to continue the placement of the pupil in the alternative education program initially selected for the pupil during the period of the expulsion order or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d), Stats. 1995, ch. 974, eff. July 1, 1996.)

Although subdivision (d) of section 48916 states that the board conditionally makes this determination (if readmission is denied pursuant to subdivision (c), i.e., if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to

²⁵⁵ The 2003 amendment merely clarified when the pupil would be reviewed for readmission if the expulsion is ordered during the summer session.

²⁵⁶ Statutes 1995, chapter 974, section 9, subdivision (b) states: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act [including the § 48916 amendments] shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.” This provision was deleted effective September 26, 1996, by Statutes 1996, chapter 937, section 6, but it has no effect on this analysis because the only state-mandated activities involve only pupils expelled pursuant to subdivision (d) of Section 48915.

other pupils or employees of the school district) the board is required to make a determination if the facts support it. According to the plain language of subdivision (c), unless the governing board can make either of these findings, it is required to readmit the pupil.

Subdivision (e) of section 48916, (added by Stats. 1995, ch. 974) requires the governing board to provide written notice to the expelled pupil and his or her parent or guardian describing the reasons for denying readmission into the regular school district program, and specifies that the notice must include the determination of the educational program for the expelled pupil. The pupil is required to enroll in that educational program unless the parent or guardian elects to enroll the pupil in another school district.

The 1995 amendments added activities required of a school district.²⁵⁷ Thus, the Commission finds the following in section 48916 (Stats. 1995, ch. 974) are state mandates within the meaning of article XIII B, section 6, for pupils expelled pursuant to section 48915, subdivision (d):

- Review the pupil for readmission. (§ 48916, subd. (a).)
- Readmit the pupil or find that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c).)
- If readmission is denied, the governing board shall make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
- If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

The next issue is whether these activities are a new program or higher level of service. As quoted above, the 1995 amendment to subdivision (a) replaced “may apply for readmission” with “shall be reviewed for readmission.” Under prior law, section 48916 did not require the school district to review the expelled pupil for readmission. As of the 1995 amendment, the pupil's readmission review is a mandatory duty of the governing board.²⁵⁸ Therefore, the Commission finds that this amendment to section 48916, subdivision (a), requiring readmission review, is a new program or higher level of service.

The 1995 amendment to subdivision (c) of section 48916 requires pupil readmission: “unless the governing board makes a finding that the pupil has not met the condition of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district.” Therefore, the Commission finds that readmitting the pupil or finding that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district is a new program or higher level of service.

²⁵⁷ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²⁵⁸ Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.”

As to whether readmission or making findings to deny readmission is a new program or higher level of service, the prior version of section 48916 (Stats. 1983, ch. 498) stated:

An expulsion order shall remain in effect until the governing board may, in the manner prescribed in this article, order the readmission of a pupil. At the time an expulsion of a pupil is ordered, the governing board shall set a date .. when the pupil may apply for readmission to a school maintained by the district. [¶]...[¶] Upon completion of the readmission process, the governing board shall not be required to readmit the pupil. (Former § 48916, 1st & 3d par., the last sentence was added by Stats. 1992, ch. 152.)

Since prior law authorized but did not require readmission of a pupil, the Commission finds that operative July 1, 1996, subdivision (d) of section 48916 (Stats. 1995, ch. 974) is a new program or higher level of service for the governing board to readmit the pupil or make the requisite findings to deny readmission, as specified.

The Commission also finds that providing written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program, to include the determination of the education program for the expelled pupil (§ 48916, subd. (e)) is a new program or higher level of service, since it was not required under prior law.

In sum, the Commission finds that section 48916 (Stats. 1995, ch. 974) is a state-mandated new program or higher level of service, operative July 1, 1996, for school districts to do the following when the governing board orders the pupil expelled pursuant to subdivision (d) of section 48915 for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)):

- Review the pupil for readmission. (§ 48916, subd. (a).)
- Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
- If readmission is denied, the governing board shall make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
- If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

N. New School District's Readmission Review (§§ 48915.1 & 48915.2)

A pupil's claim of entitlement for admission to a California school district is based in part on age and residency or a voluntary interdistrict transfer agreement.²⁵⁹

²⁵⁹ Education Code sections 48915.1, subdivision (e) and section 48915.2, subdivision (b). Legal residency in the school district is treated in section 48200 and interdistrict transfer agreements are treated in section 46600 et seq..

Section 48915.1 describes the following procedure for pupils expelled from a school district for lesser offenses (not in subdivisions (a) or (c) of section 48915) to gain admission to a school in a different district from which the pupil was expelled:

[T]he board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsions of pupils as described in Section 48918. (§ 48915.1, subd. (a).)

A school district considering a pupil admission may request information from another school district, as specified, to which the expelling district is required to respond “with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.” (§ 48915.1, subd. (a).) The parent, guardian, or emancipated pupil who was expelled (except those expelled pursuant to subds. (a) or (c) of § 48915) is required to inform the receiving school district of his or her status with the previous school district upon enrollment (§ 48915.1, subd. (b).). “If this information is not provided to the school district and [it] later determines the pupil was expelled from the previous school district, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a).” (*Ibid.*)

The governing board may deny enrollment to the pupil for the remainder of the expulsion period “after a determination has been made, pursuant to a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.” (§ 48915.1, subd. (c).) The governing board may either deny enrollment, permit enrollment, or permit conditional enrollment in a regular school program or another educational program. (§ 48915.1, subd. (d).)

A pupil expelled from another district for lesser offenses (not in subds. (a) or (c) of § 48915) may enroll in the school district during the term of the expulsion after a determination has been made, pursuant to a hearing, that the pupil does not pose a danger to either the pupils or employees of the school district. (§ 48915.1, subd. (e).) Permission to enroll depends on whether the pupil has established legal residence in the school district after the expulsion, or has enrolled pursuant to an interdistrict agreement.²⁶⁰

As to pupils expelled for the more serious offenses, a pupil expelled for any of the offenses listed in subdivisions (a) or (c) of section 48915 “shall not be permitted to enroll in any other school or school district during the period of expulsion unless it is a county community school pursuant to subdivision (c) of Section 1981, or a juvenile court school, as described in Section 48645.1, or a community day school” (§ 48915.2, subd. (a).)

After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board of a school district may

²⁶⁰ Interdistrict agreements are authorized by Education Code section 46600, subdivision (b), which states: “In addition to the requirements of subdivision (e) of Section 48915.1, and regardless of whether an agreement exists or a permit is issued pursuant to this section, any district may admit a pupil expelled from another district in which the pupil continues to reside.”

permit the individual to enroll in the school district after the term of expulsion, subject to one of the following conditions: (1) He or she has established legal residence in the school district ... (2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school district” (§ 48915.2, subd. (b).)

In the *Pupil Expulsions* (CSM 4455) decision, the Commission found that sections 48915.1, as amended by Statutes 1993, chapter 1257, and 48915.2, as added by the same 1993 statute, constitute reimbursable state mandates. Section 48915.1 was amended again by Statutes 1996, chapter 937, to add more offenses for which a pupil would not be allowed to gain admittance (those in § 48915, subd. (c)). Section 48915.2 has also been amended (by Stats. 1995, ch. 974) since the *Pupil Expulsions* (CSM 4455) decision.

Given these amendments to sections 48915.1 and 48915.2, the issue is whether the amendments impose any state- mandated new programs or higher levels of service. For section 48915.1, only the amendment made by Statutes 1996, chapter 937 is at issue. The amendments of Statutes 1995, chapter 974 to section 48915.2 are also discussed.

Readmission to different district (more serious offenses in subds. (c) and (a) of § 48915): Since the *Pupil Expulsions* (CSM 4455) decision, section 48915.2 has been amended by Statutes 1995, chapter 974. These amendments add a reference to pupils expelled under section 48915, subdivision (c) (to those expelled under § 48915, subd. (a)) who are not permitted to enroll in another school during the expulsion period, except a county community school or a juvenile court school (§ 48915.2, subd. (a)). The amendment also adds a community day school to those in which an expelled pupil would be allowed to enroll during the expulsion period.

The Commission finds that the 1995 amendment to subdivision (a) does not impose a state mandate because it does not require an activity of a school district. It merely adds offenses that would prohibit a pupil, if expelled for those offenses, from enrolling in another school during the expulsion term, and adds another type of school (community day school) in which the pupil may enroll.

Subdivision (b) of section 48915.2 was amended by Statutes 1995, chapter 974 (eff. July 1, 1996) as underlined:

After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) or (c) of section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board of a school district may permit the individual to enroll in the school district after the term of expulsion, subject to [the pupil establishing legal residence in the district, or enrollment based on an interdistrict agreement, as specified].

The Commission finds that this amendment to subdivision (b) of section 48915.2 imposes a state mandate to determine, via a section 48918 hearing, whether the pupil expelled for an offense in subdivision (c) of section 48915 poses a danger to either the pupils or employees of the district.

This determination is limited to applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district. The Supreme Court, in the *Kern High School Dist.* case, gave the following rule:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.²⁶¹

Since a school district that has an interdistrict transfer agreement has voluntarily undertaken to admit pupils from another district, the district has made the “discretionary decision to participate in a particular program or practice.” Therefore, the Commission finds that if the expelling and receiving districts have an interdistrict transfer agreement, the readmission determination is not a state mandate.

Although subdivision (b) of section 48915.2 does not expressly require the school district to make a determination regarding the pupil’s enrollment (it applies “after a determination”), the district cannot turn the pupil away without a hearing because pupils have a right to a public education.²⁶² Thus, if the expelling and receiving districts do not have an interdistrict transfer agreement, the Commission finds that it is a state mandate to determine, pursuant to a hearing under section 48918, whether an individual expelled from another school district for any act described in subdivision (c) of section 48915 poses a danger to either the pupils or employees of the school district.

Prior to the 1995 amendment, the determination to admit the pupil was required for pupils expelled from another school district for any act described in subdivision (a) of section 48915. As amended by Statutes 1994, chapter 1198, the offenses listed in former subdivision (a) of section 48915 were:

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.
- (3) Unlawful sale of any controlled substance ...[as specified] except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
- (4) Robbery or extortion.

Since preexisting law required the determination, pursuant to a hearing under section 48918, that an individual expelled from another school district for any of the acts listed above does not pose a danger to either the pupils or employees of the school district, the Commission finds that making this determination at a readmission hearing is not a new program or higher level of service for a pupil who committed any of those subdivision (a) offenses.

Section 48915, subdivisions (a) and (c), was amended by Statutes 1995, chapter 972, to add the following three offenses to those listed above.

²⁶¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

²⁶² Education Code section § 48200 et seq. and California Constitution, article IX, section 5. See also *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887, fn. 22.

- Unlawful possession of any controlled substance [as specified] ... except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
- Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
- Brandishing a knife at another person. (§ 48915, subd. (c)(2).)

And the following offenses were added later:

- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.)
- Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)

Therefore, operative July 1, 1996, the Commission finds that section 48915.2 (Stats. 1995, ch. 974)²⁶³ is a state-mandated new program or higher level of service for the school district to determine, pursuant to the hearing procedures under section 48918, that an individual expelled from another school district does not pose a danger to either the pupils or employees of the school district if the pupil has committed any of the following offenses:

- Unlawful possession of any controlled substance [as specified] ... except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
- Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
- Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
- Effective January 1, 1997, committing or attempting to commit a sexual assault, as defined, or commits a sexual battery, as defined. (§§ 48900, subd. (n) & 48915, subds. (c)(4) & (d).)
- Effective January 1, 2002, possessing an explosive. (§ 48915, subd. (c)(5).)

This activity only applies to determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.

Readmission to a different district (lesser offenses not in subds. (a) or (c) of § 48915): Section 48915.1, subdivision (a) was amended in 1996 (Stats. 1996, ch. 937) as underlined:

²⁶³ “[A] school district may permit the individual to enroll in the school district after the term of expulsion, subject to one of the following conditions: (1) He or she has established legal residence in the school district, pursuant to Section 48200. (2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the effected school districts pursuant to Chapter 5 (commencing with Section 46600) of Part 26.” (§ 48915.2, subds. (b)(1) & (b)(2).)

If the governing board of a school district receives a request from an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsions of pupils as described in Section 48918.

Since this 1996 amendment to subdivision (a) of section 48915.1 excludes pupils expelled for a new group of offenses²⁶⁴ from requesting enrollment in another school district, it does not mandate a school district activity. Thus, the Commission finds that it does not constitute a state mandate within the meaning of article XIII B, section 6.

Similarly, subdivision (c) of section 48915.1 (also amended by Stats. 1996, ch. 937) adds expulsion offenses (in subd. (c) of § 48915) for which the district need not determine, after a hearing, to deny enrollment for the remainder of the expulsion period (again, expanding the exception from those expelled under § 48915, subd. (a) to add those expelled under subd. (c) of § 48915). Since this amendment also does not require an activity of a school district, the Commission finds that it is not a state mandate within the meaning of article XIII B, section 6.

Subdivision (b) of section 48915.1 requires the parent or guardian or emancipated pupil who has been expelled for an act other than the more serious offenses listed in subdivision (a) and (as amended by Stats. 1996, ch. 937) subdivision (c) of section 48915, to inform the receiving district of his or her status with the previous school district. The Commission finds that this amendment (Stats. 1996, ch. 937) to section 48915.1, subdivision (b), does not impose a state-mandated activity on a school district.

O. Educational Services Plan and Pupil Data (§§ 48926, 48900.8 & 48916.1)

County office of education plan for educational services to expelled pupils: Section 48926, added by Statutes 1995, chapter 974, requires county superintendents of schools to develop a plan for providing education services to all pupils expelled within the county. The application is limited, however, to “counties that operate community schools pursuant to Section 1980.” The plan is required to “be adopted by the governing board of each school district within the county and by the county board of education.” The section also specifies what the plan must contain, requires it to be submitted to the Superintendent of Public Instruction by June 30, 1997, and requires a triennial update on June 30 thereafter.

Section 48926 applies to county offices of education only in counties that operate community schools “pursuant to Section 1980.” Section 1980 authorizes but does not require a county board

²⁶⁴ Subdivision (c) of section 48915 is the immediate suspension and mandatory recommended expulsions provision for the five offenses discussed above: possessing , selling, or otherwise furnishing a firearm (with specified exceptions), brandishing a knife at another person, unlawfully selling a controlled substance, committing or attempting to commit a sexual assault and (as added by Stats. 2001, ch. 116) possessing an explosive.

of education to establish and maintain one or more community schools. Among those authorized to enroll in these schools are pupils expelled for reasons specified in section 48915.²⁶⁵

School districts and county offices of education have alternatives to those community schools, as discussed above. These include community day schools (§ 48660 et seq.), juvenile court schools (§ 48645.1 et seq.), or for some pupils, independent study (§ 51747, subd. (c)(7)). The alternative programs may be operated by a consortium of districts or in joint agreement with the county superintendent of schools (§ 48916.1, subd. (b)) or via agreement with the county superintendent of another county (§ 48916.1, subd. (f)).

Section 48926 applies to a “county superintendent of schools in counties that operate community schools pursuant to Section 1980,” and section 1980 is permissive as to the operation of the community schools. This means that developing the section 48926 plan is a discretionary activity and is not legally compelled. Nor does the statute on its face impose “certain and severe penalties such as double taxation or other draconian consequences”²⁶⁶ for not developing a plan for providing education services to all pupils expelled within the county, or not operating a community school pursuant to section 1980. This is especially true given the alternatives to community schools, as listed above. In short, neither the statute nor the record contains evidence of practical compulsion to operate a community school or develop a plan for providing education services to all pupils expelled within a county.

Therefore, the Commission finds that section 48926, as added by Statutes 1995, chapter 974, does not impose a state mandate on county offices of education within the meaning of article XIII B, section 6.

Section 48926 also states: “The plan shall be adopted by the governing board of each school district within the county and by the county board of education.” Therefore, the Commission finds that it is a state mandate for the school district governing board to adopt the plan, should the county superintendent of schools develop one. The Commission also finds that this is a new program or higher level of service, since prior to Statutes 1995, chapter 974, district governing boards were not required to adopt a county plan for providing education services to all expelled pupils in the county.

Thus, the Commission finds that it is a state-mandated new program or higher level of service, if the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan, operative July 1, 1996 (Stats. 1995, ch. 974).²⁶⁷

²⁶⁵ Education Code section 1981, subdivisions (a) and (c)(3).

²⁶⁶ *Kern High School Dist., supra*, 30 Cal.4th 727, 751. In another part of the opinion, the court stated an example of practical compulsion as a substantial penalty (independent of the program funds at issue) for not complying with the statute. (*Id.* at p. 731).

²⁶⁷ Statutes 1995, chapter 974, section 9, subdivision (b), states: “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act [including § 48926] shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.” This provision was deleted, however, effective

Identify offense(s) in pupil's record: Section 48900.8 (as added by Stats. 1997, ch. 637) states that “each school district shall specifically identify, by offense committed, in all appropriate official records of a pupil each suspension or expulsion of that pupil for the commission of any of the offenses set forth in Section 48900, ... 48900.2, ... 48900.3 ... 48900.4, or ...48915.”²⁶⁸ This identification is required, “For purposes of notification to parents, and for the reporting of expulsion or suspension offenses to the [California] department [of Education.]” Based on the mandatory language, the Commission finds that section 48900.8 is a state mandate for those most serious mandatory suspension and expulsion offenses listed in section 48915, subdivision (c).

Preexisting law requires school districts to maintain records of all expulsions, including the cause, and requires them to be recorded in the pupil's mandatory interim record (former § 48918, subd. (j), current subd. (k)). As to suspensions, preexisting law requires that they be reported to the school district governing board (§ 48911, subd. (e)), and “routine discipline data” and “disciplinary notices” are included in the school district's permitted records. (Cal.Code Regs., tit. 5, § 432, subd. (b)(3)((C) & (E).) However, preexisting law did not require suspensions to be recorded in the official records of each pupil. Therefore, the Commission finds that identifying by offense, in all appropriate official records of a pupil, each suspension of that pupil is a state-mandated new program or higher level of service for pupils suspended under section 48915, subdivision (c), effective January 1, 1998. (§ 48900.8, Stats. 1997, ch. 637.)

Expulsion data maintenance and reporting (July 1 – September 25, 1996): Section 48916.1 was enacted by Statutes 1995, chapter 974, and was operative on July 1, 1996.²⁶⁹

Before Statutes 1996, chapter 937, (eff. Sept. 26, 1996) substantially amended it, subdivision (f) of section 48916.1 stated:

(1) (A) The governing board of the school district shall maintain outcome data and report them upon request from the State Department of Education on those pupils who are expelled for any reason and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to this section. Outcome data shall include, but

September 26, 1996, by Statutes 1996, chapter 937, section 6, and there is no evidence that funds were appropriated for this act between July 1, 1996 and September 26, 1996 – the effective date and repeal date of the provision in section 9 (Stats. 1995, ch. 974).

²⁶⁸ The amendment of Statutes 2005, chapter 677 to section 48900.8 (upon which the Commission makes no findings because it was not pled) added the offense in section 48900.7 (terroristic threats against school officials for school property, or both) and removed the citations to subdivisions within sections 48900 and 48915.

²⁶⁹ Statutes 1995, chapter 974 included the following in section 9, subdivision (b): “With the exception of pupils expelled pursuant to subdivision (d) of Section 48915, the provisions of this act shall become operative only to the extent funds are appropriated for its purpose in the annual Budget Act, or other legislation, or both.” Because the following analysis only applies to expulsions pursuant to subdivision (d) of section 48915 (for the most serious offenses in § 48915, subd. (c)), the provision in section 9, subdivision (b) has no effect on this analysis.

not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.

(B) Districts shall also maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.

(C) Districts shall also maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

(2) If the county superintendent of schools operates an educational program pursuant to this section, the county superintendent of schools shall provide to the governing board of the school district outcome data as specified in subparagraph (A) of paragraph (1) and outcome data on pupils participating in independent study programs offered by the county office of education.

Because this provision uses the mandatory “shall”²⁷⁰ the Commission finds that it is a state mandate for school districts to do the following from July 1, 1996 (the operative date of Stats. 1995, ch. 974) until September 25, 1996 (when this provision was amended by Stats. 1996, ch. 937):

1. Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.

2. Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.

3. Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

²⁷⁰ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

The Commission finds that subdivision (f)(2) is not a state mandate on a county superintendent because it only applies to a “county superintendent of schools who operates an educational program pursuant to this section [48916.1, Stats. 1995, ch. 974].” The county superintendent of schools is not required to operate an education program for expelled pupils, however, as stated in subdivision (b) that the education program “may” be provided by a county superintendent of schools.

The Commission also finds that reporting the data to the California Department of Education (CDE), as stated in subdivision (f)(1)(A) is not a state mandate between July 1, 1996 and September 25, 1996, because the data is reported only “upon request” and there is no evidence in the record that CDE requested this information to be reported.

Preexisting law requires school districts to maintain records of all expulsions, including the cause, and requires them to be recorded in the pupil’s mandatory interim record. (Former § 48918, subd. (j), current subd. (k).) Preexisting law did not require maintaining outcome data, so the Commission finds that maintaining this outcome data on pupils, as specified, is a new program or higher level of service.

Therefore, the Commission finds that, from July 1, 1996 until September 25, 1996, section 48916.1 (Stats. 1995, ch. 974) is a state-mandated new program or higher level of service for school districts to maintain outcome data on pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows:

1. Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1. (Stats. 1995, ch. 974.) Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
2. Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
3. Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

Expulsion data maintenance and reporting (September 26, 1996 – January 7, 2002): Statutes 1996, chapter 937 (eff. Sept. 26, 1996) moved the outcome data provision in section 48916.1 to subdivision (e)(1) and amended it as follows:

Each school district shall maintain the following data: (A) The number of pupils recommended for expulsion. (B) The grounds for each recommended expulsion. (C) Whether the pupil was subsequently expelled. (D) Whether the expulsion

order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion.

Subdivision (e)(2) of section 48916.1, as amended by Statutes 1996, chapter 937, states in part:

If a school district does not report outcome data as required by this subdivision, the Superintendent may not apportion any further money to the school district pursuant to Section 48664 until the school district is in compliance with this subdivision.

Subdivision (e)(2) also requires the Superintendent of Public Instruction to notify the school district if it has failed to report the data, and gives the district 30 days to comply.

Because subdivision (e)(1) of section 48916.1 uses the mandatory “shall” the Commission finds that maintaining the expulsion data, as specified, is a state mandate.²⁷¹ And because subdivision (e)(2) prohibits the Superintendent of Public Instruction from apportioning funds to a school district that does not report the expulsion data in subdivision (e)(1), the Commission finds that this subdivision also imposes a state mandate on school districts to report the data to CDE, as not reporting it would be a “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”²⁷²

The next issue is whether maintaining and reporting the expulsion data is a new program or higher level of service.

Prior law (§ 48916.1, Stats. 1995, ch. 974, discussed above) required school districts to maintain outcome data, such as attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs and independent study.

Prior law did not require school districts to maintain aggregate data, however, as required by section 48916, subdivision (e)(1), including information on the number of pupils recommended for expulsion and whether they were subsequently expelled, as specified. Nor did prior law require reporting the specified data to CDE, as required by subdivision (e)(2) of section 48916. Consequently, the Commission finds that maintaining and reporting the data called for in subdivision (e) of section 48916 is a new program or higher level of service, effective September 26, 1996.

Therefore, effective September 26, 1996 until January 7, 2002 (when federal NCLB was enacted) the Commission finds that section 48916.1 (Stats. 1996, ch. 937) is a state-mandated new program or higher level of service for school districts to maintain data on the following and report it to CDE:

- (A) The number of pupils recommended for expulsion.
- (B) The grounds for each recommended expulsion.
- (C) Whether the pupil was subsequently expelled.
- (D) Whether the expulsion order was suspended.
- (E) The type of referral made

²⁷¹ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

²⁷² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916, subd. (e), Stats. 1996, ch. 937).

This activity is reimbursable for pupils expelled for the most serious expulsion offenses (listed in § 48915, subd. (c)).

Expulsion data maintenance and reporting (January 8, 2002 - present): The No Child Left Behind Act of 2001 (NCLB), effective January 8, 2002, states the following:

(c)(3) Uniform management information and reporting system

(A) Information and statistics

A state shall establish a uniform management information and reporting system.

(B) Uses of funds

A State may use funds described in subparagraphs (A) and (b) of subsection (b)(2) of this section, either directly or through grants and contracts, to implement the uniform management information and reporting system described in subparagraph (a), for the collection of information on --

(i) truancy rates; and

(ii) the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary schools and secondary schools in the State. [¶]...[¶]

(C) COMPILATION OF STATISTICS

In compiling the statistics required for the uniform management information and reporting system, the offenses described in subparagraph (B)(ii) shall be defined pursuant to the State's criminal code, but shall not identify victims of crimes or persons accused of crimes. The collected data shall include incident reports by school officials, anonymous student surveys, and anonymous teacher surveys.

(D) REPORTING

The information described under subparagraph (B) shall be reported to the public and the data referenced in clauses (i) and (ii) shall be reported to the State on a school-by-school basis.²⁷³

The issue is whether maintaining and reporting the data is a federal mandate as a result of this NCLB provision. “[A]rticle XIII B, section 6, and the implementing statutes ... by their terms, provide for reimbursement only of *state*- mandated costs, not *federally* mandated costs.”²⁷⁴

For the same reasons explained on pages 32-41 above (explosive possession under NCLB), the Commission finds it is a federal mandate on the state to maintain and report to CDE the following data, effective January 8, 2002: (A) The number of pupils recommended for expulsion; (B) The grounds for each recommended expulsion; and (C) Whether the pupil was subsequently expelled.

The Commission also finds that this portion of NCLB is a federal mandate on the school district. As stated by the *Hayes* court, “the Commission must focus upon the costs incurred by local

²⁷³ 20 U.S.C. section 7112 (c)(3). [Emphasis added.]

²⁷⁴ *San Diego Unified School Dist, supra*, 33 Cal.4th 859, 879-880. See also California Constitution, article XIII B, section 9, subdivision (b).

school districts and whether those costs were imposed on local districts by federal mandate or by the state's *voluntary choice in its implementation* of the federal program."²⁷⁵ The plain language of the federal statute gives the state no choice in implementation because it states that the "data ... shall be reported to the State on a school-by-school basis." Thus, the state has not freely chosen to impose the costs of these expulsions on the local educational agencies, in that the federal statute mandates how the state statute is implemented – by the school or school district.

The federal requirement to report "violence and drug related offenses" includes all those offenses in subdivision (c) of section 48915 for which issuing an expulsion order is required. Therefore, the Commission finds that reporting this data is not mandated by the state within the meaning of article XIII B, section 6, effective January 8, 2002, because it is a federal mandate as of that date, for school districts to maintain data on the following and report it to CDE: (A) The number of pupils recommended for expulsion; (B) The grounds for each recommended expulsion; and (C) Whether the pupil was subsequently expelled.

However, the next issue is whether reporting the following data (also listed in § 48916.1, subd. (e)(1)) to CDE is a federal mandate:

(D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916, subd. (e), Stats. 1996, ch. 937.)

The Commission finds that it is not. Federal law only requires reporting "the frequency, seriousness, and incidence of violence and drug related offenses resulting in suspensions and expulsion." Although this encompasses paragraphs (A) through (C) of section 48916.1, subdivision (e)(1), it does not encompass paragraphs (D) through (F).

In the *San Diego Unified School Dist.*²⁷⁶ case, the court considered whether the mandatory expulsion provision of Education Code section 48915, subdivision (c) for possession of a firearm constitutes a nonreimbursable federal mandate. In finding that there was no federal requirement for a pupil expulsion during the time period in question, the court stated:

Because it is state law ... and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows ... that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable).²⁷⁷

Here, as in *San Diego Unified School Dist.*, the federal law does not require reporting whether the expulsion order was suspended, or the type of referral made after the expulsion, or the disposition of the pupil after the end of the period of expulsion. Federal law only requires reporting the "frequency, seriousness, and incidence of violence and drug related offenses

²⁷⁵ *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564, 1595. [Emphasis added.]

²⁷⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859.

²⁷⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 881. See also *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173.

resulting in suspensions and expulsion in elementary and secondary schools.”²⁷⁸ Thus, it is the state law that triggers the suspension -- without discretion on the part of the principal or school district to do otherwise.

It is also a new program or higher level of service to maintain this information for the same reasons as discussed above.

Therefore, the Commission finds that it is a state-mandated new program or higher level of service, effective September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): “(D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion.” (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Issue 4: Do the Test Claim Statutes Impose Costs Mandated by the State within the Meaning of Government Code Sections 17514 and 17556?

The claimant, in a declaration submitted with the test claim, estimated that it incurred approximately \$320,000 in staffing and other costs to process 208 recommended expulsions during July 1, 1995 to June 30, 1996. Although the reimbursement period for these activities starts in January 1, 1996 and later because of the effective dates of the test-claim legislation, the Commission finds that there is sufficient time-period overlap to find costs mandated by the state as defined by Government Code section 17514. The Commission also finds that none of the exceptions to reimbursement in Government Code section 17556 apply to the activities found above to be state-mandated new programs or higher levels of service.

CONCLUSION

For the reasons discussed above, the Commission finds that the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for all of the following activities:

- Effective January 1, 1996 (the § 48911 suspension procedures²⁷⁹ are part of these activities, as well as the § 48918 expulsion hearing procedures):

²⁷⁸ 20 USCA section 7112 (c)(3).

²⁷⁹ As discussed on pages 28-29, the suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal’s designee or the superintendent of schools between the pupil (defined to include “a pupil’s parent or guardian or legal counsel” § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal’s designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil’s parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person. (§ 48915, subd. (c)(2), Stats. 1995 ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
- For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil's expulsion, and for the governing board to order a pupil's expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil's expulsion, and for the governing board to order the pupil's expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
- Also effective January 1, 1996:
 - For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) The section 48918 expulsion hearing procedures are part of this activity.
 - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)
- Operative July 1, 1996
 - For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

- For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.²⁸⁰ This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
- For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, ch. 974):

²⁸⁰ Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- Review the pupil for readmission. (§ 48916, subd. (a).)
- Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
- If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
- If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (Stats. 1995, ch. 974.)
- Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
 - Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 - Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.)
 - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
- From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):

- Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
- Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
- Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
- Effective September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended. (2) The type of referral made after the expulsion. (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
 - (A) The number of pupils recommended for expulsion. (B) The grounds for each recommended expulsion. (C) Whether the pupil was subsequently expelled. (D) Whether the expulsion order was suspended. (E) The type of referral made after the expulsion. (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
- Effective January 1, 1997:
 - For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined.²⁸¹ (§ 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.) The section 48911 suspension procedures listed on pages 27-28 are part of this activity, as well as the expulsion hearing procedures in section 48918.

²⁸¹ A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code (§ 48900, subd. (n)).

- For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- For the one-time activity of amending the school district's rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
 - A complaining witness shall be given five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony (*Ibid.*).
 - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code²⁸² at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

²⁸² Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. (*Ibid.*)
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. (*Ibid.*)
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
- The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
- For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and

accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)

- For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
 - At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
 - Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - If the hearing is to be conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)

- If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony. (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way. (6) For the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses. (7) For the prosecuting witnesses to be excluded from the courtroom during that testimony. (8) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti²⁸³ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony.” (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
- Effective January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)). (§ 48900.8, Stats. 1997, ch. 637.)
- Effective January 1, 1999, for the school district to amend its expulsion rules and regulations as follows. (§ 48918, subd. (a), Stats. 1998, ch. 498.) This is a one-time activity.

²⁸³ The corpus delicti is the basic element or fact of a crime.

- If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.
- Effective January 1, 2000:
 - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332.) These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.
- Effective January 1, 2001:
 - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for any expulsion.
 - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k), § 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).
- Effective January 1, 2002:
 - For a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds. (§ 48915, subs. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures listed on pages 27-28 are part of this activity.

The Commission also finds that the remaining test claim statutes over which the Commission has jurisdiction do not constitute reimbursable state-mandates within the meaning of article XIII B, section 6.

Proposed for Adoption: September 29, 2011

**ATTACHMENT 1
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Section 48915¹
As Amended by Statutes 1995, Chapter 972

Period of Reimbursement: July 1, 1995 through June 30, 1996

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the first in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code section 48915, as amended in 1995, and cover new offenses added to Education Code section 48915 that trigger existing mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the first year of the period of reimbursement for this claim (fiscal year 1995-1996). The six sets of parameters and guidelines, each covering one or more fiscal years, are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes

¹ Because Education Code section 48915 adds new mandatory expulsion offenses, downstream activities are triggered that were found reimbursable in *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) and are listed in Section IV. Reimbursable Activities.

with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning in fiscal year 2012-2013, and each year thereafter, all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under the sixth set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1 – current document	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998, chapter 498.
Set 4	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School</i> , <i>Pupil Expulsion from School</i> , and <i>Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

The Statement of Decision on *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911,² and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);
 3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures³ for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

² All statutory references are to the Education Code unless otherwise indicated.

³ These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.
- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e).

These parameters and guidelines are for the period of reimbursement from July 1, 1995 through June 30, 1996. However, the operative date of Statutes 1995, chapter 972 is January 1, 1996. Therefore, the reimbursement period for the new state-mandated activities begins on January 1, 1996.

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

1. Costs for one fiscal year shall be included in each claim.
2. 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. (Gov. Code, § 17561, subd. (b)(1)(A).)

3. A local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. (Gov. Code, § 17560, subd. (a).)
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education

- (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapter 972.

2. Training (one-time per employee)

- (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS II

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil⁴ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

⁴ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972); and
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972).

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing. (§ 48918, subd. (b).)
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or

- (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).⁵ (§ 48918, subd. (b).)

3. Expulsion hearing costs:

(a) Preparation for Expulsion Hearing

Preparing and reviewing documents to be used during the expulsion hearing.
Arranging hearing dates and assigning panel members and translators as needed.
(§ 48918, subd. (c).)

(b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)

(c) Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board

Preparation and submission of the hearing officer or panel’s findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)

(d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
(§ 48918, subd. (g).)

E. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

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

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil’s parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion

⁵ The Federal Education Rights and Privacy Act of 1974 (“FERPA”) defines “education records” as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)

3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)
4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

F. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

Then the following activity is reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

G. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school; and
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)

H. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

And the expelled pupil applies for admission to another school district (the “receiving district”) then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district’s request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

I. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

If the governing board expelled a pupil for any of the following:

- Selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

Then the following activities are reimbursable:

1. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not “education records” as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)

2. Participation In Hearings

Participation by a school district in the county board of education’s hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Remand Hearing

If the county board of education remanded the expulsion to the school district’s governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

4. Expunging Records

Expunging the school district’s and pupil’s records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.

- (2) 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.
- (b) 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.
- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁶ 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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan* is legally binding on all parties and provides 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 claims. The administrative record, including the statement of decision, is on file with the Commission.

**ATTACHMENT 2
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48926
As Amended by Statutes 1995, Chapters 972 and 974
Statutes 1996, Chapters 915 and 937, 1052

Period of Reimbursement: July 1, 1996 through June 30, 1997

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the second in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code sections shown in the caption above, and cover new offenses added to the Education Code that trigger existing mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the first and second years of the period of reimbursement for this claim (fiscal years 1995-1996 and 1996-1997). The six sets of parameters and guidelines are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning in fiscal year 2012-2013, and each year thereafter, all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under the sixth set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain

reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2– current document	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998, chapter 498.
Set 4	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School</i> , <i>Pupil Expulsion from School</i> , and <i>Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

The Statement of Decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911,¹ and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);
 3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures² for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
 3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.

¹ All statutory references are to the Education Code unless otherwise indicated.

² These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning July 1, 1996:

- a. For the superintendent of schools (or designee) to provide notice to a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), of the education alternative placement to the pupil's parent or guardian at the time of the expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
- b. For the governing board to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918. This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- c. If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974.)
- d. Ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- e. Recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most serious offenses listed in subdivision (c) of section 48915.
- f. For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- g. Perform the following activities when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)). (§ 48916, Stats. 1995, ch. 974.):
 - 1. Review the pupil for readmission. (§ 48916, subd. (a).)
 - 2. Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
 - 3. If readmission is denied, for the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to,

serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)

4. If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- h. Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district:
 1. Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 2. Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 3. Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 4. Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997.)

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data, as specified, for pupils expelled for the most serious offenses in subdivision (c) of section 48915. (§ 48916.1, Stats. 1995, ch. 974.)

Beginning September 26, 1996, for the school district to maintain data on the following and report it to the California Department of Education (CDE) for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) The number of pupils recommended for expulsion; (2) The grounds for each recommended expulsion; (3) Whether the pupil was subsequently expelled; (4) Whether the expulsion order was suspended; (5) The type of referral made after the expulsion; and (6) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1997:

- a. Amend the school district's rules and regulations, as specified, to include procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats. 1996, ch. 915, one-time costs.)
- b. For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for pupils who commit or attempt to commit a sexual assault or sexual battery as defined. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052.) The section 48911 suspension procedures and section 48918 expulsion hearing procedures are part of this activity.
- c. For the principal or superintendent to recommend expelling a pupil for assault or battery on any school employee. (§ 48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- d. For school districts to follow specified procedures when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n). (§ 48918 and 48918.5, Stats. 1996, ch. 915.)

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions, Pupil Expulsions, and Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e).

These parameters and guidelines are for the period of reimbursement from July 1, 1996 through June 30, 1997. However, some of the statutes that impose activities have different operative dates, as follows:

Activities claimed under Statutes 1995, chapter 974, are reimbursable beginning July 1, 1996. Activities claimed under Statutes 1996, chapter 938, are reimbursable beginning September 26, 1996. Activities claimed under Statutes 1996, chapters 915 and 1052, are reimbursable beginning January 1, 1997. Reimbursement for state-mandated costs may be claimed as follows:

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996) and Statutes 1996, chapters 915 and 1052.
 - (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
 - (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
 - (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)
2. School District Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)
3. Training (one-time per employee)
 - (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS II

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil³ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

³ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing. (§ 48918, subd. (b).)
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁴ (§ 48918, subd. (b).)

⁴ The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition

3. Expulsion hearing costs:

(a) Preparation for Expulsion Hearing

Preparing and reviewing documents to be used during the expulsion hearing.
Arranging hearing dates and assigning panel members and translators as needed.
(§ 48918, subd. (c).)

(b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)

(c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)

(d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
(§ 48918, subd. (g).)

E. ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

1. Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
2. Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
4. If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm

(for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)

5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁵ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
8. Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

F. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

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

⁵ The corpus delicti is the basic element or fact of a crime.

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)
3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)
4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

G. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE, REHABILITATION PLAN, AND EDUCATIONAL PROGRAM

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

2. Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)
3. Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)
4. Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.)

H. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school;
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)
3. Review the pupil for readmission. (operative July 1, 1996.)
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil seeking application to a school district (the “receiving school district”) has been expelled by another school district for one of the following most serious offenses:

- Unlawful possession of any controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (a)(3), Stats. 1995 ch. 972);
- Possessing, selling, or otherwise furnishing a firearm without permission, as specified, if the possession is verified by an employee of a school district (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997);

And the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activity associated with the receiving district’s admission hearing is reimbursable:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);

And the expelled pupil applies for admission to another school district (the “receiving district”) then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district’s request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

K. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

If the governing board expelled a pupil for any of the following:

- Selling or otherwise furnishing a firearm § 48915, subd. (c)(1);

- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not “education records” as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)

2. Participation In Hearings

Participation by a school district in the county board of education’s hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Remand Hearing

If the county board of education remanded the expulsion to the school district’s governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

4. Expunging Records

Expunging the school district’s and pupil’s records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

L. ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

- 1. From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for these pupils as follows (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.):

- (a) Pupils who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
 - (b) Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
 - (c) The number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
2. Beginning September 26, 1996 (until January 7, 2002), for school districts to maintain data on the following and report it to the California Department of Education (CDE), commencing on June 1, 1997, for pupils expelled for the most serious offenses in section 48915, subdivision (c):
- a. The number of pupils recommended for expulsion;
 - b. The grounds for each recommended expulsion;
 - c. Whether the pupil was subsequently expelled;
 - d. Whether the expulsion order was suspended;
 - e. The type of referral made after the expulsion; and
 - f. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e)(1), Stats. 1996, ch. 937.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.

- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁶ is subject to the initiation of an audit by

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan* is legally binding on all parties and provides 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 claims. The administrative record, including the statement of decision, is on file with the Commission.

**ATTACHMENT 3
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48926

As Amended by Statutes 1995, Chapters 972 and 974

Statutes 1996, Chapters 915 and 937, 1052, Statutes 1997, Chapter 637,

Statutes 1998, Chapter 498.

**Period of Reimbursement: July 1, 1997 through June 30, 1998
and July 1, 1998 – June 30, 1999**

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the third in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code sections shown in the caption above, and cover new offenses added to the Education Code that trigger existing mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the first through fourth years of the period of reimbursement for this claim (fiscal years 1995-1996, 1996-1997, 1997-1998 and 1998-1999). The six sets of parameters and guidelines are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning in fiscal year 2012-2013, and each year thereafter, all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil*

Expulsion Appeals (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under the sixth set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3 – current document	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998, chapter 498.
Set 4	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School</i> , <i>Pupil Expulsion from School</i> , and <i>Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

The Statement of Decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911,¹ and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);
 3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures² for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
 3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession

¹ All statutory references are to the Education Code unless otherwise indicated.

² These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.

- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning July 1, 1996:

- a. For the superintendent of schools (or designee) to provide notice to a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), of the education alternative placement to the pupil's parent or guardian at the time of the expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
- b. For the governing board to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918. This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- c. If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974.)
- d. Ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- e. Recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most serious offenses listed in subdivision (c) of section 48915.
- f. For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- g. Perform the following activities when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)). (§ 48916, Stats. 1995, ch. 974.):
 - 1. Review the pupil for readmission. (§ 48916, subd. (a).)
 - 2. Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)

3. If readmission is denied, for the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
4. If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- h. Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district:
 1. Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 2. Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 3. Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 4. Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997.)

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data, as specified, for pupils expelled for the most serious offenses in subdivision (c) of section 48915. (§ 48916.1, Stats. 1995, ch. 974.)

Beginning September 26, 1996, for the school district to maintain data on the following and report it to the California Department of Education (CDE) for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) The number of pupils recommended for expulsion; (2) The grounds for each recommended expulsion; (3) Whether the pupil was subsequently expelled; (4) Whether the expulsion order was suspended; (5) The type of referral made after the expulsion; and (6) The

disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1997:

- a. Amend the school district's rules and regulations, as specified, to include procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats. 1996, ch. 915, one-time costs.)
- b. For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for pupils who commit or attempt to commit a sexual assault or sexual battery as defined. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052.) The section 48911 suspension procedures and section 48918 expulsion hearing procedures are part of this activity.
- c. For the principal or superintendent to recommend expelling a pupil for assault or battery on any school employee. (§ 48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- d. For school districts to follow specified procedures when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n). (§ 48918 and 48918.5, Stats. 1996, ch. 915.)

Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension of that pupil for any of the most serious mandatory offenses in section 48915, subdivision (c). (§ 48900.8, Stats. 1997, ch. 637.)

Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows:

If compliance by the governing board with the time requirements for the conduct of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year. (§ 48918, subd. (a), Stats. 1998, ch. 489.)

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e).

These parameters and guidelines are for the period of reimbursement from July 1, 1997 through June 30, 1999. However, some of the statutes that impose activities have different operative dates, as follows:

Activities claimed under Statutes 1997, chapter 637, are reimbursable beginning January 1, 1998. Activities claimed under Statutes 1998, chapter 498, are reimbursable beginning January 1, 1999.

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

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996), Statutes 1996, chapters 915 and 1052, and Statutes 1998, chapter 489.
 - (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
 - (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
 - (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)
2. School District Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)

3. Training (one-time per employee)

- (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS II

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil³ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

³ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;

- (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing. (§ 48918, subd. (b).)
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
- (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁴ (§ 48918, subd. (b).)
3. Expulsion hearing costs:
- (a) Preparation for Expulsion Hearing
 - Preparing and reviewing documents to be used during the expulsion hearing.
 - Arranging hearing dates and assigning panel members and translators as needed.
 - (§ 48918, subd. (c).)
 - (b) Conducting Expulsion Hearing
 - The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)
 - (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board
 - Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)
 - (d) Record of Hearing
 - Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
 - (§ 48918, subd. (g).)

⁴ The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

E. ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

1. Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
2. Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
4. If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also

witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁵ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
8. Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

F. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

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

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)
3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)

⁵ The corpus delicti is the basic element or fact of a crime.

4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

G. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE, REHABILITATION PLAN, AND EDUCATIONAL PROGRAM

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)
2. Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)
3. Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)
4. Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.)

H. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school;
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)
3. Review the pupil for readmission. (operative July 1, 1996.)
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil seeking application to a school district (the "receiving school district") has been expelled by another school district for one of the following most serious offenses:

- Unlawful possession of any controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (a)(3), Stats. 1995 ch. 972);
- Possessing, selling, or otherwise furnishing a firearm without permission, as specified, if the possession is verified by an employee of a school district (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997);

And the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activity associated with the receiving district's admission hearing is reimbursable:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);

And the expelled pupil applies for admission to another school district (the “receiving district”) then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district’s request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

K. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

If the governing board expelled a pupil for any of the following:

- Selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Providing Copies of Documents
 - (a) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
 - (b) Providing copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not “education records” as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)
2. Participation In Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

4. Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

L. ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

Beginning September 26, 1996 (until January 7, 2002), for school districts to maintain data on the following and report it to the California Department of Education (CDE), commencing on June 1, 1997:

- a. The number of pupils recommended for expulsion;
- b. The grounds for each recommended expulsion;
- c. Whether the pupil was subsequently expelled;
- d. Whether the expulsion order was suspended;
- e. The type of referral made after the expulsion; and
- f. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e)(1), Stats. 1996, ch. 937.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training

time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.

- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁶ 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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

The statement of decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan* is legally binding on all parties and provides 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 claims. The administrative record, including the statement of decision, is on file with the Commission.

**ATTACHMENT 4
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48923,
48926

As Amended by Statutes 1995, Chapters 972 and 974

Statutes 1996, Chapters 915 and 937, 1052, Statutes 1997, Chapter 637,

Statutes 1998, Chapter 498, Statutes 1999, Chapter 332, Statutes 2000, Chapter 147.

**Period of Reimbursement: July 1, 1999 through June 30, 2000
and July 1, 2000 – June 30, 2001**

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the fourth in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code sections shown in the caption above, and cover new offenses added to the Education Code that trigger existing mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the first through sixth years of the period of reimbursement for this claim (fiscal year 1995-1996 through fiscal year 2000-2001). The six sets of parameters and guidelines are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning in fiscal year 2012-2013, and each year thereafter, all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil*

Expulsions II, and *Educational Services Plan for Expelled Pupils* and are claimable under the sixth set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3 –	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998, chapter 498.
Set 4 – current document	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School</i> , <i>Pupil Expulsion from School</i> , and <i>Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

The Statement of Decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911,¹ and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);
 3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures² for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
 3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession

¹ All statutory references are to the Education Code unless otherwise indicated.

² These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.

- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning July 1, 1996:

- a. For the superintendent of schools (or designee) to provide notice to a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), of the education alternative placement to the pupil's parent or guardian at the time of the expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
- b. For the governing board to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918. This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- c. If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974.)
- d. Ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- e. Recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most serious offenses listed in subdivision (c) of section 48915.
- f. For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- g. Perform the following activities when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)). (§ 48916, Stats. 1995, ch. 974.):
 - 1. Review the pupil for readmission. (§ 48916, subd. (a).)
 - 2. Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)

3. If readmission is denied, for the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
4. If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- h. Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district:
 1. Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 2. Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 3. Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 4. Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subs. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997.)

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data, as specified, for pupils expelled for the most serious offenses in subdivision (c) of section 48915. (§ 48916.1, Stats. 1995, ch. 974.)

Beginning September 26, 1996, for the school district to maintain data on the following and report it to the California Department of Education (CDE) for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) The number of pupils recommended for expulsion; (2) The grounds for each recommended expulsion; (3) Whether the pupil was subsequently expelled; (4) Whether the expulsion order was suspended; (5) The type of referral made after the expulsion; and (6) The

disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1997:

- a. Amend the school district's rules and regulations, as specified, to include procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats. 1996, ch. 915, one-time costs.)
- b. For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for pupils who commit or attempt to commit a sexual assault or sexual battery as defined. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052.) The section 48911 suspension procedures and section 48918 expulsion hearing procedures are part of this activity.
- c. For the principal or superintendent to recommend expelling a pupil for assault or battery on any school employee. (§ 48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- d. For school districts to follow specified procedures when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n). (§ 48918 and 48918.5, Stats. 1996, ch. 915.)

Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension of that pupil for any of the most serious mandatory offenses in section 48915, subdivision (c). (§ 48900.8, Stats. 1997, ch. 637.)

Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows:

If compliance by the governing board with the time requirements for the conduct of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year. (§ 48918, subd. (a), Stats. 1998, ch. 489.)

Beginning January 1, 2000:

For school districts to perform the following one-time activities: (1) updating the school district rules and regulations on notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney

advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332). These activities are reimbursable when the pupil commits any of the offenses specified in subdivisions (a) or (c) of section 48915.

Beginning January 1, 2001:

For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for an expulsion for any reason.

For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k)). (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses. (listed in § 48915, subd. (c).)

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions, Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e).

These parameters and guidelines are for the period of reimbursement from July 1, 1999 through June 30, 2001. However, some of the statutes that impose activities have different operative dates, as follows:

Activities claimed under Statutes 1999, chapter 332, are reimbursable beginning January 1, 2000. Activities claimed under Statutes 2000, chapter 147, are reimbursable beginning January 1, 2001.

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

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996), Statutes 1996, chapters 915 and 1052, Statutes 1998, chapter 489, and Statutes 1999, chapter 332 (including revising the pupil notification required by Stats. 1999, ch. 332).
 - (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
 - (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
 - (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)
2. School District Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)
3. Training (one-time per employee)
 - (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS II

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil³ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

³ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion;
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); and
 - (d) Notice of the opportunity for the pupil or the pupil's parent or guardian to be represented by counsel or by a non-attorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.)
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁴ (§ 48918, subd. (b).)

⁴ The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly

3. Expulsion hearing costs:

(a) Preparation for Expulsion Hearing

Preparing and reviewing documents to be used during the expulsion hearing.
Arranging hearing dates and assigning panel members and translators as needed.
(§ 48918, subd. (c).)

(b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)

(c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)

(d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
(§ 48918, subd. (g).)

E. ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

1. Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
2. Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

4. If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁵ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
8. Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

F. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

⁵ The corpus delicti is the basic element or fact of a crime.

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

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)
3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)
4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

G. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE, REHABILITATION PLAN, AND EDUCATIONAL PROGRAM

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

2. Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)
3. Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)
4. Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.)

H. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school;
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)
3. Review the pupil for readmission. (operative July 1, 1996.)
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil seeking application to a school district (the “receiving school district”) has been expelled by another school district for one of the following most serious offenses:

- Unlawful possession of any controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (a)(3), Stats. 1995 ch. 972);
- Possessing, selling, or otherwise furnishing a firearm without permission, as specified, if the possession is verified by an employee of a school district (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997);

And the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activity associated with the receiving district’s admission hearing is reimbursable:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);

And the expelled pupil applies for admission to another school district (the “receiving district”) then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district’s request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

K. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

County Boards of Education (applies to expulsion appeals for all offenses)

Remanding an expulsion decision to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147, eff. Jan. 1, 2001.)

School Districts

If the governing board expelled a pupil for any of the following:

- Selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)

2. Participation in Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

4. Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

5. Notice and Adoption of Required Findings on Remand (operative Jan. 1, 2001)

If following an appeal, the county board of education remanded the expulsion to the governing board, then:

- (a) Providing notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion; and maintain a record of each expulsion and the cause therefor.
- (b) Adopting the required findings on remand from the county board of education in a public session. (Holding a hearing is not reimbursable.) (§ 48923, subd. (b), Stats. 2000, ch. 147.)

L. ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

Maintain data on the following and report it to the California Department of Education (CDE):

- a. The number of pupils recommended for expulsion;
- b. The grounds for each recommended expulsion;
- c. Whether the pupil was subsequently expelled;
- d. Whether the expulsion order was suspended;
- e. The type of referral made after the expulsion; and
- f. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e)(1), Stats. 1996, ch. 937.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.

- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁶ is subject to the initiation of an audit by

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan* is legally binding on all parties and provides 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 claims. The administrative record, including the statement of decision, is on file with the Commission.

**ATTACHMENT 5
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48923,
48926

As Amended by Statutes 1995, Chapters 972 and 974

Statutes 1996, Chapters 915 and 937, 1052, Statutes 1997, Chapter 637,

Statutes 1998, Chapter 498, Statutes 1999, Chapter 332, Statutes 2000, Chapter 147.

Statutes 2001, Chapter 116

Period of Reimbursement: July 1, 2001 through June 30, 2012

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the fifth in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code sections shown in the caption above, and cover new offenses added to the Education Code that trigger existing mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the first through seventeenth years of the period of reimbursement for this claim (fiscal year 1995-1996 through fiscal year 2011-2012).). The six sets of parameters and guidelines are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning in fiscal year 2012-2013, and each year thereafter, all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under the sixth set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3 –	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998, chapter 498.
Set 4	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5 – current document	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School</i> , <i>Pupil Expulsion from School</i> , and <i>Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

The Statement of Decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911,¹ and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);
 3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures² for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
 3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

¹ All statutory references are to the Education Code unless otherwise indicated.

² These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.
- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning July 1, 1996:

- a. For the superintendent of schools (or designee) to provide notice to a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), of the education alternative placement to the pupil's parent or guardian at the time of the expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
- b. For the governing board to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918. This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- c. If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974.)
- d. Ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- e. Recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most serious offenses listed in subdivision (c) of section 48915.
- f. For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- g. Perform the following activities when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)). (§ 48916, Stats. 1995, ch. 974.):
 - 1. Review the pupil for readmission. (§ 48916, subd. (a).)
 - 2. Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a

danger to campus safety or to other pupils or employees of the school district.”
(§ 48916, subd. (c).)

3. If readmission is denied, for the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school.
(§ 48916, subd. (d).)
4. If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil’s parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- h. Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district’s governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district:
 1. Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 2. Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 3. Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
 4. Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997.)

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data, as specified, for pupils expelled for the most serious offenses in subdivision (c) of section 48915. (§ 48916.1, Stats. 1995, ch. 974.)

Beginning September 26, 1996, for the school district to maintain data on the following and report it to the California Department of Education (CDE) for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) The number of pupils recommended for expulsion; (2) The grounds for each recommended expulsion; (3) Whether the pupil was subsequently expelled; (4) Whether the

expulsion order was suspended; (5) The type of referral made after the expulsion; and (6) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1997:

- a. Amend the school district's rules and regulations, as specified, to include procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats. 1996, ch. 915, one-time costs.)
- b. For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for pupils who commit or attempt to commit a sexual assault or sexual battery as defined. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052.) The section 48911 suspension procedures and section 48918 expulsion hearing procedures are part of this activity.
- c. For the principal or superintendent to recommend expelling a pupil for assault or battery on any school employee. (§ 48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- d. For school districts to follow specified procedures when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n). (§ 48918 and 48918.5, Stats. 1996, ch. 915.)

Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension of that pupil for any of the most serious mandatory offenses in section 48915, subdivision (c). (§ 48900.8, Stats. 1997, ch. 637.)

Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows:

If compliance by the governing board with the time requirements for the conduct of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year. (§ 48918, subd. (a), Stats. 1998, ch. 489.)

Beginning January 1, 2000:

For school districts to perform the following one-time activities: (1) updating the school district rules and regulations on notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil

notification to include the right to be represented by legal counsel or a nonattorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332). These activities are reimbursable when the pupil commits any of the offenses specified in subdivisions (a) or (c) of section 48915.

Beginning January 1, 2001:

For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for an expulsion for any reason.

For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k)). (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses. (listed in § 48915, subd. (c).)

Beginning January 1, 2002:

- For a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possesses an explosive at school or at a school activity off school grounds. (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures are part of this activity.

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The

filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e).

These parameters and guidelines are for the period of reimbursement from July 1, 2001 through June 30, 2012. However, activities claimed under Statutes 2001, chapter 116, are reimbursable beginning January 1, 2002. Reimbursement for state-mandated costs may be claimed as follows:

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the

reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996), Statutes 1996, chapters 915 and 1052, Statutes 1998, chapter 489, and Statutes 1999, chapter 332 (including revising the pupil notification required by Stats. 1999, ch. 332).
 - (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
 - (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
 - (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)
 - (e) Adopt rules and regulations establishing the procedures for suspending a pupil who possesses an explosive at school or at a school activity off school grounds. (Statutes 2001, chapter 116.)
2. School District Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)
3. Training (one-time per employee)
 - (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS II

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, eff. Jan. 1, 2002);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil³ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);

³ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee. (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997.)

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion;
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); and
 - (d) Notice of the opportunity for the pupil or the pupil's parent or guardian to be represented by counsel or by a non-attorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.)

2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁴ (§ 48918, subd. (b).)
3. Expulsion hearing costs:
 - (a) Preparation for Expulsion Hearing

Preparing and reviewing documents to be used during the expulsion hearing.
Arranging hearing dates and assigning panel members and translators as needed.
(§ 48918, subd. (c).)
 - (b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)
 - (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)
 - (d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
(§ 48918, subd. (g).)

E. ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

⁴ The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

1. Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
2. Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
4. If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁵ has

⁵ The corpus delicti is the basic element or fact of a crime.

been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
8. Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

F. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

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

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)
3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)
4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

G. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE, REHABILITATION PLAN, AND EDUCATIONAL PROGRAM

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)
2. Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)
3. Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)
4. Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.)

H. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school;
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)
3. Review the pupil for readmission. (operative July 1, 1996.)
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil seeking application to a school district (the "receiving school district") has been expelled by another school district for one of the following most serious offenses:

- Unlawful possession of any controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (a)(3), Stats. 1995 ch. 972);
- Possessing, selling, or otherwise furnishing a firearm without permission, as specified, if the possession is verified by an employee of a school district (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

And the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activity associated with the receiving district's admission hearing is reimbursable:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

And the expelled pupil applies for admission to another school district (the "receiving district") then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

K. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

County Boards of Education (applies to expulsion appeals for all offenses)

Remanding an expulsion decision to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147, eff. Jan. 1, 2001.)

School Districts

If the governing board expelled a pupil for any of the following:

- Selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)

2. Participation in Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

4. Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

5. Notice and Adoption of Required Findings on Remand (operative Jan. 1, 2001)

If following an appeal, the county board of education remanded the expulsion to the governing board, then:

- (a) Providing notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion; and maintain a record of each expulsion and the cause therefor.
- (b) Adopting the required findings on remand from the county board of education in a public session. (Holding a hearing is not reimbursable.) (§ 48923, subd. (b), Stats. 2000, ch. 147.)

L. ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));

- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable until January 7, 2002:

Maintain data on the following and report it to the California Department of Education (CDE):

- a. The number of pupils recommended for expulsion;
- b. The grounds for each recommended expulsion;
- c. Whether the pupil was subsequently expelled;
- d. Whether the expulsion order was suspended;
- e. The type of referral made after the expulsion; and
- f. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e)(1), Stats. 1996, ch. 937.)

Beginning January 8, 2002, it is reimbursable for the school district to maintain data on the following and report it to CDE for pupils expelled for the offenses listed above (section 48915, subd. (c)):

- a. Whether the expulsion order was suspended;
- b. The type of referral made after the expulsion; and
- c. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost

objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.
- (c) 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.

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel’s Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁶ 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 Controller to initiate an audit shall commence to run from the date of initial payment of the

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision on *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan* is legally binding on all parties and provides 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 claims. The administrative record, including the statement of decision, is on file with the Commission.

**ATTACHMENT 6
STAFF'S DRAFT
PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
48918, 48918.5, 48923, 48926

As Amended by Statutes 1995, Chapters 972 and 974;
Statutes 1996, Chapters 915 937, and 1052; Statutes 1997, Chapter 637;
Statutes 1998, Chapter 498; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147;
Statutes 2001, Chapter 116

Consolidated With

PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)

Education Code Section 48911, Subdivisions (b) and (e)

Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;
Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)

Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916 and 48918

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes
1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622; Statutes 1987,
Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters
1255, 1256, and 1257; Statutes 1994, Chapter 146

PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924

Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965,; Statutes 1978, Chapter 668;
Statutes 1983, Chapter 498

Period of Reimbursement: From July 1, 2012 Forward

I. SUMMARY OF THE MANDATE

These parameters and guidelines are the sixth in a set of six that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* identified in the caption above. These parameters and guidelines address the costs incurred to perform the new activities mandated by Education Code sections shown in the caption above, and cover offenses added to the Education Code that trigger existing

mandatory suspension and expulsion procedures and post-expulsion requirements that increased the level of service provided by school districts during the period of reimbursement for this claim (fiscal year 2012-forward). The six sets of parameters and guidelines are intended to make reimbursement claims easier for school districts to submit and for the State Controller’s Office to evaluate and pay.

The suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs for possession of a firearm in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) which address the program required by statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

In addition to the activities eligible for reimbursement under these consolidated parameters and guidelines, each subsequent set of parameters and guidelines for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* adds activities that correspond to the statutes with later operative dates that were determined by the Commission to impose reimbursable state-mandated activities on school districts.

Beginning with these parameters and guidelines (fiscal year 2012-2013 and beyond), all reimbursable activities from the original program in *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under this set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under their existing parameters and guidelines and State Controller’s Claiming Instructions for Programs 176 to 271.

The six sets of parameters and guidelines are summarized in the table below:

<u>Parameters and Guidelines</u>	<u>Period of Reimbursement</u>	<u>Statutes Approved</u>
Set 1	July 1, 1995 - June 30, 1996	§ 48915, as amended by Statutes 1995, chapter 972, and activities triggered by the new offenses added to section 48915.
Set 2	July 1, 1996 - June 30, 1997	§§ 48915.2, 48916, 48916.1, 48918, 48918.5, 48926, as amended by Statutes 1995, chapter 874, Statutes 1996, chapters 915, 937, 1052.
Set 3 –	July 1, 1997 – June 30, 1999	§§ 48900.8, 48918, as amended by Statutes 1997, chapter 637, Statutes 1998,

		chapter 498.
Set 4	July 1, 1999 – June 30, 2001	§§ 48918, 48923, as amended by Statutes 1999, chapter 332, Statutes 2000, chapter 147.
Set 5	July 1, 2001 – June 30, 2012	§ 48915, Statutes 2001, chapter 116.
Set 6– current document	July 1, 2012 –	All statutes, consolidated with <i>Pupil Suspension from School, Pupil Expulsion from School, and Pupil Expulsion Appeals</i> (CSM-4456, 4455, 4463).

A. *Pupil Suspensions from School (CSM 4456)*

On December 19, 1996, the Commission on State Mandates (Commission) adopted its statement of decision determining that certain provisions of Education Code section 48911,¹ subdivisions (b) and (e), impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The mandate is limited to the following reimbursable activities for suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive (October 11, 1993 to December 31, 1993):

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable (§ 48911, subd. (b)); and
- A report of the cause of each school suspension to the district board. (§ 48911, subd. (e).)

B.. *Pupil Expulsions from School (CSM 4455)*

On May 26, 1997, the Commission adopted its statement of decision, and on May 26, 2005, adopted its amended statement of decision pursuant to the California Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, finding that certain provisions of the Education Code impose a new program or higher level of service for school districts within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514:

To suspend a pupil for possessing a firearm,² and recommend expulsion of a pupil for:

¹ All statutory references are to the Education Code unless otherwise indicated.

² The statement of decision also lists: From October 11, 1993 to December 31, 1993, suspending a pupil for possession of a firearm, knife of no reasonable use to the pupil, or possession of an explosive.

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion. (§ 48915, subd. (a), Stats. 1983, ch. 498 Stats. 1993, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

When a pupil is expelled for any of the following:

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion.

Then it is reimbursable to include specified provisions in the notice of hearing to the pupil, and on request, allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as specified. (§ 48915, subd. (a), Stats. 1983, ch. 498, Stats. 1983, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

If the pupil is expelled for the following:

From October 11, 1993, to December 31, 1993, for possession of a firearm, knife of no reasonable use to the pupil, or explosive. (§ 48915, subd. (b), Stats. 1993, ch. 1255.)

From January 1, 1994 to the present, for possession of a firearm. (§ 48915, subd. (b), Stats. 1993, ch. 1256.)

Then it is reimbursable to (1) send written notice of specified provisions (§ 48918, subd. (i)); (2) Maintain a record of each expulsion, including the cause thereof (§ 48918, subd. (j).); and (3) Record expulsion orders and the causes thereof as specified, and, on request, forward the record to any school in which the pupil subsequently enrolls. (§ 48918, subd. (j).)

For a pupil expelled for possessing a firearm, the following is reimbursable: (1) Set a date when the pupil may apply for readmission to a district school; (2) Make available to the same pupil and his or her parent or guardian a description of the procedure for readmission; and (3) Adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission. (§ 48916.)

The following were also found to be reimbursable for school districts that do not have an interdistrict transfer agreement with another school district: (1) Determine whether a pupil expelled by another school district, would pose a potential danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion (§ 48915.1, subd. (d)); (2) Respond to a receiving district's request for recommendation (§ 48915.1) if the pupil is expelled for the following offenses: (a) from October 11, 1993 to December 31, 1993, for possession of a firearm, knife of no reasonable use to the pupil, or explosive; (§ 48915, subd. (b), Stats. 1993, ch. 1255); (b) from January 1, 1994 to the present, for possession of a firearm (§ 48915, subd. (b), Stats. 1993, ch. 1256); (3) include in the notice of hearing specified information (§§ 48915.1, 48915.2, and 48918, subd. (b)); (4) Allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing upon request, as specified (§§ 48915.1, 48915.2, and 48918, subd. (b)); (5) Maintain records as specified (§§ 48915.1, 48915.2, and 48918, subd. (j)); and (6) Notify the applicant and parent/guardian of the governing board's determination, as specified. (§§ 48915.1, subd. (a), 48915.2 & 48918, subd. (i).)

C. Pupil Expulsion Appeals (CSM 4463)

On March 27, 1997, the Commission adopted its statement of decision finding that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all pupil expulsion appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals;
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal;
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents);
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo;
- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education; and
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915, subdivision (b) (as amended by Stats. 1993, chs. 1255 & 1256), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil or the pupil’s parent or guardian, as follows:
 1. If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 2. If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).³
 3. Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
 4. If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
 5. If ordered by the county board of education, expunge the district’s and the pupil’s records of the expulsion.

D. Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils

The statement of decision on *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and was issued in May 2011. The Commission found that the test claim statutes impose a partially 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 approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1996:

- a. For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for:
 1. A pupil who brandishes a knife at another person (§ 48915, subd. (c)(2), Stats. 1995 ch. 972);
 2. A pupil who sells or furnishes a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal (§ 48915, subds. (c)(1) and (d), Stats. 1995, ch. 972);

³The Federal Education Rights and Privacy Act of 1974 (“FERPA”) defines “education records” as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

3. A pupil's first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- b. For the principal or superintendent to immediately suspend, pursuant to section 48911, and for the governing board to order expulsion, for a pupil who sells a controlled substance, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972).
- c. For the school to perform the following suspension procedures⁴ for the offenses listed in (a) and (b) above:
 1. Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
 2. At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)
 3. A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
- d. For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972). The section 48918 expulsion hearing procedures are part of this activity.
- e. For the governing board to refer a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)) to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension (§ 48915, subd. (d), Stats. 1995, ch. 972).

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning July 1, 1996:

⁴ These offenses also trigger the expulsion procedures identified in the *Pupil Expulsions from School* (CSM-4455) test claim.

- a. For the superintendent of schools (or designee) to provide notice to a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), of the education alternative placement to the pupil's parent or guardian at the time of the expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)
- b. For the governing board to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918. This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- c. If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974.)
- d. Ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- e. Recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most serious offenses listed in subdivision (c) of section 48915.
- f. For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
- g. Perform the following activities when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)). (§ 48916, Stats. 1995, ch. 974.):
 1. Review the pupil for readmission. (§ 48916, subd. (a).)
 2. Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
 3. If readmission is denied, for the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 4. If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- h. Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the

offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district:

1. Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
2. Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
3. Brandishing a knife at another person. (§ 48915, subd. (c)(2).)
4. Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, chs. 915 and 1052, operative Jan. 1, 1997.)

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data, as specified, for pupils expelled for the most serious offenses in subdivision (c) of section 48915. (§ 48916.1, Stats. 1995, ch. 974.)

Beginning September 26, 1996, for the school district to maintain data on the following and report it to the California Department of Education (CDE) for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) The number of pupils recommended for expulsion; (2) The grounds for each recommended expulsion; (3) Whether the pupil was subsequently expelled; (4) Whether the expulsion order was suspended; (5) The type of referral made after the expulsion; and (6) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The Commission also approved the consolidated test claim for the following reimbursable activities, beginning January 1, 1997:

- a. Amend the school district's rules and regulations, as specified, to include procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats. 1996, ch. 915, one-time costs.)
- b. For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for pupils who commit or attempt to commit a sexual assault or sexual battery as defined. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052.) The section 48911 suspension procedures and section 48918 expulsion hearing procedures are part of this activity.

- c. For the principal or superintendent to recommend expelling a pupil for assault or battery on any school employee. (§ 48915, subd. (a)(5), Stats. 1996, chs. 915 & 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- d. For school districts to follow specified procedures when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n). (§ 48918 and 48918.5, Stats. 1996, ch. 915.)

Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension of that pupil for any of the most serious mandatory offenses in section 48915, subdivision (c). (§ 48900.8, Stats. 1997, ch. 637.)

Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows:

If compliance by the governing board with the time requirements for the conduct of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year. (§ 48918, subd. (a), Stats. 1998, ch. 489.)

Beginning January 1, 2000:

For school districts to perform the following one-time activities: (1) updating the school district rules and regulations on notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser, and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332). These activities are reimbursable when the pupil commits any of the offenses specified in subdivisions (a) or (c) of section 48915.

Beginning January 1, 2001:

For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for an expulsion for any reason.

For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the

education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k)). (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses. (listed in § 48915, subd. (c).)

Beginning January 1, 2002:

For a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possesses an explosive at school or at a school activity off school grounds. (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures are part of this activity.

For purposes of consistency, these parameters and guidelines continue to include the reasonable reimbursement methodology (RRM) adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs incurred by a school district.

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. This includes county offices of education. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The *Pupil Expulsions II* and *Pupil Suspensions II* test claims were filed on December 23, 1996, so the filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e). The *Educational Services Plan for Expelled Pupils* test claim was filed December 29, 1997, so the filing date of this test claim establishes eligibility for reimbursement operative July 1, 1996.

These consolidated parameters and guidelines are for the period of reimbursement beginning July 1, 2012. Reimbursement for state-mandated costs may be claimed as follows:

1. Costs for one fiscal year shall be included in each claim.
2. 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. (Gov. Code, § 17561, subd. (b)(1)(A).)
3. A local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. (Gov. Code, § 17560, subd. (a).)

4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VI of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D.3 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ONE-TIME ACTIVITIES

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996), Statutes 1996, chapters 915 and 1052, Statutes 1998, chapter 489, and Statutes 1999, chapter 332 (including revising the pupil notification required by Stats. 1999, ch. 332).

- (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
- (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
- (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) & 48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)
- (e) Adopt rules and regulations establishing the procedures for suspending a pupil who possesses an explosive at school or at a school activity off school grounds. (Statutes 2001, chapter 116.)
- (f) Printing and disseminating rules and procedures to each school site.

2. County Board of Education

- (a) Adopting rules and procedures pertaining to pupil expulsions and revising those rules and procedures to conform to amendment of the statutory requirements.

3. School District Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)

4. Training (one-time per employee)

- (a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS I and II

If the suspension is for possession of a firearm, then the following activities are reimbursable:

1. Attendance at Informal Conference

The attendance of the teacher, supervisor, or other school district employee who referred the pupil to the principal for suspension in the pre-suspension conference between the principal (or principal's designee) or superintendent and the pupil. (§ 48911, subd. (b).)

2. Reporting the Cause to the District Office

Reporting the cause of the suspension to the school district's superintendent or governing board in accordance with the regulations of the school district's governing board. Such report may be oral or written. (§ 48911, subd. (e).)

3. Pupil Records

Identifying by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637, eff. Jan. 1, 1998.)

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, eff. Jan. 1, 2002);

Then the following suspension activities pursuant to section 48911 are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil⁵ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)
5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

⁵ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

C. ON-GOING ACTIVITIES: RECOMMENDATION OF EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any knife or other dangerous object of no reasonable use to the pupil (§ 48915, subd. (a)(2));
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code (§ 48915, subd. (c)(3));
- Robbery or extortion. (§ 48915, subd. (a)(4).)

D. ON-GOING ACTIVITIES: EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

- Assault or battery on any school employee (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any knife or other dangerous object of no reasonable use to the pupil (§ 48915, subd. (a)(2));
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code (§ 48915, subd. (c)(3));
- Robbery or extortion; (§ 48915, subd. (a)(4));

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion;
 - (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); and
 - (d) Notice of the opportunity for the pupil or the pupil's parent or guardian to be represented by counsel or by a non-attorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.)
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁶ (§ 48918, subd. (b).)
3. Expulsion hearing costs:
 - (a) Preparation for Expulsion Hearing

⁶ The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

Preparing and reviewing documents to be used during the expulsion hearing.
Arranging hearing dates and assigning panel members and translators as needed.
(§ 48918, subd. (c).)

(b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).)

(c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).)

(d) Record of Hearing

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made.
(§ 48918, subd. (g).)

E. ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

1. Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)
2. Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
4. If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support

- persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁷ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
 7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)
 8. Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

F. ON-GOING ACTIVITIES: POST-EXPULSION HEARING PROCEDURES

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

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

⁷ The corpus delicti is the basic element or fact of a crime.

Then the following activities are reimbursable:

1. Issuing the expulsion order. (§ 48915, subd. (d).)
2. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)
3. Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)
4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)
5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

G. ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT SCHOOLSITE, REHABILITATION PLAN, AND EDUCATIONAL PROGRAM

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)
2. Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)
3. Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

4. Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.)

H. ON-GOING ACTIVITIES: READMISSION PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Possessing, selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school;
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.)
3. Review the pupil for readmission. (operative July 1, 1996.)
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil (“applicant”) seeking application to the receiving school district has been expelled by another school district for *any offense* and the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activities associated with the receiving district’s hearing are reimbursable:

1. Including in the notice of hearing to the applicant: (a) a copy of the hearing procedure rules of the receiving district; and (b) notice of the opportunity for the applicant or the applicant’s parent or guardian to inspect and obtain copies of all documents to be used at the hearing.
2. Allowing an applicant or applicant’s parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:
 - (a) if the requesting party is an applicant less than 18 years of age, or the parent or guardian of an applicant who is 18 years of age or older, all documents; or
 - (b) if the requesting party is the parent or guardian of an applicant under the age of 18, only those documents which are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).
3. Determination by the governing board whether a pupil expelled by another school district would pose a danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion.
4. Maintaining a record of each admission denial, including the cause of the denial.
5. Notifying the applicant and the applicant’s parent or guardian of the governing board’s determination of whether the applicant poses a potential danger to the pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion. (§§ 48915.1 & 48915.2)

J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL DISTRICT

If the governing board expelled a pupil for any of the following offenses:

- Possessing, selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

And the expelled pupil applies for admission to another school district (the “receiving district”) then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district’s request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

K. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS

County Boards of Education (applies to expulsion appeals for *all offenses*)

1. Providing Notice to the Parties

(a) Notifying the pupil and the pupil’s parent(s) or guardian(s) of the procedures for the appeal. (§ 48919.)

(b) Notifying the school district and pupil in writing of the final order of the county board of education, either by personal service or certified mail. (§ 48924.)

2. Review of Hearing Record

Reviewing the filed appeal and the transcript and record of the hearing conducted by the school district governing board. (§§ 48921-48922.)

3. Conducting Hearings

Conducting the initial appeal hearing and rendering a decision. Reimbursement for this component is limited to appeals for which the county board of education decides to grant a hearing de novo. (§§ 48919 & 48923.)

4. Preserving Records

Preserving the record of appeal. (§ 48919.)

5. Remand

Remanding an expulsion decision to a school district for adoption of the required findings if the school district’s decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147, eff. Jan. 1, 2001.)

School Districts

If the governing board expelled a pupil for any of the following:

- Possessing, selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4). (§ 48919.)

2. Participation in Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

3. Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

4. Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

5. Notice and Adoption of Required Findings on Remand (operative Jan. 1, 2001)

If following an appeal, the county board of education remanded the expulsion to the governing board, then:

- (a) Providing notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion; and maintain a record of each expulsion and the cause therefor.
- (b) Adopting the required findings on remand from the county board of education in a public session. (Holding a hearing is not reimbursable.) (§ 48923, subd. (b), Stats. 2000, ch. 147.)

L. ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));

- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

It is reimbursable for the school district to maintain data on the following and report it to the California Department of Education:

- a. Whether the expulsion order was suspended;
- b. The type of referral made after the expulsion; and
- c. The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

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

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557,

subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.
- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D.3 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing	\$115.72
IV.D.3 (b). Conducting Expulsion Hearing	\$144.58
IV.D.3 (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	\$171.00
IV.D.3 (d) Record of Hearing	\$1.47
Total	\$432.77

2. Formula

Reimbursement of Activities IV.D.3 (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs and Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁸ 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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

⁸ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The following statements of decision:

- *Pupil Suspensions from School* and *Pupil Expulsion Appeals*;
- *Pupil Expulsions from School*, as modified pursuant to the California Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, and adopted on May 26, 2005; and
- *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan*;

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 claims. The administrative record, including the statement of decision, is on file with the Commission.

Adopted: 8/20/98
Amended: 5/27/10

**AMENDMENT TO PARAMETERS AND GUIDELINES
PUPIL SUSPENSIONS, EXPULSIONS, AND EXPULSIONS APPEALS
05-PGA-65**

Consolidation of:

Pupil Suspensions from School – CSM 4456

Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965, Statutes 1978, Chapter 668,
Statutes 1980, Chapter 73, Statutes 1983, Chapter 498,
Statutes 1985, Chapter 856, Statutes 1987, Chapter 134

Pupil Expulsions from School -CSM-4455

Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916 and 48918
Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965,
Statutes 1978, Chapter 668, Statutes 1982, Chapter 318,
Statutes 1983, Chapter 498, Statutes 1984, Chapter 622,
Statutes 1987, Chapter 942, Statutes 1990, Chapter 1231,
Statutes 1992, Chapter 152, Statutes 1993, Chapters 1255, , 1256, and 1257
Statutes 1994, Chapter 146,

Pupil Expulsion Appeals - CSM-4463

Education Code Sections 48919, 48921-48924
Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965,
Statutes 1978, Chapter 668, Statutes 1983, Chapter 498,

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

These parameters and guidelines are effective until June 30, 2012. Beginning July 1, 2012, claims for these programs should be filed under the consolidated parameters and guidelines for *Pupil Suspensions II, Pupil Expulsions II, and Educational Services Plan for Expelled Pupils, and Pupil Suspensions from School, Pupil Expulsions from School and Pupil Expulsions Appeals*

I. SUMMARY OF THE SOURCE OF THE MANDATES

A. Pupil Suspensions from School

Chapter 965, Statutes of 1977, added former Education Code section 48903, subdivision (b) and imposed a new requirement for the teacher or supervisor who referred the pupil to the principal for suspension from school to participate in the pre-suspension conference between the pupil and the principal (or the principal's designee), whenever practical. Chapter 668, Statutes of 1978 and Chapter 73, Statutes of 1980, amended former Education Code section

48903, subdivision (b) and added "*school employee*" to the list of potential participants in the pre-suspension conference. Education Code section 48903 was repealed by Chapter 498, Statutes of 1983, and substantially the same requirements were moved to new Education Code section 48911, subdivision (b). The 1983 amendment authorized the school superintendent to suspend pupils from school and to conduct the informal conference. In 1985, Chapter 856, Statutes of 1985 added a definition for the principal's designee.

Chapter 134, Statutes of 1987, amended Education Code section 48911, subdivision (e), to add a new requirement for a school district employee to report the cause of a pupil's suspension to the school district governing board or superintendent.

Chapter 1255, Statutes of 1993, amended Education Code section 48915, subdivision (b), to add a new requirement for the principal or superintendent of a school district to immediately suspend "any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds." Chapter 1256, Statutes of 1993, amended Education Code section 48918, subdivision (b), limiting the requirement for immediate suspensions to "any pupil found to be in possession of a firearm at school or at a school activity off school grounds."

B. Pupil Expulsions

Chapter 498, Statutes of 1983 added and Chapters 1255 and 1256, Statutes of 1993 amended Education Code section 48915, subdivisions (a) and (b), which imposed a new requirement for school district principals and superintendents to recommend expulsion of pupils to their governing boards if the pupil committed one of the following offenses:

- Causing serious physical injury to another person, except in self defense;
- Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- Robbery or extortion.

Chapter 1255, Statutes of 1993 amended Education Code section 48915 adding a new requirement for governing boards to either expel or recommend admission to an alternative education program if a pupil was found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds. This provision was in effect from October 11, 1993 through December 31, 1993. Chapter 1256, Statutes of 1993 amended Education Code section 48915, subdivision (b), to limit expulsion or recommendation of an alternative education program to any pupil in possession of a firearm at school or at a school activity off school grounds. Chapter 1256 became effective on January 1, 1994.

Chapter 1253, Statutes of 1975, Chapter 965, Statutes of 1977, Chapter 668, Statutes of 1978, Chapter 318, Statutes of 1982, Chapter 498, Statutes of 1983, Chapter 1231, Statutes of 1990, and Chapter 146, Statutes of 1994, added or amended the new requirement found in Education Code section 48918 for school district governing boards to adopt rules and regulations for the expulsion of pupils, which must include the specific procedures set forth in section 48918.

Chapter 1253, Statutes of 1975, Chapter 965, Statutes of 1977, and Chapter 1231, Statutes of 1990, added or amended the new requirement found in Education Code section 48918, subdivision (b) for the school district to include in the written expulsion hearing notice to the pupil and the pupil's parent or guardian:

- (1) a copy of the disciplinary rules of the district that relate to the alleged violation;
- (2) notice of the parent's, guardian's or pupil's obligation pursuant to Education Code section 48915.1, subdivision (b), upon the pupil's enrollment in a new school district, to inform that district of the expulsion; and
- (3) notice of the right of the pupil or pupil's parent or guardian to inspect and obtain copies of all documents to be used at the expulsion hearing.

Chapter 1253, Statutes of 1975, and Chapter 1231, Statutes of 1990, added or amended the new requirement found in Education Code section 48918, subdivision (i) for school districts to send to the pupil or the pupil's parent or guardian:

- (1) written notice of any decision to expel or suspend enforcement of an expulsion order during a period of probation;
- (2) notice of the right to appeal the expulsion to the county board of education; and
- (3) notice of the parent's, guardian's or pupil's obligation pursuant to Education Code section 48915.1, subdivision (b), upon the pupil's enrollment in a new school district, to inform that district of the expulsion.

Chapter 965, Statutes of 1977 amended former Education Code section 48914, subdivision (g) to add a new requirement for the governing board to maintain a record of each expulsion, including the cause thereof. Chapter 498, Statutes of 1983 moved this provision to new Education Code section 48915, subdivision (j), and added a new requirement that the expulsion order and the causes therefore be recorded in the pupil's mandatory interim record and that this record be forwarded, upon request, to any school in which the pupil subsequently enrolls.

Chapter 489, Statutes of 1983, added Education Code section 48916, which imposed a new requirement for school district governing boards to set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when an expelled pupil may apply for readmission. Section 48916 also requires school districts to adopt rules and regulations for the readmission procedure, and to make these rules and regulations available to the pupil and the pupil's parent or guardian when the expulsion order is entered.

Chapter 942, Statutes of 1987, added Education Code section 48915.1, which imposed a new requirement that school boards conduct a hearing if a pupil who was expelled from another school district poses a continuing threat to the school district's pupils or employees. This section also required the expelling school district to respond to a request for information regarding a recommendation for expulsion by the receiving school district. Chapter 1231, Statutes of 1990 and Chapter 1257, Statutes of 1993, amended Education Code section 48915.1 and Chapter 1257, Statutes of 1993 moved the hearing requirements for pupils expelled for certain offenses from Education Code section 48915.1 to new Education Code section 48915.2.

C. Pupil Expulsion Appeals

Chapter 1253, Statutes of 1975 added former Education Code sections 10609 through 10609.4 regarding expulsions and expulsion appeals. Chapter 1010 of the Statutes of 1976 reenacted the Education Code and renumbered these sections as Education Code sections 48915 through 48920. These sections were amended by Chapter 965 of the Statutes of 1977 and by

Chapter 668 of the Statutes of 1978. Chapter 498, Statutes of 1983 repealed all previous Education Code sections regarding expulsions and expulsion appeals and added new sections 48919 through 48924. These sections require county boards of education to: adopt rules and regulations establishing procedures for expulsion appeals; notify persons of the requirements for filing the appeal, notify the parties of the acceptance of the filed appeal, the date of the hearing, the requirement for the appellant to provide transcript of the school district expulsion hearing record, and the procedures for the conduct of the hearing; conduct the hearing within 20 schooldays and render a decision within 3 schooldays; remand the matter to the school district governing board, or conduct a hearing de novo if the county board of education determines that there is relevant and material evidence which should be considered; and notify the parties of the final and binding order. School districts are required participate in the county board appeal process.

II. COMMISSION ON STATE MANDATES DECISIONS

A. Pupil Suspensions

The Commission on State Mandates, in the Statement of Decision adopted at the December 19, 1996 hearing, determined that, limited to suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive (October 11, 1993 to December 31, 1993), certain provisions of Education Code section 48911, subdivisions (b) and (e) impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution.

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable. (Education Code section 48911, subdivision (b).)
- A report of the cause of each school suspension to the district board (Education Code section 48911, subdivision (e)).

B . Pupil Expulsions

The Commission on State Mandates, in the Statement of Decision adopted at the May 26, 1997 hearing, found that certain provisions of the following Education Code sections impose a new program or higher level of service for school districts within the meaning of section 6, article XIII B of the California Constitution:

- Education Code section 48915, subdivision (a), as added by Chapter 498/1983 and amended by Chapter 1255/1993 and Chapter 1256/1993;
- Education Code section 48915, subdivision (b), as amended by Chapter 1255/1993 and Chapter 1256/1993;
- Education Code section 48918 [opening paragraph and subdivisions (b), (i) and (j)] and its predecessor statutes as added by Chapter 1253/1975 and amended by Chapter

965/1977, Chapter 668/1978, Chapter 318/1982, Chapter 498/1983, Chapter 1231/1990, and Chapter 146/1994;

- Education Code section 48916, as added by Chapter 498/1983 and amended by Chapter 152/1992;
- Education Code section 48915.1, as added by Chapter 943/1987 and amended by Chapter 1231/1990 and Chapter 1257/1993;
- Education Code section 48915.2, as added by Chapter 1257/1993.

The Commission further determined that certain of the foregoing sections imposed a new program or higher level of service only with respect to expulsion procedures instituted for the certain specified offenses.

C. Expulsion Appeals

The Commission on State Mandates, in the Statement of Decision adopted at the March 27, 1997 hearing, found that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution, for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all student expulsions appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals.
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal.
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents).
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo.
- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education.
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915(b) (as amended by Chapter 1255 of the Statutes of 1993 and Chapter 1256 of the Statutes of 1993), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil or the pupil's parent or guardian, as follows:
- If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or

- If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).¹
- Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
- If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
- If ordered by the county board of education, expunge the district's and the pupil's records of the expulsion.

III. ELIGIBLE CLAIMANTS

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

IV. PERIOD OF REIMBURSEMENT

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

These parameters and guidelines are effective until June 30, 2012. Beginning July 1, 2012, claims for these programs should be filed under the consolidated parameters and guidelines for Pupil Suspensions II, Pupil Expulsions II, and Educational Services Plan for Expelled Pupils and Pupil Suspensions from School, Pupil Expulsions from School and Pupil Expulsions Appeals.

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 claims for these mandates were submitted on March 9, 1994, March 9, 1994 and September 22, 1994, respectively. Therefore, costs incurred on or after July 1, 1993 for compliance with the test claim statutes are eligible for reimbursement.

Actual costs for one fiscal year should be included in each reimbursement claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561(d)(3) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of release of 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 provided for by Government Code section 17564.

¹The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

V. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable 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, 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 and county office of education, the direct and indirect costs of labor, materials and supplies, travel, and services incurred for the following mandate components are eligible for reimbursement:

A. ADOPTION AND REVISION OF RULES AND PROCEDURES

1. County Boards of Education

- (a) Adopting rules and procedures for expulsion appeal hearings and revising those rules and procedures to conform to amendments of the statutory hearing requirements.
- (b) Printing and disseminating rules and procedures to each school district in the county.

2. School Districts and County Boards of Education

- (a) Adopting rules and procedures pertaining to pupil expulsions and revising those rules and procedures to conform to amendments of the statutory requirements.
- (b) Adopting rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916.
- (c) Printing and disseminating rules and procedures to each school site.

B. SUSPENSION CONFERENCE AND REPORT

If the suspension is for one of the following offenses and the offense occurred within the following dates:

Date of Offense	Offense
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or

	explosive.
January 1, 1994 to Present	Possession of a firearm. ²

Then the following activities are reimbursable:

1. Attendance at Informal Conference

The attendance of the teacher, supervisor or other school district employee who referred the pupil to the principal for suspension in the pre-suspension conference between the principal (or principal's designee) or superintendent and the pupil.

2. Reporting the Cause to the District Office

Reporting the cause of the suspension to the school district's superintendent or governing board in accordance with the regulations of the school district's governing board. Such report may be oral or written.

C. RECOMMENDATION OF EXPULSION

The preparation of a report to the school district governing board concerning the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Causing serious physical injury to another person, except in self defense;
- Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- Robbery or extortion.

D. EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

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

² Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim.

- Robbery or extortion.

Then the following activities are reimbursable:

1. Including in the notice of hearing to the pupil:
 - (a) a copy of the disciplinary rules of the district that relate to the alleged violation;
 - (b) a notice of the parent's, guardian's or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
 - (c) notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.
2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:
 - (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).

E. POST-EXPULSION PROCEDURES

If the expulsion hearing is for one of the following offenses and the offense occurred within the following dates:

Date of Offense	Offense
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or explosive.
January 1, 1994 to Present	Possession of a firearm. ³

Then the following activities are reimbursable:

1. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity.
2. Maintaining a record of the expulsion, including the cause of the expulsion;

³ Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim

3. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record; and
4. Forwarding the student's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school.

F. READMISSION PROCEDURES

If the governing board expelled a pupil for one of the following offenses and the offense occurred within the following dates:

Date of Offense	Offense
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or explosive.
January 1, 1994 to Present	Possession of a firearm. ⁴

Then the following activities are reimbursable:

1. Setting a date when the pupil may apply for readmission to a district school; and
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian.

G. APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil ("applicant") seeking application to a school district (the "receiving school district") has been expelled by another school district and the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activities associated with the receiving district's hearing are reimbursable:
ADD REFERENCE to 1/1/94 for ANY OFFENSE

1. Including in the notice of hearing to the applicant: (a) a copy of the hearing procedure rules of the receiving district; and (b) notice of the opportunity for the applicant or the applicant's parent or guardian to inspect and obtain-copies of all documents to be used at the hearing.
2. Allowing an applicant or applicant's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:
 - (a) If the requesting party is an applicant less than 18 years of age or the parent or guardian of an applicant who is 18 years of age or older, all documents; or
 - (b) If the requesting party is the parent or guardian of an applicant under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁵

⁴ Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim

⁵ See footnote 1.

3. Determination by the governing board whether a pupil expelled by another school district would pose a danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion.
4. Maintaining a record of each admission denial, including the cause of the denial.
5. Notifying the applicant and the applicant's parent or guardian of the governing board's determination of whether the applicant poses a potential danger to the pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion.

H. RESPONDING TO REQUESTS FOR RECOMMENDATIONS

If the governing board expelled a pupil for one of the following offenses and the offense occurred within the following dates:

Date of Offense	Offense
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or explosive.
January 1, 1994 to Present	Possession of a firearm. ⁶

and the expelled student applies for admission to another school district (the "receiving district") then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable.

I. EXPULSION APPEAL HEARINGS

1. County Boards of Education (applicable to all student expulsion appeals)
 - (a) Providing Notice to the Parties
 - (1) Notifying the pupil and the pupil's parent(s) or guardian(s) of the procedures for the appeal.
 - (2) Notifying the school district and pupil in writing of the final order of the county board of education, either by personal service or certified mail.
 - (b) Review of Hearing Record

Reviewing the filed appeal and the transcript and record of the hearing conducted by the school district governing board.

⁶ Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim

(c) Conducting Hearings

Conducting the initial appeal hearing and rendering a decision.
Reimbursement for this component is limited to appeals for which the county board of education decides to grant a hearing de novo.

(d) Preserving Records

Preserving the record of appeal.

2 School Districts

If the governing board expelled a pupil for one of the following offenses and the offense occurred within the following dates:

Date of Offense	Offenses
October 11, 1993 to December 31, 1993	Possession of a firearm, knife of no reasonable use to the student or explosive.
January 1, 1994 to Present	Possession of a firearm. ⁷

Then the following activities are reimbursable:

(a) Providing Copies of Documents

- (1) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age.
- (2) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁸

(b) Participation In Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo.

(c) Remand Hearing

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing.

⁷ Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim

⁸ See footnote 1.

(d) Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education.

J. TRAINING.

Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

VI. CLAIM PREPARATION

Each reimbursement claim for costs incurred to comply with these mandates must be timely filed and set forth a listing of each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable component/activity identified in Section V. of this document.

SUPPORTING DOCUMENTATION

Claimed costs should be supported by the following information:

A. Direct Costs

Direct costs are defined as costs that can be specifically traced to goods, services, units, programs, activities, or functions.

(1.) Employee Salaries and Benefits

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

Reimbursement for personal services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and employer's contribution for social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

(2.) Materials and Supplies

Only expenditures which can be identified as a direct cost of these mandates can be claimed. List cost of materials and supplies which have been consumed or expended specifically for the purposes of these mandates. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimants. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

(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.) Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of the travel, inclusive dates and time of travel, destination points, and travel costs.

B. Indirect Costs

- (1.) School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.
- (2.) 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.

VII. RECORDS 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 chapter⁹ 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.

VIII. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller is directed to include in her claiming instructions the request for claimants to send an additional copy of the completed test claim specific form 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. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate.

IX. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from

⁹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

any source, e.g., service fees collected, federal funds, other state funds, etc., shall be identified and deducted from this claim.

X. REQUIRED CERTIFICATION

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

Hearing Date: September 29, 2011
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**DRAFT STAFF ANALYSIS
 PROPOSED PARAMETERS AND GUIDELINES**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)
PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)
EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
 48918, 48918.5, 48923, 48926

As Amended by Statutes 1995, Chapters 972 and 974;
 Statutes 1996, Chapters 915 937, and 1052; Statutes 1997, Chapter 637;
 Statutes 1998, Chapter 498; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147;
 Statutes 2001, Chapter 116

By San Juan Unified School District, Kern County Superintendent of Schools, Claimants

Beginning Fiscal Year 2012-2013 Consolidated with

PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)

Education Code Section 48911, Subdivisions (b) and (e)
 Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;
 Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)

Education Code Sections 48915, Subdivisions (a) and (b),
 48915.1, 48915.2, 48916, and 48918
 Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes
 1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622; Statutes 1987,
 Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters
 1255, 1256, and 1257; Statutes 1994, Chapter 146

PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924
 Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668;
 Statutes 1983, Chapter 498

By the San Diego Unified School District, San Diego County Office of Education,
 Claimants

This draft staff analysis, issued with the six sets of parameters and guidelines, is intended to explain: (1) how the attached parameters and guidelines reflect the statement of decision for the *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan For Expelled Pupils* test claims, and (2) how the parameters and guidelines are consistent with and (beginning fiscal year 2012-2013) consolidated with the preexisting parameters and guidelines for the *Pupil Suspensions from School, Pupil Expulsion from School, and Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) program (sometimes referred to as “preexisting parameters and guidelines”).

STAFF ANALYSIS

Claimants

San Diego Unified School District:	Pupil Expulsions from School (CSM-4455), Pupil Suspensions from School (CSM-4456)
San Diego Unified School District, San Diego County Office of Education:	Pupil Expulsion Appeals (CSM-4463)
San Juan Unified School District:	Pupil Expulsions II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18), Pupil Suspensions II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)
Kern County Superintendent of Schools:	Educational Services Plan For Expelled Pupils (97-TC-09)

I. Background

Attached are six sets of parameters and guidelines that are proposed for adoption for the consolidated test claims *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*. Each subsequent set of parameters and guidelines for these test claims adds activities that correspond to the statutes with later operative dates (between 1995 and 2002) that were determined by the Commission on State Mandates (Commission) to impose reimbursable state-mandated activities on school districts (including county offices of education). The six sets of parameters and guidelines, each covering one or more fiscal years, are intended to make reimbursement claims easier for school districts to submit and for the State Controller's Office to evaluate and pay.

Suspension and expulsion procedures and post-expulsion requirements were originally found to impose reimbursable state-mandated costs in decisions on *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463), which relate to the statutes enacted from 1975 - 1994. This consolidated test claim – *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* – addresses new statutory requirements added from 1995 to 2002.

Beginning with the sixth (or final) parameters and guidelines (fiscal year 2012-2013 and beyond), all reimbursable activities from the preexisting test claims: *Pupil Suspension from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) are consolidated with *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils* and are claimable under this set of parameters and guidelines. The costs incurred under *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) until June 30, 2012 remain reimbursable under the preexisting parameters and guidelines. Following is the background on these preexisting parameters and guidelines.

A. Pupil Suspensions from School (CSM 4456)

On December 19, 1996, the Commission adopted its statement of decision determining that certain provisions of Education Code section 48911, subdivisions (b) and (e), impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The mandate is limited to the following reimbursable activities for suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive (October 11, 1993 to December 31, 1993):

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable (§ 48911, subd. (b));¹ and
- A report of the cause of each school suspension to the district board. (§ 48911, subd. (e).)

B. Pupil Expulsions from School (CSM 4455)

On May 26, 1997, the Commission adopted its statement of decision, and on May 26, 2005, adopted its amended statement of decision pursuant to the California Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, finding that certain provisions of the Education Code impose a new program or higher level of service on school districts within the meaning of section 6 of article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514:

To suspend a pupil for possessing a firearm,² and recommend expulsion of a pupil for:

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion. (§ 48915, subd. (a), Stats. 1983, ch. 498 Stats. 1993, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

When a pupil is expelled for any of the following:

- (a) Causing serious physical injury to another person, except in self defense;

¹ References are to the Education Code unless otherwise indicated.

² The statement of decision also lists: From October 11, 1993 to December 31, 1993, suspending a pupil for possession of a firearm, knife of no reasonable use to the student or possession of an explosive.

- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion.

Then it is reimbursable to include specified provisions in the notice of hearing to the pupil, and on request, allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as specified. (§ 48915, subd. (a), Stats. 1983, ch. 498, Stats. 1983, ch. 1255 and ch. 1256; § 48915, subd. (b), Stats. 1993, ch. 1255 and ch. 1256.)

If the pupil is expelled for the following:

From October 11, 1993, to December 31, 1993, for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 48915, subd. (b), Stats. 1993, ch. 1255.)

From January 1, 1994 to the present, for possession of a firearm. (§ 48915, subd. (b), Stats. 1993, ch. 1256.)

Then it is reimbursable to: (1) send written notice of specified provisions (§ 48918, subd. (i)); (2) maintain a record of each expulsion, including the cause thereof (§ 48918, subd. (j).); and (3) record expulsion orders and the causes thereof as specified, and, on request, forward the record to any school in which the pupil subsequently enrolls. (§ 48918, subd. (j).)

For a pupil expelled for possessing a firearm, the following is reimbursable: (1) Set a date when the pupil may apply for readmission to a district school; (2) Make available to the same pupil and his or her parent or guardian a description of the procedure for readmission; and (3) Adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission. (§ 48916.)

The following were also found to be reimbursable for school districts that do not have an interdistrict transfer agreement with another school district: (1) determine whether a pupil expelled by another school district, would pose a potential danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion (§ 48915.1, subd. (d)); (2) respond to a receiving district's request for recommendation (§ 48915.1) if the pupil is expelled for the following offenses: (a) from October 11, 1993 to December 31, 1993, for possession of a firearm, knife of no reasonable use to the student, or explosive; (§ 48915, subd. (b), Stats. 1993, ch. 1255); and (b) from January 1, 1994 to the present, for possession of a firearm (§ 48915, subd. (b), Stats. 1993, ch. 1256); (3) include in the notice of hearing specified information (§§ 48915.1, 48915.2, and 48918, subd. (b)); (4) allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing upon request, as specified (§§ 48915.1, 48915.2, and 48918, subd. (b)); (5) maintain records as specified (§§ 48915.1, 48915.2, and 48918, subd. (b)).

(j)); and (6) notify the applicant and parent/guardian of the governing board's determination, as specified. (§§ 48915.1, subd. (a), 48915.2 & 48918, subd. (i).)

C. Pupil Expulsion Appeals (CSM 4463)

On March 27, 1997, the Commission adopted its statement of decision finding that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all student expulsion appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals;
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal;
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents);
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo;
- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education; and
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915, subdivision (b) (as amended by Stats. 1993, chs. 1255 & 1256), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil or the pupil's parent or guardian, as follows:
 1. If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 2. If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).³

³The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school

3. Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
4. If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
5. If ordered by the county board of education, expunge the district's and the pupil's records of the expulsion.

D. *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils*

The statement of decision on *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils* was adopted on August 1, 2008, and issued in May 2011.

The test claim statutes added or amended Education Code sections⁴ that govern the grounds and procedures for handling pupil expulsions⁵ suspensions,⁶ rehabilitations, readmissions, and related activities, as well as expulsion appeals and county office of education plans for educational services to expelled pupils. The Commission found that these test claim statutes impose a partially 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.

Pupil expulsions fall into three categories of offenses: (1) the most serious offenses (§ 48915, subd. (c)) for which the principal or superintendent must immediately suspend the pupil and recommend him or her for expulsion, and for which the governing board must order expulsion;⁷ (2) those offenses (§ 48915, subd. (a)) for which the principal or superintendent must recommend a pupil for expulsion unless the principal or superintendent finds that expulsion is

district. 20 U.S.C. Section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

⁴ All references are to the Education Code unless otherwise indicated.

⁵ Expulsion procedures are in section 48915. An expulsion means “removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in Section 46300.” (§ 48925, subd. (b).)

⁶ Suspension procedures are in section 48911. A suspension means “removal of a pupil from ongoing instruction for adjustment purposes.” The statutory definition also includes what suspension “does not mean.” (§ 48925, subd. (d).)

⁷ Subdivision (d) of section 48915 requires expulsion for the subdivision (c) offenses, which are: possessing a firearm without permission, brandishing a knife at another person, unlawfully selling a controlled substance, committing or attempted commission of a sexual assault or sexual battery, or possession of an explosive. (§ 48915, subd. (c).)

inappropriate due to the circumstances;⁸ and (3) the less serious offenses (§ 48915, subds. (b) & (e)) for which a pupil may be expelled if either (i) other means of correction are not feasible or have repeatedly failed to bring about the proper conduct, or (ii) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.⁹ Expelled pupils are required to be referred to programs of study that meet specified conditions, in addition to other requirements.

Whenever the principal or superintendent recommends a pupil for expulsion, the pupil is entitled to a hearing pursuant to the procedures in section 48918.¹⁰ The suspension and expulsion statutes trigger other test claim statutes as explained in the statement of decision.

The statement of decision lists the following reimbursable activities, with headers to show which set of parameters and guidelines they are in (subsequent parameters and guidelines include activities in earlier parameters and guidelines unless otherwise indicated by a termination date):

1995-1996 Parameters and Guidelines

1. Beginning January 1, 1996 (the § 48911 suspension procedures¹¹ are part of these activities, as well as the § 48918 expulsion hearing procedures):

⁸ Those offenses are: causing serious physical injury to another person, except in self defense, possessing a knife, explosive, or other dangerous object of no reasonable use to the pupil, possession of a controlled substance (except the first offense of possession of one ounce or less of marijuana), robbery or extortion, or assault or battery or threat thereof on a school employee. (§ 48915, subd. (a).)

⁹ Other offenses are listed, all referring to those in section 48900 et seq. for which suspension or expulsion may be imposed.

¹⁰ *San Diego Unified School Dist v. Commission on State Mandates* (2004) 33 Cal.4th 859, 870. The principal or superintendent is required to recommend expulsion for the offenses in subdivisions (c) and (a) of section 48915.

¹¹ The suspension procedures are: Precede the suspension with an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil (defined to include "a pupil's parent or guardian or legal counsel" § 48925, subd. (e)) and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Inform the pupil of the reason for the disciplinary action and the evidence against him or her and give the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

At the time of the suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever the pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (§ 48911, subd. (d).)

A school employee shall report the suspension of the pupil including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion for a pupil who brandishes a knife at another person. (§ 48915, subd. (c)(2), Stats. 1995 ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and the governing board to issue an expulsion order for a pupil who sells a controlled substance, as defined. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)
- For a principal or superintendent to immediately suspend a pupil pursuant to section 48911, and to recommend the pupil's expulsion, and for the governing board to order a pupil's expulsion for selling or furnishing a firearm unless the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. (§ 48915, subds. (c)(1) & (d), Stats. 1995, ch. 972.)
- For the principal or superintendent to immediately suspend, pursuant to section 48911, and recommend the pupil's expulsion, and for the governing board to order the pupil's expulsion for the first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (c)(3), Stats. 1995 ch. 972.)

2. Also beginning January 1, 1996:

- For the principal or superintendent of schools to recommend expelling a pupil for possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) The section 48918 expulsion hearing procedures are part of this activity.
- For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to refer the pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

1996-1997 Parameters and Guidelines

3. Beginning July 1, 1996:

- For a pupil expelled for any of the most serious offenses (in § 48915, subd. (c)), to provide a notice of the education alternative placement to the pupil's parent or guardian at the time of expulsion order. (§ 48918, subd. (j), Stats. 1995, ch. 974.)

- For the school district to amend its expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918.¹² This is a one-time activity. (§ 48918, subd. (i), Stats. 1995, ch. 974, §§ 7.5 & 10.)
- To ensure that an educational program is provided to the pupil expelled for any of the most serious offenses in subdivision (c) of section 48915. The program must conform to the specifications in section 48916.1. (§ 48916.1, Stats. 1995, ch. 974.)
- To recommend a rehabilitation plan to a pupil at the time of the expulsion order (§ 48916, subd. (b), Stats. 1995, ch. 974) when a pupil is expelled for any of the most offenses listed in subdivision (c) of section 48915.
- For the one-time activity of adopting rules and regulations to establish the process for the required review of all expelled pupils for readmission. (§ 48916, subd. (c), Stats. 1995, ch. 974.)

¹² Section 48918, subdivision (i), states: (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with 11455.20 (originally § 11525) of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- To do the following when the governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (in § 48915, subd. (c)) (§ 48916, Stats. 1995, ch. 974):
 - Review the pupil for readmission. (§ 48916, subd. (a).)
 - Order the expelled pupil's readmission or make a finding to deny readmission if "the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district." (§ 48916, subd. (c).)
 - If readmission is denied, the governing board to make the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - If readmission is denied, the governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)
- If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (Stats. 1995, ch. 974.)
- Before allowing the expelled pupil to enroll in a school district that did not expel the pupil, for the receiving district's governing board to determine, pursuant to a hearing under Section 48918, whether an individual expelled from another school district for the offenses listed below poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974.) This activity is only reimbursable for determinations of applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.
 - Unlawful possession of any controlled substance [as specified] ... including the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
 - Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
 - Brandishing a knife at another person. (§ 48915, subd. (c)(2).)

- Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.)
 - Possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.)
4. From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):
- Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of academic progress, of pupils participating in independent study offered by the school district.
 - Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
 - Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.
5. Beginning September 26, 1996, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) Whether the expulsion order was suspended; (2) The type of referral made after the expulsion; and (3) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)
6. Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):
- (A) The number of pupils recommended for expulsion.
 - (B) The grounds for each recommended expulsion.
 - (C) Whether the pupil was subsequently expelled.
 - (D) Whether the expulsion order was suspended.
 - (E) The type of referral made after the expulsion.
 - (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

7. Beginning January 1, 1997:

- For the principal or superintendent to suspend, pursuant to section 48911, and recommend expulsion, and for the governing board to order expulsion, for pupils who commit or attempt to commit a sexual assault or sexual battery, as defined.¹³ (§ 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.) The section 48911 suspension procedures listed on pages 27-28 of the statement of decision are part of this activity, as well as the expulsion hearing procedures in section 48918.
- For the principal or superintendent of schools to recommend expelling a pupil for assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052.) The expulsion hearing procedures in section 48918 are part of this activity.
- For the one-time activity of amending the school district's rules and regulations to include the following procedures that apply when there is a recommendation to expel a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900:
 - A complaining witness shall be given five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
 - A complaining witness shall be entitled to have up to two adult support persons, including but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. (*Ibid.*)
 - If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code¹⁴ at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

¹³ A sexual assault is defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code and a sexual battery as defined in Section 243.4 of the Penal Code. (§ 48900, subd. (n).)

¹⁴ Penal Code section 868.5 entitles a prosecuting witness in certain crimes to have up to two support persons during the witness' testimony, one of which may accompany the witness to the stand. Section 868.5 also states:

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the

- Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. (*Ibid.*)
- Nothing shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. (*Ibid.*)
- If the hearing is to be conducted at a public meeting, ... a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence to be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. (§ 48918, subd. (h), Stats. 1996, ch. 915.)
- In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose. (§ 48918, subd. (h), Stats. 1996, ch. 915.)

witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

- At the time that the expulsion hearing is recommended, the complaining witness is provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a).)
 - The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness. (§ 48918.5, subd. (b).)
 - For the district to provide a nonthreatening environment for a complaining witness in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district provides a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. In the discretion of the person conducting the hearing, the complaining witness is allowed reasonable periods of relief from examination and cross-examination during which he or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand. (§ 48918.5, subd. (c).)
 - For the person conducting the expulsion hearing to immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)
8. For school districts to do the following when a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n):
- At the time the expulsion hearing is recommended, provide the complaining witness with a copy of the applicable disciplinary rules and to advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) "have the hearing closed during the time they [sic] testify pursuant to subdivision (c) of section 48918." (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)

- Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)
- If the hearing is to be conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)
- If the complaining witness has one or more support persons, and one or more of the support persons is also a witness, to follow the provisions of Section 868.5 of the Penal Code at the hearing. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) for the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) for the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) the governing board shall inform the support person or persons that the proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings; (5) for the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) for the testimony of their support person or persons who are also prosecuting witnesses to be presented before the testimony of the prosecuting witnesses; (7) for the prosecuting witnesses to be excluded from the courtroom during that testimony; (8) when the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti¹⁵ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.
- Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. Each school district shall provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony." (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)

¹⁵ The corpus delicti is the basic element or fact of a crime.

- Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

1997-1999 Parameters and Guidelines

9. Beginning January 1, 1998, for school districts to identify by offense, in all appropriate official records of a pupil, each suspension (but not expulsion) of that pupil for any of the most serious mandatory offenses (in § 48915, subd. (c)). (§ 48900.8, Stats. 1997, ch. 637.)
10. Beginning January 1, 1999, for the school district to amend its expulsion rules and regulations as follows (§ 48918, subd. (a), Stats. 1998, ch. 498) (this is a one-time activity):
 - If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under subdivision (a) of section 48918 is impracticable due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48915, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held no later than 20 calendar days prior to the first day of school for the school year.

1999-2001 Parameters and Guidelines

11. Beginning January 1, 2000:
 - For a school district to perform the following one-time activities: (1) updating the school district rules and regulations regarding notification to the pupil regarding the opportunity to be represented by legal counsel or a nonattorney adviser; and (2) revising the pupil notification to include the right to be represented by legal counsel or a nonattorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332.) These activities are reimbursable when the pupil commits any of the offenses specified in subdivision (c) or subdivision (a) of section 48915.
12. Beginning January 1, 2001:
 - For a county board of education to remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subdivision (b), Stats. 2000, ch. 147.) This activity is reimbursable for any expulsion.
 - For a school district, when adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing); (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the

education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48918, subd. (k).) (§ 48923, subd. (b), Stats. 2000, ch. 147.) This activity is only reimbursable when the district governing board orders the pupil expelled for any of the most serious mandatory expulsion offenses (listed in § 48915, subd. (c)).

2001-2012 Parameters and Guidelines

13. Beginning January 1, 2002, for a principal or superintendent to immediately suspend, pursuant to section 48911, a pupil who possess an explosive at school or at a school activity off school grounds. (§ 48915, subds. (c) & (d), Stats. 2001, ch. 116.) The section 48911 suspension procedures listed on pages 27-28 of the statement of decision are part of this activity.

The sixth (2012-2013 and beyond) set of parameters and guidelines includes all the activities above, consolidated with the reimbursable activities in the preexisting parameters and guidelines.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The parameters and guidelines shall include the following information: summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of a reasonable reimbursement methodology (RRM); and any offsetting revenue or savings that may apply.¹⁶

The Commission may adopt an RRM for inclusion in the parameters and guidelines.¹⁷ An RRM may be proposed by the claimant, an interested party, the Department of Finance, the Controller's Office, or another affected state agency. An RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is 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 where 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 an RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

¹⁶ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

¹⁷ Government Code section 17557, subdivision (b); California Code of Regulations, Title 2, section 1183.131.

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. In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.¹⁸

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.¹⁹ Under Article 7, the Commission's decision is based on evidence in the record. Oral or written testimony offered by any person shall be under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.²⁰

After it adopts the parameters and guidelines, the Commission submits them to the State Controller's Office to issue claiming instructions to local government, and to pay and audit reimbursement claims.²¹ Issuance of the claiming instructions constitutes the notice of the right of local government to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.²²

III. Discussion

Following is an explanation of staff's proposed parameters and guidelines.

A. Summary of the Mandate

The Summary of the Mandate does the following: (1) explains why six sets of parameters and guidelines accompany this statement of decision; (2) provides background information on the preexisting parameters and guidelines adopted for the same program (*Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463, enacted from 1975 – 1994); and (3) summarizes the statement of decision that is the basis for these parameters and guidelines. (*Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*, 96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09, enacted from 1995-2001.)

¹⁸ Government Code section 17518.5.

¹⁹ California Code of Regulations, Title 2, section 1187.

²⁰ California Code of Regulations, Title 2, section 1187.5.

²¹ Government Code section 17558.

²² Government Code section 17561, subdivision (d)(1).

B. Eligible Claimants

This section defines an eligible claimant as any “school district,” as defined in Government Code section 17519, except for community colleges. County offices of education may also be eligible claimants for some activities specified in the statement of decision. Charter schools are not eligible claimants.

C. Period of Reimbursement

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. *Pupil Suspensions II* and *Pupil Expulsions II* were filed in December 1996, so eligibility for reimbursement begins July 1, 1994.

The *Educational Services Plan for Expelled Pupils* test claim was filed in December 1997, so eligibility for reimbursement begins July 1, 1995. This date, however, only applies to section 48926 because the other statutes pled in 97-TC-09 have an earlier reimbursement eligibility date because they were pled in the earlier test claims (statement of decision, page 25).

Reimbursement does not begin before the operative date of a statute. So, for example, the 1995-1996 parameters and guidelines are for the period from July 1, 1995 through June 30, 1996. But because the operative date of Statutes 1995, chapter 972 is January 1, 1996, the reimbursement period for the first parameters and guidelines begins on January 1, 1996.

The parameters and guidelines that consolidate the preexisting parameters and guidelines (for *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463) with the present parameters and guidelines (for *Pupil Suspensions II*, *Pupil Expulsions II*, and *Educational Services Plan for Expelled Pupils*, 96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09) are for the period of reimbursement beginning July 1, 2012 and beyond.

D. Reimbursable Activities

For purposes of consistency, the six parameters and guidelines follow the framework of the activities in the preexisting parameters and guidelines adopted for the same program. (*Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals*, CSM-4456, 4455, 4463, enacted from 1975 – 1994.) The preexisting framework also shows how new offenses that require a suspension or expulsion trigger hearing or other activities in the preexisting parameters and guidelines. For example, the activity “recommendation of expulsion” (#3 below) does not change from the preexisting parameters and guidelines, but new offenses are added that trigger the recommendation to expel.

New activities from the statement of decision are inserted into the framework of these preexisting parameters and guidelines. These new activities include the following sections: (1) expulsions based on allegations of sexual assault or attempted sexual assault, or sexual battery (#5 below); (2) referral of expelled pupil to different schoolsite, rehabilitation plan, and education program (#7 below); and (3) school district data collection (#12 below).

1. Adoption and Revision of Rules and Procedures (one-time activity)

The parameters and guidelines authorize reimbursement for adopting rules and procedures on pupil suspensions and expulsions and related activities, which is consistent with the preexisting parameters and guidelines.

As new statutes are enacted, the rules and procedures may be revised to reflect the new statutory requirements. For example, the 1995-1996 parameters and guidelines authorize reimbursement for adopting and revising rules and procedures “establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapter 972.” Subsequent parameters and guidelines reflect statutes that added suspension and expulsion offenses and procedures and related activities. Other examples of reimbursable activities that fall into this category are as follows.

According to the statement of decision (pp. 83-85) it is reimbursable, beginning July 1, 1996, for school districts to adopt rules and regulations establishing the procedure for filing and processing requests for readmission. (§ 48916, Stats. 1995, ch. 974.) This is reflected in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

The statement of decision also states (p. 99) that it is reimbursable for school district governing boards to adopt a plan for providing education services to all expelled pupils if the county superintendent of schools develops the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.) This is reflected also in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

The statement of decision further states that, starting January 1, 1997, it is reimbursable for school districts to adopt rules and regulations governing procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery. (§ 48918.5.) This is also reflected in the parameters and guidelines, beginning with the 1996-1997 fiscal year.

Adopting and revising the rules and procedures are one-time activities, and correspond to statutory changes because as new mandatory expulsion offenses are added, the district’s rules and procedures should be revised to reflect them. Revising existing rules and procedures is not an on-going activity. Training was moved from section IV.J in the preexisting parameters and guidelines, and is limited to one-time per employee.

2. Suspensions II (in the consolidated parameters and guidelines, Suspensions I and II) (on-going activity)

This section of the parameters and guidelines specifies the offenses (§ 48915, subd. (c)) that require immediate suspension, as well as the procedures (§ 48911) that must be followed for each pupil suspended. The suspension offenses in the 1995-1996 and later parameters and guidelines are:

- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);²³
- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);

The offense added in the 1996-1997 and later parameters and guidelines is:

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997).

And the offense added in the 2001-2012 and later parameters and guidelines is:

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, operative Jan. 1, 2002).

Suspending a pupil for possessing an explosive was found to be a state mandate (statement of decision p. 39-40) even though expelling a pupil for this offense, as discussed below, was found to be a federal mandate.

The statement of decision (p. 27) states that the following suspension procedures are reimbursable:

1. Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil²⁴ and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)
2. Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)
3. Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)
4. Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

²³ The statute states that the offense is "possessing, selling or otherwise furnishing a firearm" (§ 48915, subd. (c)) but suspending and expelling for firearm possession was in prior law and not added by the test claim statutes (statement of decision p. 28).

²⁴ Pupil is defined to include "a pupil's parent or guardian or legal counsel." (§ 48925, subd. (e).)

The Commission found that one more suspension activity, as discussed in the statement of decision (p. 100), is also reimbursable as follows:

5. Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

This activity is in the 1997-1998 and later parameters and guidelines, and it applies to possessing a firearm.

The preexisting parameters and guidelines lists activities that correspond the first four activities above when a pupil is suspended for firearm possession. These were found to be reimbursable in the *Pupil Suspensions, Expulsions and Expulsion Appeals* parameters and guidelines. The consolidated parameters and guidelines (2012-2013 and beyond) reflect the suspension procedures listed in the statement of decision (pp. 27, 100), and adds “identifying suspensions in the pupil’s record” (no. 5 above) for a suspension involving firearm possession.

3. Recommendation of Expulsion (on-going activity)

This section specifies the offenses (§ 48915, subd. (c)) for which a principal or superintendent must recommend expulsion of a pupil (references to the principal include the superintendent).

Most serious offenses in section 48915, subdivision (c): The offenses for which a principal must recommend expulsion of a pupil are listed in the 1995-1996 and later parameters and guidelines:

- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);²⁵
- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972).

Recommending that a pupil be expelled for selling a controlled substance (except not more than one avoirdupois ounce of marijuana) was not found to be a new program or higher level of service in the statement of decision (p. 29). But since the exemption for the first offense of selling not more than one ounce of marijuana was removed from the statute, expelling for this offense was found to be reimbursable in the statement of decision (p. 30).

Because it was effective January 1, 1997, committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052) was added to the 1996-1997 and later parameters and guidelines as an offense for which a principal recommends expulsion.

Under the Gun Free Schools Act and later, the No Child Left Behind Act of 2001, states are required to expel a pupil for possessing an explosive at school. Thus, the Commission found in

²⁵ The statute states that the offense is “possessing, selling or otherwise furnishing a firearm” (§ 48915, subd. (c)) but expelling for firearm possession was in prior law and not added by the test claim statutes (statement of decision p. 28).

the statement of decision (pp. 30-39) that expelling a pupil for possession of an explosive (§ 48915, subd. (c)(5), Stats. 2001, ch. 116) is a federal mandate, so recommending that a pupil be expelled for this offense is not a reimbursable mandate.

Serious offenses in section 48915, subdivision (a): According to this subdivision “the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance.” In the statement of decision (pp. 47-49), the Commission found it is reimbursable when the principal or superintendent recommends that a pupil be expelled for the following offenses:

- Possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.)
- Committing assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052, § 2.)

Even though the principal may not recommend an expulsion for these offenses (in § 48915, subd. (a)) if the circumstances do not warrant it, the principal has no control over the circumstances. So the Commission found (statement of decision, pp. 47-49) that recommending an expulsion for these offenses in subdivision (a) is reimbursable. The following discussion concerns the remaining offenses in subdivision (a) of section 48915.

Consolidation with preexisting parameters and guidelines: The preexisting parameters and guidelines state that it is reimbursable for a principal or superintendent to recommend that a pupil be expelled for other offenses (now in § 48915, subds. (a) or (c)) as follows:

- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil (§ 48915, subds. (a)(2), (c)(1) & (c)(5));
- Unlawful sale of any controlled substance ... except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3));
- Robbery or extortion (§ 48915, subd. (a)(4)).

Unlawful sale of a controlled substance (§ 48915, subd. (c)(3)) is reimbursable in the consolidated parameters and guidelines (2012-2013 and beyond). There is no longer an exception in statute for the first offense of selling not more than one avoirdupois ounce of marijuana, so this exception has been deleted from the consolidated parameters and guidelines.

The preexisting parameters and guidelines reimburse recommending an expulsion for “possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil” which reflects former section 48915, subdivision (a)(2). (Stats. 1993, ch. 1255 & ch. 1256.) The consolidated parameters and guidelines (2012-2013 and beyond) make two changes.

First, because the law now reads, “possession of any knife or other dangerous object of no reasonable use to the pupil” the parameters and guidelines were changed accordingly. (§ 48915, subd. (a)(2), Stats. 2001, ch. 116.) Second, “possession of a firearm” is now listed with “selling or furnishing a firearm,” also to reflect current law.²⁶ (§ 48915, subd. (c)(1), Stats. 2001, ch. 116.)

The other offenses in the preexisting parameters and guidelines (causing serious physical injury to another except in self defense, and robbery or extortion) remain unchanged in the consolidated parameters and guidelines (2012-2013 and beyond) because they reflect section 48915, subdivisions (a)(1) and (a)(4).

4. Expulsion Hearing Procedural Requirements (on-going activity)

Whenever the principal or superintendent recommends a pupil for expulsion, the pupil is entitled to a hearing pursuant to the procedures in section 48918.²⁷

The reimbursable hearing requirements are in the preexisting parameters and guidelines. They include specifying what goes into the notice of the hearing, allowing a pupil or pupil’s parent or guardian to inspect and obtain copies of documents that will be used at the expulsion hearing, and actual hearing costs, including preparation for the hearing, conducting the hearing, the hearing officer’s or panel’s expulsion recommendation, and a record of the hearing.

Expulsion Offenses: As new mandatory expulsions offenses were added to section 48915, subdivision (c) (as listed above under “Recommendation of Expulsion”), they trigger these reimbursable hearing procedures in the preexisting parameters and guidelines.

In addition, the statement of decision found that hearing procedures are reimbursable for the following offenses:

- Possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis). (§ 48915, subd. (a)(3), Stats. 1995, ch. 972.) (See statement of decision, pp. 47-48.)
- Committing assault or battery on any school employee. (§48915, subd. (a)(5), Stats. 1996, ch. 1052, § 2.) (See statement of decision, pp. 47-49.)

In the preexisting parameters and guidelines, the hearing procedures are reimbursable for pupils expelled for:

- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil (former § 48915, subd. (a)(2));

²⁶ Section 48915 was last amended by Statutes 2001, chapter 116.

²⁷ Sections 48915 and 48918. *San Diego Unified School Dist v. Commission on State Mandates* (2004) 33 Cal.4th 859, 870.

- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3));
- Robbery or extortion. (§ 48915, subd. (a)(4).)

The second offense above, “possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil,” reflects former section 48915, subdivision (a)(2). (Stats. 1993, ch. 1255 & ch. 1256.) For the consolidated parameters and guidelines (2012-2013 and beyond) this provision is changed to “possession of any knife or other dangerous object of no reasonable use to the pupil” to conform to existing law (§ 48915, subd. (a)(2).) Similarly, the exception for the first offense of a sale of “not more than one avoirdupois ounce of marijuana” has been removed to conform the parameters and guidelines to existing law (§ 48915, subd. (c)(3).)

Reasonable Reimbursement Methodology: For purposes of consistency, all the parameters and guidelines (from 1995-1996 and beyond) continue to include the reasonable reimbursement methodology adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for reimbursing the expulsion hearing costs, including preparing for and conducting the expulsion hearing, the hearing officer’s or panel’s expulsion recommendation to the governing board, and maintaining a record of the hearing. These activities have not changed since the preexisting parameters and guidelines were adopted, except for increasing the number of offenses to which they apply.

Notice of pupil’s opportunity to be represented by counsel or a non-attorney advisor: Only one activity was added to the hearing procedural requirements by the test claim statutes: providing notice of the opportunity for the pupil or the pupil’s parent or guardian to be represented by counsel or by a non-attorney advisor. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.) This activity is reflected in the 1999 – 2001 and later parameters and guidelines, and is not covered by the RRM, which only covers the hearing costs (including preparation for the hearing, conducting the hearing, the hearing officer’s or panel’s expulsion recommendation, and a record of the hearing) but not costs for providing notice.

Even though expulsion for possession of an explosive was found to be a federal mandate in the statement of decision, it is reimbursable to notify the pupil of his or her right to a nonattorney advisor when a pupil is expelled for this offense (statement of decision, p. 64). In *Long Beach Unified School Dist. v. State of California*,²⁸ the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.²⁹ The reasoning of *Long Beach Unified School Dist.* applies to these parameters and guidelines.

²⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155.

²⁹ *Id.* at page 173.

Although expelling a pupil for possession of an explosive is a federal mandate, the notice of legal counsel or a nonattorney advisor is an activity, like in *Long Beach Unified School Dist.*, that goes beyond the federal requirement to expel the pupil.³⁰ Moreover, the state freely chose to impose this notice activity on school district governing boards that expel pupils for possession of an explosive, making the activity a state and not a federal mandate.³¹

By the same reasoning, staff finds that all the hearing procedures listed in the preexisting parameters and guidelines are reimbursable when a pupil is expelled for possessing an explosive.

5. Expulsions Based on Allegations of Sexual Assault or Attempted Sexual Assault or Sexual Battery (on-going activity)

Effective January 1, 1997, expulsion hearing procedures were enacted that apply only when there is an allegation of sexual assault or attempted sexual assault, or sexual battery. (§§ 48918 & 48918.5, Stats. 1996, ch. 915.) These hearing procedures for sexual assault or sexual battery are a separate activity from adopting rules and regulations governing the hearing procedures, which is a reimbursable activity discussed in section D.1. above.

Of these procedures, those that were found to be reimbursable in the statement of decision involve providing the complaining witness with the applicable disciplinary rules and notice of various rights, as specified (§48918.5), giving the complaining witness five days' notice before testifying (§48918, subd. (b)(5)), allowing the witness to have a support person or persons and admonishing the support person that the hearing is confidential (§48918, subd. (b)(5)), hearing the witness' testimony in a session closed to the public under certain circumstances, as specified (§48918, subd. (c)), following procedures in Penal Code section 868.5 if the complaining witness has one or more support persons, and one or more of the support persons is also a witness, as specified (§48918, subd. (b)(5)), providing a nonthreatening environment for a complaining witness (§48918.5 subd. (c)) providing a room that is separate from the hearing room for the complaining witness before and during breaks in testimony (§48918, subd. (c)) and immediately advising the complaining witness and accused pupils to refrain from personal or telephonic contact with each other during the pendency of the expulsion process (§48918.5, subd. (d)).

Because these procedures were operative January 1, 1997, they are in the 1996-1997 and later parameters and guidelines.

6. Post-Expulsion Hearing Procedures (on-going activity)

The preexisting parameters and guidelines include post-expulsion hearing procedures that apply when a pupil is expelled for possession of a firearm. They appear in all parameters and guidelines (1995-1996 and beyond) because they must be performed when a pupil is expelled for any offense, although they are only reimbursable for expulsions for the most serious offenses in section 48915, subdivision (c). These post-expulsion procedures include sending written notice to the pupil or the pupil's parent or guardian of the decision and the right to appeal the decision

³⁰ *Ibid.*

³¹ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594.

to the county board of education, as specified, and the obligation of the pupil, parent or guardian to notify a new school district, upon enrollment, of the pupil's expulsion. They also include maintaining a record of the expulsion, including the cause of the expulsion, recording the expulsion order and the cause in the pupil's mandatory interim record, and forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of the school. (§ 48918, subs. (j) & (k).)

To these preexisting procedures, staff adds only one: "issuing an expulsion order," which is included in all parameters and guidelines (1995-1996 and beyond). This activity is based on section 48915, subdivision (d), which states in part: "The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c)."

These hearing procedures, including issuing an expulsion order, only apply when a pupil is expelled for the most serious offenses in subdivision (c) of section 48915. This is consistent with the statement of decision (pp. 49-52), which found that although other offenses (in § 48915, subd. (a)) may require an expulsion recommendation and a hearing, it is discretionary for the governing board to issue the expulsion order. Downstream activities that result from a discretionary expulsion are not reimbursable.

Even though expulsion for explosive possession is a federal mandate, these post-expulsion hearing procedures are also reimbursable for explosive possession expulsion hearings (§ 48915, subd. (c)(5)), for the reason discussed above under "expulsion hearing procedural requirements."

7. Referral of Expelled Pupil to Different Schoolsite, Rehabilitation Plan, and Educational Program (on-going activity)

The statement of decision identified a new group of activities, not in the preexisting parameters and guidelines, which only apply to pupils who have been expelled for the most serious mandatory expulsion offenses in section 48915, subdivision (c).

According to the statement of decision (pp. 80-81), the following activity (in the 1995-1996 and later parameters and guidelines) is reimbursable:

Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; (3) is not housed at the schoolsite attended by the pupil at the time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

The statement of decision (pp. 76-80, 81-83) also identified the following new activities as reimbursable beginning July 1, 1996:

Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. (j)., Stats. 1995, ch. 974.)

Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974.)

Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled. (§ 48916.1, Stats. 1995, ch. 974.)

These new activities regarding the notice, a rehabilitation plan, and an education program, are in the 1996-1997 and later parameters and guidelines.

8. Readmission Procedures (on-going activity)

The statement of decision (pp. 83-85, 90-93) recognized the following activities when a pupil is reviewed for readmission to the school district that expelled the pupil:

1. Review the pupil for readmission.
 - (a) Order the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)
 - (b) If readmission is denied, the governing board:
 - (1) Makes the determination to either continue the placement of the expelled pupil in the alternative education program, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)
 - (2) Provides written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the education program for the expelled pupil. (§ 48916, subd. (e).)

Because these activities are operative on July 1, 1996, they are in the 1996-1997 and later parameters and guidelines. As explained in the statement of decision (p. 93), these activities are only reimbursable when a pupil is expelled for the most serious offenses in subdivision (c) of section 48915.

The preexisting parameters and guidelines recognized two reimbursable readmission activities when a pupil was expelled for possession of a firearm:

1. Setting a date when the pupil may apply for readmission to a district school; and
2. Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian.

These are included in the consolidated parameters and guidelines (2012-2013 and beyond).

9. Application by Expelled Pupil to Attend New District (on-going activity)

When an expelled pupil seeks to attend a school district (the “receiving school district”) that did not expel the pupil, the receiving district holds a hearing. (§ 48915.1.) The hearing and related procedures were determined to be reimbursable in the preexisting parameters and guidelines.

As discussed in the statement of decision (pp. 95-97), there is a separate hearing requirement when a pupil is expelled for the serious offenses in subdivision (a) or (c) of section 48915:

Before allowing the expelled pupil to enroll, determination by the governing board pursuant to a hearing under section 48918, whether an individual expelled from another school poses a danger to either the pupils or employees of the school district. (§ 48915.2, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

This activity was added to the 1996-1997 and later parameters and guidelines.

As explained in the statement of decision (pp. 95-96), this determination is limited to pupils who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district. The Supreme Court has stated, “activities undertaken at the option or discretion of a local government entity . . . do not trigger a state mandate and hence do not require reimbursement of funds.”³² Since a school district that has an interdistrict transfer agreement has voluntarily undertaken to admit pupils from another district, the district has made the decision at its option or discretion. Therefore, the Commission found that if the expelling and receiving districts have an interdistrict transfer agreement, the readmission determination is not a state mandate.

Although this hearing and determination (§ 48915.2, subd. (b)) applies when a pupil is expelled for the offenses listed in subdivisions (c) and (a) of section 48915, not all of those offenses are reimbursable in the parameters and guidelines. This is because, as discussed in the statement of decision (p. 96), preexisting law required a district determination, pursuant to a hearing, that an individual expelled from another school district for certain offenses did not pose a danger to either the pupils or employees of the receiving school district. Thus, the Commission found that making this determination at the receiving district’s readmission hearing is not a new program or higher level of service for a pupil expelled for the following offenses: (1) causing serious physical injury to another person, except in self-defense; (2) possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds; (3) unlawful sale of any controlled substance . . . [as specified] except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; and (4) robbery or extortion. (Former § 48915, subd. (a), Stats. 1994, ch. 1198.)

Consequently, the Commission found that the receiving district’s hearing and determination (§ 48915.2) is reimbursable for pupils who were expelled from another district for the following offenses added to section 48915, subdivisions (a) or (c), by Statutes 1995, chapter 972, as listed in the 1995-1996 and later parameters and guidelines:

³²*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

- Unlawful possession of any controlled substance [as specified] ... except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (§ 48915, subd. (a)(3).)
- Possessing, selling, or otherwise furnishing a firearm ... [without permission as specified]. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. (§ 48915, subd. (c)(1).)
- Brandishing a knife at another person. (§ 48915, subd. (c)(2).)

The Commission also found that the receiving district's hearing (§ 48915.2, subd. (b)) is reimbursable when a pupil is expelled for committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined. (§§ 48900, subd. (n) & 48915, subds. (c)(4) & (d), Stats. 1996, ch. 1052.) This offense is listed in the 1996-1997 and later parameters and guidelines because it was effective January 1, 1997. The Commission further found that the receiving district's hearing is reimbursable when a pupil was expelled for possession of an explosive. (§ 48915, subd. (c)(5), Stats. 2001, ch. 116.) This offense is listed in the 2001-2012 and later parameters and guidelines because it was effective January 1, 2002.

As reflected in the consolidated parameters and guidelines (2012-2013 and beyond) the preexisting parameters and guidelines list activities that apply when a pupil expelled for any offense seeks to attend a receiving school district. As with the offenses discussed above, the receiving district holds a hearing. (§ 48915.1.) The preexisting parameters and guidelines list reimbursable activities associated with the hearing, including specified notice procedures, allowing a pupil or the pupil's parent or guardian to inspect documents, determining whether the expelled pupil seeking admission to the new district would pose a danger to the pupils and employees of the receiving district, determining whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion, maintaining a record of each admission denial, include the cause of the denial, and notifying the pupil and the pupil's parent or guardian of the receiving district's decision.

10. Responding to Requests for Recommendations for Admission to a Receiving School District (on-going activity)

The preexisting parameters and guidelines state:

If the governing board expelled a pupil for possession of a firearm and the expelled student applies for admission to another school district (the "receiving district") then, unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

The new parameters and guidelines (1995-1996 and beyond) retain this activity, and expand the list of offenses that trigger it beyond "possession of a firearm."

Because it is discretionary for a school district to expel a pupil for any offense other than those listed in subdivision (c) of section 48915, and because the expelling district is responding to the

receiving district's request for a recommendation, this activity is reimbursable for a district that expelled a pupil for the following subdivision (c) offenses (in the 1995-1996 and later parameters and guidelines):

- Possessing, selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Brandishing a knife at another person (§ 48915; subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);

The offense added in the 1996-1997 and later parameters and guidelines is:

- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

And the offense added in the 2001-2012 and later parameters and guidelines is:

- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, operative Jan. 1, 2002).

11. Expulsion Appeal Hearings (on-going activity)

Pupils have the right to appeal their expulsions to the county board of education, which must follow specific procedures in handling the appeals. (§ 48919.) The preexisting parameters and guidelines list separate reimbursable activities for county boards of education and for school districts in expulsion appeal hearings.

For the county boards of education, the preexisting parameters and guidelines list the following reimbursable activities when the pupil was expelled for any offense: providing notice, as specified; review of the hearing record, as specified; conducting hearings (only when the county board of education decides to grant a hearing de novo); and preserving the record of appeal. These activities are in all the parameters and guidelines (from 1995-1996 forward).

For school districts, the preexisting parameters and guidelines list the following reimbursable activities when the pupil was expelled for possessing a firearm: providing copies of the documents and records from the district's expulsion hearing to the pupil, or to the pupil's parent or guardian; participation by a school district in the county board of education's hearing on appeal if the county board grants a hearing de novo; if the county board remanded the expulsion to the district following an appeal, then conducting a hearing on remand and rendering a decision in the remand hearing are reimbursable; and expunging the school district's and pupil's record of the expulsion when ordered by the county board of education. These activities are also in all the parameters and guidelines (from 1995-1996 forward).

In the statement of decision (pp. 88-90), the Commission found that the following county board of education activity is reimbursable when a pupil was expelled for any offense:

To remand an expulsion matter to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915³³ but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147.)

The Commission found that this activity applies to any expulsion because the county board of education must remand the matter regardless of the expulsion offense, and has no discretion not to act. Thus, this county board activity is in the 1999-2001 and later parameters and guidelines.

The Commission also found the following school district activities are reimbursable when a pupil is expelled for any of the most serious offenses in section 48915, subdivision (c):

When adopting the required findings on remand from the county board of education, to: (1) take final action on the expulsion in a public session (not hold another hearing) and; (2) provide notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion (§ 48918, subd. (j)); and (3) maintain a record of each expulsion and the cause therefor. (§ 48923, subd. (b), Stats. 2000, ch. 147.)

Thus, these school district activities are in the 1999-2001 and later parameters and guidelines.

12. School District Data Collection

There was no required data collection or reporting in the preexisting parameters and guidelines. The statement of decision (pp. 100-106) reflects changes in data collection requirements enacted between 1996 and 2002. The following data collection and reporting activity is in the 1996-1997 parameters and guidelines:

From July 1, 1996 until September 25, 1996, for school districts to maintain outcome data for pupils expelled for the most serious offenses in subdivision (c) of section 48915, as follows (§ 48916.1, Stats. 1995, ch. 974):

- Maintain outcome data on those pupils who are expelled and who are enrolled in education programs operated by the school district, the county superintendent of schools, or as otherwise authorized pursuant to section 48916.1 (Stats. 1995, ch. 974). Outcome data shall include, but not be limited to, attendance, graduation and dropout rates of expelled pupils enrolled in alternative placement programs. Outcome data shall also include attendance, graduation and dropout rates, and comparable levels of

³³ A decision to expel is based on a finding that either: "(1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct; (2) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others." (§ 48915, subds. (b) & (e).)

academic progress, of pupils participating in independent study offered by the school district.

- Maintain data as further specified by the Superintendent of Public Instruction, on the number of pupils placed in community day school or participating in independent study whose immediate preceding placement was county community school, continuation school, or comprehensive school, or who was not enrolled in any school.
- Maintain data on the number of pupils placed in community day school whose subsequent placement is county community school, continuation school, or comprehensive school, or who are not enrolled in any school.

Also reimbursable in the 1996-1997 parameters and guidelines is the following data collection and reporting requirement, reflecting a statutory change operative September 26, 1997 (§ 48916.1, Stats. 1996, ch. 937):

Beginning September 26, 1996 until January 7, 2002, for school districts to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c):

- (A) The number of pupils recommended for expulsion.
- (B) The grounds for each recommended expulsion.
- (C) Whether the pupil was subsequently expelled.
- (D) Whether the expulsion order was suspended.
- (E) The type of referral made after the expulsion.
- (F) The disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

The federal No Child Left Behind Act took effect January 8, 2002, and contains reporting requirements that overlap those in the state statute (A – C above). Thus, the Commission found those overlapping data requirements were no longer reimbursable state mandates. (Statement of decision pp. 104-106.) This resulted in the following for the 2001 -2012 and later parameters and guidelines:

Beginning January 8, 2002, for the school district to maintain data on the following and report it to CDE for pupils expelled for the most serious offenses in section 48915, subdivision (c): (1) whether the expulsion order was suspended; (2) the type of referral made after the expulsion; and (3) the disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

As discussed in the statement of decision (pp. 104-106), reporting this data is a reimbursable state mandate because it is not required by federal law, but is required by state law.

E. Reasonable Reimbursement Methodology

For purposes of consistency, the parameters and guidelines continue to include the reasonable reimbursement methodology adopted by the Commission in the *Pupil Suspensions*, *Pupil Expulsions*, and *Pupil Expulsion Appeals* parameters and guidelines (CSM-4456, 4455, 4463) for the reimbursement of the direct and indirect expulsion hearing costs (in section D.3 of the parameters and guidelines) incurred by a school district. These activities have not changed since the preexisting parameters and guidelines were adopted, except for increasing the number of offenses to which they apply.

F. Conclusion & Recommendation

Staff recommends that the Commission adopt the six sets of attached parameters and guidelines for the following fiscal years: 1995-1997, 1996-1997, 1997-1999, 1999-2001, 2001-2012, and 2012-2013 and beyond.

SixTen and Associates

Mandate Reimbursement Services

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July 27, 2011

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

Dear Mr. Bohan:

Re: 96-358-03, 03A, 03B 15/96 Pupil Expulsions II
98-TC-22 Pupil Expulsions II, 3rd amendment
01-TC-18 Pupil Expulsions II, 4th Amendment
96-358-04, 04A, 04B 972/95 Pupil Suspensions II
98-TC-23 Pupil Suspensions II, 3rd amendment
01-TC-17 Pupil Suspensions II, 4th amendment
97-TC-09 1052/96 Educational Services Plan for Expelled Pupils
Test Claims of San Juan Unified School District
Proposed Terminating, Transition, and Merger Parameters and Guidelines

I have received the Commission's Statement of Decision and Draft Staff Analysis (DSA) for the parameters and guidelines proposed for the above referenced test claims transmitted by your letter dated May 20, 2011, to which I respond on behalf of the test claimant.

Transition Parameters and Guidelines

The May 20, 2011, transmittal included six sets of new draft parameters and guidelines. Attachments (Sets) 1-5 are transition period parameters and guidelines covering the period of July 1, 1995, through June 30, 2012, which encompass only the new activities that result from the Commission decision for the San Juan test claims. The test claimant agrees with the approach of separate parameters and guidelines for the activities approved by the San Juan test claims only, rather than a retroactive merger with the San Diego test claim parameters and guidelines which pertain to the statutes for this subject matter effective prior to 1995.

Merger Parameters and Guidelines

Attachment (Set) 6 is the merger of the San Juan test claim activities with the existing

Drew Bohan, Executive Director

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July 27, 2011

San Diego test claims decision parameters and guidelines. The test claimant agrees with the merger of the San Juan and San Diego test claim parameters and guidelines effective July 1, 2012.

The test claimant proposes several changes to Attachment 6 to facilitate the annual claiming process. Those proposed changes are indicated in the attached document: "Revised Attachment 6." To the extent that these changes are included in the Final Staff Analysis for Attachment 6, they can also be retroactively applied to the transition parameters and guidelines, Attachments 1-5, as they apply to the San Juan test claim activities.

Terminating Parameters and Guidelines

The May 20, 2011, transmittal also includes the May 27, 2010, amendment of the San Diego test claim parameters and guidelines, modified only for the purpose of terminating those parameters and guidelines effective June 30, 2012. The test claimant agrees that the parameters and guidelines for the San Diego test claims should be terminated once the merged parameters and guidelines commence.

However, it appears that this is the wrong version of the San Diego parameters and guidelines for the currently reimbursed program. The May 27, 2010, version is an amendment of the August 20, 1998, original parameters and guidelines from the San Diego test claims that resulted from the Controller's April 7, 2006, request to incorporate "boilerplate" language. On July 28, 2006, after the filing date of the Controller's boilerplate request, the Commission amended the San Diego test claims parameters and guidelines principally to establish the reasonable reimbursement methodology for the expulsion hearings. It is this July 28, 2006, version that is the basis for current annual claim reimbursement. The May 27, 2010, amendment for boilerplate language is without legal effect since it amended the original August 20, 1998, parameters and guidelines and not the amended parameters and guidelines dated July 28, 2006.

Sincerely,



Keith B. Petersen

C: Linda Simlick, General Counsel, San Juan Unified School District

Attachment: Revised Attachment 6

Test Claimant's Proposed Parameters and Guidelines Drafted by:
Keith B. Petersen, SixTen and Associates

DATED 7/27/2011

ATTACHMENT 6

**PROPOSED NEW TITLE: CONSOLIDATED PUPIL SUSPENSIONS,
EXPULSIONS, AND EXPULSION APPEALS**

PUPIL EXPULSIONS II (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18)

PUPIL SUSPENSIONS II (96-358-04, 04A, 04B, 98-TC-23, 01-TC-17)

EDUCATIONAL SERVICES PLAN FOR EXPELLED PUPILS (97-TC-09)

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
48918, 48918.5, 48923, 48926

As Amended by Statutes 1995, Chapters 972 and 974;
Statutes 1996, Chapters 915 937, and 1052; Statutes 1997, Chapter 637;
Statutes 1998, Chapter 498; Statutes 1999, Chapter 332; Statutes 2000, Chapter 147;
Statutes 2001, Chapter 116

Consolidated With

PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)

Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980, Chapter 73;
Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)

Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916 and 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668;
Statutes 1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 622;
Statutes 1987, Chapter 942; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 152;
Statutes 1993, Chapters 1255, 1256, and 1257; Statutes 1994, Chapter 146

PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668;
Statutes 1983, Chapter 498

Period of Reimbursement: From July 1, 2012 Forward

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**CONSOLIDATED PUPIL SUSPENSIONS,
EXPULSIONS, AND EXPULSION APPEALS**

(Effective Beginning July 1, 2012)

I. SUMMARY OF THE MANDATE

No change

II. ELIGIBLE CLAIMANTS

No change

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The *Pupil Expulsions II* and *Pupil Suspensions II* test claims were filed on December 23, 1996, so the filing dates of these test claims establish eligibility for reimbursement operative July 1, 1995, pursuant to Government Code section 17557, subdivision (e). The *Educational Services Plan for Expelled Pupils* test claim was filed December 29, 1997, so the filing date of this test claim establishes eligibility for reimbursement operative July 1, 1996.

These consolidated parameters and guidelines are for the period of reimbursement beginning July 1, 2012. Reimbursement for state-mandated costs may be claimed as follows:

1. Costs for one fiscal year shall be included in each claim.
2. ~~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. (Gov. Code, § 17561, subd. (b)(1)(A).)~~
3. A local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. (Gov. Code, § 17560, subd. (a).)
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement

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**CONSOLIDATED PUPIL SUSPENSIONS,
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(Effective Beginning July 1, 2012)

shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).

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

IV. REIMBURSABLE ACTIVITIES

No change to preamble on contemporaneous documentation.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by the actual cost method (except for Section IV.D. 3-6 which shall be by the reasonable reimbursement methodology) for additional expulsion hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable. For each eligible claimant, the following activities are reimbursable:

A. POLICIES AND PROCEDURES (ONE-TIME ACTIVITIES)

1. Adoption and Revision of Rules and Procedures for School Districts and County Boards/Offices of Education
 - (a) Adopt and revise rules and regulations establishing procedures pertaining to pupil expulsions to conform to amendments of section 48915 by Statutes 1995, chapters 972 and 974 (operative July 1, 1996), Statutes 1996, chapters 915 and 1052, Statutes 1998, chapter 489, and Statutes 1999, chapter 332 (including revising the pupil notification required by Stats. 1999, ch. 332).
 - (b) Adopt rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916, and revise those rules and regulations to conform to the amendments of Statutes 1995, chapter 974, operative July 1, 1996.
 - (c) Amend expulsion rules and regulations to provide for issuing subpoenas, as specified in subdivision (i) of section 48918 (Stats. 1995, ch. 974, §§ 7.5 & 10, operative July 1, 1996).
 - (d) Adopt rules and regulations establishing the procedures for expelling a pupil based on an allegation of sexual assault or attempted sexual assault, or sexual battery, as defined in subdivision (n) of section 48900. (§ 48918, subd. (b) &

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48918.5, Stats 1996, ch. 915 and ch. 1052, operative Jan. 1, 1997.)

(e) Adopt rules and regulations establishing the procedures for suspending a pupil who possesses an explosive at school or at a school activity off school grounds. (Statutes 2001, chapter 116.)

(f) Printing and disseminating rules and procedures to each school site.

2. County Board Offices of Education-Expulsion Appeals

(a) Adopting rules and procedures pertaining to pupil expulsions appeals and revising those rules and procedures to conform to amendment of the statutory requirements.

(b) Print and disseminate rules and procedures to each school district in the county.

3. School Districts-Adoption of Education Services Plan for Expelled Pupils

If the county superintendent of schools develops a plan for providing education services to all expelled pupils in the county, for school district governing boards to adopt the plan. (§ 48926, Stats. 1995, ch. 974, operative July 1, 1996.)

~~4. Training (one-time per employee)~~

~~(a) Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.~~

~~B. ON-GOING ACTIVITIES: PUPIL SUSPENSIONS I and II~~

~~If the suspension is for possession of a firearm, then the following activities are reimbursable:~~

~~1. Attendance at Informal Conference~~

~~The attendance of the teacher, supervisor, or other school district employee who referred the pupil to the principal for suspension in the pre-suspension conference~~

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~~between the principal (or principal's designee) or superintendent and the pupil. (§ 48911, subd. (b).)~~

~~2. Reporting the Cause to the District Office~~

~~Reporting the cause of the suspension to the school district's superintendent or governing board in accordance with the regulations of the school district's governing board. Such report may be oral or written. (§ 48911, subd. (e).)~~

~~3. Pupil Records~~

~~Identifying by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637, eff. Jan. 1, 1998.)~~

If the immediate suspension is for any of the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling a controlled substance, including the first offense for selling not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, as defined (§ 48915, subd. (c)(3), Stats. 1995 ch. 972);
- Possession, selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats. 2001, ch. 116, eff. Jan. 1, 2002);

Then the following suspension activities pursuant to section 48911 are reimbursable:

~~2 1. Parent Contact~~

~~Making a reasonable effort to contact the pupil's parent or guardian in person or by telephone. (§ 48911, subd. (b).)~~

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† 2. Informal Conference

Conducting an informal conference (by the principal or the principal's designee or the superintendent of schools) between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. Informing the pupil of the reason for the disciplinary action and the evidence against him or her and giving the pupil the opportunity to present his or her version and evidence in his or her defense. (§ 48911, subd. (b).)

3. Parent Written Notice

Notifying the parent or guardian in writing of the suspension whenever the pupil is suspended from school. (§ 48911, subd. (d).)

4. Governing Board Report

Reporting the suspension of the pupil including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. (§ 48911, subd. (e).)

5. Pupil Records

Identify by offense, in all appropriate official records of a pupil, each suspension of that pupil. (§ 48900.8, Stats. 1997, ch. 637.)

C. ~~ON-GOING ACTIVITIES~~: RECOMMENDATION OF FOR EXPULSION

The preparation of the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);

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(Effective Beginning July 1, 2012)

- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Assault or battery on any school employee (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any knife or other dangerous object of no reasonable use to the pupil (§ 48915, subd. (a)(2));
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code (§ 48915, subd. (c)(3));
- Robbery or extortion. (§ 48915, subd. (a)(4).)

**D. ~~ON-GOING ACTIVITIES:~~ EXPULSION HEARING PROCEDURES ~~AL~~
REQUIREMENTS**

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

- Brandishing a knife at another person (§ 48915, subd. (c)(2), Stats. 1995, ch. 972);
- Selling or furnishing a firearm, as specified (§ 48915, subd. (c)(1), Stats. 1995, ch. 972);
- Unlawful possession of a controlled substance, as defined (except for the first offense of possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis) (§ 48915, subd. (a)(3), Stats. 1995, ch. 972);
- The first offense of a sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis (§ 48915, subd. (c)(3), Stats. 1995, ch. 972);
- Committing or attempting to commit a sexual assault or sexual battery as defined

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(Effective Beginning July 1, 2012)

in section 48900 (§ 48915, subd. (c)(4), Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);

- Assault or battery on any school employee (§ 48915, subd. (a)(5) Stats. 1996, chs. 915 & 1052, operative Jan. 1, 1997);
- Causing serious physical injury to another person, except in self defense (§ 48915, subd. (a)(1));
- Possession of any knife or other dangerous object of no reasonable use to the pupil (§ 48915, subd. (a)(2));
- Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code (§ 48915, subd. (c)(3));
- Robbery or extortion; (§ 48915, subd. (a)(4));

Then the following activities are reimbursable:

1. Hearing Notice

Including in the notice of hearing to the pupil

- (a) A copy of the disciplinary rules of the district that relate to the alleged violation;
- (b) A notice of the parent's, guardian's, or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion;
- (c) Notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); and
- (d) Notice of the opportunity for the pupil or the pupil's parent or guardian to be represented by counsel or by a non-attorney adviser. (§ 48918, subd. (b)(5), Stats. 1999, ch. 332, eff. Jan. 1, 2000.)

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(Effective Beginning July 1, 2012)

2. Document Inspection

Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:

- (a) If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
- (b) If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).⁵ (§ 48918, subd. (b).)

~~3. Expulsion hearing costs:~~

~~(a) Preparation for Expulsion Hearing~~

3. Hearing Preparation

Preparing and reviewing documents to be used during the expulsion hearing. Arranging hearing dates and assigning panel members and translators as needed. (§ 48918, subd. (c).) This activity is reimbursed based on a uniform cost allowance reasonable reimbursement methodology.

~~(b) Conducting Expulsion Hearing~~

4. Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing. (§ 48918, subd. (c).) This activity is reimbursed based on a uniform cost allowance reasonable reimbursement methodology.

~~(c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board~~

⁵The Federal Education Rights and Privacy Act of 1974 ("FERPA") defines "education records" as those records, files, documents, and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

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**CONSOLIDATED PUPIL SUSPENSIONS,
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(Effective Beginning July 1, 2012)

5. Written Recommendation

Preparation and submission of the hearing officer or panel's findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board. (§ 48918, subds. (d) and (f).) This activity is reimbursed based on a uniform cost allowance reasonable reimbursement methodology.

(d) — Record of Hearing

6. Hearing Record

Maintaining a record of the hearing by any means which would allow for a reasonably accurate and complete written transcript of the proceedings to be made. (§ 48918, subd. (g).) This activity is reimbursed based on a uniform cost allowance reasonable reimbursement methodology.

E. ~~ON-GOING ACTIVITIES: EXPULSIONS BASED ON ALLEGATIONS OF SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT OR SEXUAL BATTERY (operative Jan. 1, 1997.)~~ EXPULSION HEARING PROCEDURES: SEXUAL ASSAULT ALLEGATIONS

When a pupil is recommended for an expulsion involving allegations of sexual assault or attempted sexual assault, as defined, or sexual battery, as defined in section 48900, subdivision (n), the following activities are reimbursable:

8 1. Advisory Against Party Contact

Immediately advise the complaining witnesses and accused pupils to refrain from personal or telephonic contact with each other during the pendency of any expulsion process. (§ 48918.5, subd. (d), Stats. 1996, ch. 915.)

4 2. Notice to Complaining Witness

Provide the complaining witness with a copy of the applicable disciplinary rules and advise the witness of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing; (2) have up to two adult support persons of his or her choosing present in the hearing at the time he or she testifies; and (3) have the hearing closed during the time he or she testifies pursuant to subdivision (c) of section 48918. (§ 48918.5, subd. (a), Stats. 1996, ch. 915.)

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2 Give the complaining witness five days' notice prior to being called to testify. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

3. Complaining Witness Accommodations

~~4.~~ If the hearing is conducted at a public meeting, hear the witness' testimony in a session closed to the public if testifying would threaten serious psychological harm and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. (§ 48918, subd. (c), Stats. 1996, ch. 915.)

6. Provide a nonthreatening environment for a complaining witness in order to better enable him or her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)

7. Provide a room separate from the hearing room for the use of the complaining witness prior to and during breaks in testimony. (§ 48918.5, subd. (c), Stats. 1996, ch. 915.)

4. Support Person as Witness Protocol

3. Before the complaining witness' testimony, admonish the witness' support person(s) that the hearing is confidential. (§ 48918, subd. (b), Stats. 1996, ch. 915.)

5. Follow the provisions of section 868.5 of the Penal Code at the hearing if the complaining witness has one or more support persons, and one or more of the support persons is also a witness. (§ 48918, subd. (b), Stats. 1996, ch. 915.) The section 868.5 procedures include: (1) Only one support person may accompany the witness to the witness stand, although the other may remain in the room during the witness' testimony; (2) For the prosecution to present evidence that the support person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness; (3) For the governing board, on the prosecution's showing in (2), to grant the request for the support person unless information presented by the defendant or noticed by the district establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony; (4) The governing board shall inform the support person or persons that the proceedings are confidential and may not be

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discussed with anyone not in attendance at the proceedings; (5) For the governing board to admonish the support person or persons to not prompt, sway, or influence the witness in any way; (6) For the testimony of the support person or persons who are also witnesses to be presented before the testimony of the prosecuting witnesses and excluding the prosecuting witnesses from the courtroom during the support person's testimony; and (7) When the evidence given by the support person would be subject to exclusion because it has been given before the corpus delicti⁶ has been established, for the evidence to be admitted subject to the governing board or defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

F. ~~ON-GOING ACTIVITIES:~~ POST-EXPULSION HEARING PROCEDURES

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

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);

Then the following activities are reimbursable:

1. Expulsion Order

Issuing the expulsion order. (§ 48915, subd. (d).)

2. Parent Notice

Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education; (c) the education alternative placement at the time of expulsion order, and (d) the obligation of the pupil, parent or guardian under Education Code section

⁶The corpus delicti is the basic element or fact of a crime.

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48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity. (§ 48918, subd. (j).)

3. Pupil Records

Maintaining a record of the expulsion, including the cause of the expulsion. (§ 48918, subd. (k).)

4. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record. (§ 48918, subd. (k).)

5. Forwarding the pupil's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school. (§ 48918, subd. (k).)

**G. ~~ON-GOING ACTIVITIES: REFERRAL OF EXPELLED PUPIL TO DIFFERENT
SCHOOLSITE, REHABILITATION PLAN, AND ALTERNATIVE EDUCATIONAL
PROGRAMS~~**

When the pupil is expelled for one of the following offenses:

- Possessing, selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

Then the following activities are reimbursable:

1. Referral to Alternative Education Program

Refer the expelled pupil to a program of study that meets the following criteria: (1) is appropriately prepared to accommodate pupils who exhibit discipline problems; (2) is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; and (3) is not housed at the schoolsite attended by the pupil at the

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time of suspension. (§ 48915, subd. (d), Stats. 1995, ch. 972.)

2. Notice to Parents

Send written notice to the pupil or the pupil's parent or guardian of the education alternative placement at the time of the expulsion order. (§ 48918, subd. j., Stats. 1995, ch. 974.)

3. Rehabilitation Plan

Recommend a rehabilitation plan for the pupil, at the time of the expulsion order. (§ 48916, subd. (b), Stats. 1995, ch. 974, operative July 1, 1996.)

4. Alternative Educational Program Costs

Ensure that an educational program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. The educational program may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools. The educational program may not be situated within or on the grounds of the school from which the pupil was expelled (§ 48916.1, Stats. 1995, ch. 974, operative July 1, 1996.) State attendance-based funding or other state or federal sources of funding for these programs are an offset to the reimbursable cost of providing the alternative educational programs.

H. ~~ON-GOING ACTIVITIES:~~ READMISSION TO THE DISTRICT PROCEDURES

If the governing board expelled a pupil for any of the following offenses:

- Possessing, selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§ 48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

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Then the following activities are reimbursable:

~~3. Review the pupil for readmission. (operative July 1, 1996.)~~

1. Readmission Determination

~~(a)~~ Ordering the expelled pupil's readmission or making a finding to deny readmission if the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the school district. (§ 48916, subd. (c), Stats. 1995, ch. 974.)

~~(b)~~ If readmission is denied, the governing board: , ~~(1)~~ [m]aking the determination to either continue the placement of the expelled pupil in the alternative education program, or ~~to placing~~ the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in a county community school. (§ 48916, subd. (d).)

2. Pupil/Parent Notice

1. Setting a date when the pupil may apply for readmission to a district school.

~~2.~~ Providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian. (§ 48916.) Or,

~~(b)(2)~~ Providing written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying readmission to the regular school program. The written notice shall include the determination of the alternative education program for the expelled pupil. (§ 48916, subd. (e).)

**I. ON-GOING ACTIVITIES: APPLICATION BY EXPELLED PUPIL TO
ATTENDANCE AT A NEW DISTRICT**

RECEIVING DISTRICT ACTIVITIES

If a pupil ("applicant") seeking application to the receiving school district has been expelled by another school district for *any offense* and the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activities associated with the receiving district's hearing are reimbursable:

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1. Notice of Hearing

Including in the notice of hearing to the applicant: (a) a copy of the hearing procedure rules of the receiving district; and (b) notice of the opportunity for the applicant or the applicant's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.

2. Document Inspection

Allowing an applicant or applicant's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:

- (a) if the requesting party is an applicant less than 18 years of age, or the parent or guardian of an applicant who is 18 years of age or older, all documents; or
- (b) if the requesting party is the parent or guardian of an applicant under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).

3. Admission Determination

Determination by the governing board whether a pupil expelled by another school district would pose a danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion.

4. Maintaining a record of each admission denial, including the cause of the denial.

5. Notifying the applicant and the applicant's parent or guardian of the governing board's determination of whether the applicant poses a potential danger to the pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion. (§§ 48915.1 & 48915.2)

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~~J. ON-GOING ACTIVITIES: RESPONDING TO REQUESTS FOR
RECOMMENDATIONS FOR ADMISSION TO A RECEIVING SCHOOL
DISTRICT~~

SENDING DISTRICT ACTIVITIES

If the governing board expelled a pupil for any of the following offenses:

- Possessing, selling or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

4. Request for Recommendation

~~And the expelled pupil applies for admission to another school district (the "receiving district") then;~~ Unless the expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable. (§ 48915.2.)

~~K-J. ON-GOING ACTIVITIES: EXPULSION APPEAL HEARINGS~~

~~County Boards of Education (applies to expulsion appeals for all offenses)~~

COUNTY OFFICES OF EDUCATION

For all offenses:

1. Providing Notice to the Parties
 - (a) Notifying the pupil and the pupil's parent(s) or guardian(s) of the procedures for the appeal. (§ 48919.)

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- (b) Notifying the school district and pupil in writing of the final order of the county board of education, either by personal service or certified mail. (§ 48924.)

2. Review of District Hearing Record

Reviewing the filed appeal and the transcript and record of the hearing conducted by the school district governing board. (§§ 48921-48922.)

3. De Novo Conducting Hearings

Conducting the initial appeal hearing and rendering a decision. Reimbursement for this component is limited to appeals for which the county board of education decides to grant a hearing de novo. (§§ 48919 & 48923.)

5 4. Remand to District

Remanding an expulsion decision to a school district for adoption of the required findings if the school district's decision is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. (§ 48923, subd. (b), Stats. 2000, ch. 147, eff. Jan. 1, 2001.)

4 5. Preserving Hearing Records

Preserving the record of appeal. (§ 48919.)

SCHOOL DISTRICTS

If the governing board expelled a pupil for any of the following:

- Possessing, selling or otherwise furnishing a firearm § 48915, subd. (c)(1);
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery. (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

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Then the following activities are reimbursable:

4 6. Providing Copies of Documents

- (a) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age. (§ 48919.)
- (b) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g (a)(4). (§ 48919.)

2 7. Participation in Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo. (§ 48919.)

4 8. Remand Hearings

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing. (§ 48923.)

~~5. Notice and Adoption of Required Findings on Remand (operative Jan. 1, 2001)~~

If following an appeal, the county board of education remanded the expulsion to the governing board, then:

- (a) Providing notice to the pupil or the pupil's parent or guardian of the following: the expulsion decision, the right to appeal to the county board, the education alternative placement to be provided during the expulsion, and the obligation of the parent or guardian to inform a new school district in which the pupil may enroll of the pupil's expulsion; and maintain a record of each expulsion and the cause therefor.
- (b) Adopting the required findings on remand from the county board of education in a public session. (Holding a hearing is not reimbursable.) (§ 48923, subd. (b), Stats. 2000, ch. 147.)

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3 9. Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education. (§ 48923.)

~~L K.~~ ON-GOING ACTIVITIES: SCHOOL DISTRICT DATA COLLECTION

If the governing board expelled a pupil for any of the following offenses:

- Selling, or otherwise furnishing a firearm (§ 48915, subd. (c)(1));
- Brandishing a knife at another person (§ 48915, subd. (c)(2));
- Unlawfully selling any controlled substance (§ 48915, subd.(c)(3));
- Committing or attempting to commit a sexual assault or committing a sexual battery (§48915, subd. (c)(4), Stats. 1996, ch. 1052, operative Jan. 1, 1997);
- Possession of an explosive at school or at a school activity off school grounds (§ 48915, subd. (c)(5), Stats., ch. 116, eff. Jan. 1, 2002);

It is ~~reimbursable for the school district to~~ Maintaining data on the following and reporting it data to the California Department of Education about:

- a. [w]hether the expulsion order was suspended;
- b. [t]he type of referral made after the expulsion; and
- e. [t]he disposition of the pupil after the end of the period of expulsion. (§ 48916.1, subd. (e), Stats. 1996, ch. 937.)

L. TRAINING

Training school district personnel (one-time per employee) about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

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V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

No change

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission ~~is adopting~~ has adopted a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D.3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.

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- (c) 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.

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in Section IV.D.3-6 and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities in Section IV.D. 3-6 are as follows:

Reimbursable Component	Uniform Cost Allowance
IV.D.3 (a) Preparation for Expulsion Hearing <u>Preparation</u>	\$115.72
IV.D. 3(b) 4 Conducting Expulsion Hearing	\$144.58
IV.D. 3(c) 5 Hearing Officer or Panel's Expulsion Written Recommendation to the Governing Board	\$171.00
IV.D. 3(d) 6 Record of Hearing <u>Record</u>	\$ 1.47
Total	\$432.77

The uniform cost allowances shall be adjusted each subsequent year by the Implicit Price Deflator.

2. Formula

Reimbursement of Activities IV.D.3 (a)-(d) ~~-6~~ is determined by multiplying the

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uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D.3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

no change

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

No change

IX STATE CONTROLLER'S CLAIMING INSTRUCTIONS

No change

X. REMEDIES BEFORE THE COMMISSION

No change

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

No change



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

August 12, 2011

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

Re: Comment on Proposed Parameters and Guidelines
Pupil Suspensions II, Pupil Expulsions II and Educational Services Plans for Expelled Pupils, 96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09
and Proposed Consolidation with Pupil Suspensions from School, Pupil Expulsions from School, and Pupil Expulsion Appeals, CSM-4456, 4455, and 4463
San Juan Unified School District and Kern County Office of Education, Claimants

Dear Mr. Bohan:

The State Controller's Office (SCO) has reviewed the six sets of proposed parameters and guidelines (P's and G's) for the above-referenced program. The SCO concurs with the draft staff analysis to adopt the five proposed P's and G's for Pupil Suspensions II, Pupil Expulsions II, and Educational Services Plans for Expelled Pupils. However we recommend that the Consolidated P's and G's for Pupil Suspensions II, Pupil Expulsions II, and Educational Service Plans for Expelled Pupils with Pupil Suspensions from School, Pupil Expulsions from School, and Pupil Expulsion Appeals use the set of P's and G's amended on July 28, 2006 rather than the May 27, 2010 version.

The draft staff analysis submitted included an old set of P's and G's that were amended on May 27, 2010 and were only effective for claims filed from July 1, 2005 through June 30, 2006. The SCO recommends removing the May 27, 2010, version from the draft staff analysis and replacing it with the P's and G's amended on July 28, 2006.

Should you have questions regarding the above, please contact Tin Bui at (916) 323-8137 or e-mail to tbui@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAL", written over a white background.

JAY LAL, Manager
Local Reimbursement Section

AMENDED CONSOLIDATED PARAMETERS AND GUIDELINES

PUPIL SUSPENSIONS, EXPULSIONS, AND EXPULSION APPEALS

Pupil Suspensions from School - CSM-4456

Education Code section 48911, subdivisions (b) and (e)
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668
Statutes 1980, Chapter 73; Statutes 1983, Chapter 498
Statutes 1985, Chapter 856; Statutes 1987, Chapter 134

Pupil Expulsions from School -CSM-4455

Education Code Sections 48915, subdivisions (a) and (b),
48915.1, 48915.2, 48916 and 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; Statutes 1982, Chapter 318;
Statutes 1983, Chapter 498; Statutes 1984, Chapter 622;
Statutes 1987, Chapter 942; Statutes 1990, Chapter 1231;
Statutes 1992, Chapter 152; Statutes 1993, Chapters 1255, 1256, 1257; and,
Statutes 1994, Chapter 146

Pupil Expulsion Appeals - CSM-4463

Education Code Sections 48919, 48921-48924
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965;
Statutes 1978, Chapter 668; and Statutes 1983, Chapter 498

I. Summary of the Mandates

These consolidated parameters and guidelines address the following three test claim decisions:

A. Pupil Suspensions from School

On December 19, 1996, the Commission on State Mandates adopted its Statement of Decision determining that certain provisions of Education Code section 48911, subdivisions (b) and (e) impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. The mandate is limited to the following reimbursable activities for suspensions based upon (1) possession of a firearm (October 11, 1993 to present), and (2) possession of a knife or explosive October 11, 1993 to December 31, 1993).

- The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable. (Ed. Code, § 48911, subd. (b).)
- A report of the cause of each school suspension to the district board (Ed. Code, § 48911, subdivision (e).)

B. Pupil Expulsions from School

On May 26, 1997, the Commission on State Mandates adopted its Statement of Decision, and on May 26, 2005, adopted its Amended Statement of Decision pursuant to the Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859. finding that certain provisions of the following Education Code sections impose a new program or higher level of service for school districts within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

- Education Code section 48915, subdivision (a), as added by Statutes 1983, chapter 498 and amended by Statutes 1993, chapters 1255 and 1256.;
- Education Code section 48915, subdivision (b), as amended by Statutes 1993, chapter 1255 and 1256;
- Education Code section 48918 (opening paragraph and subds. (a), (b), (f), (g), (h), (i) & (j)), as added by Statutes 1975, chapter 1253 and amended by Statutes 1977, chapter 965, Statutes 1978, chapter 668, Statutes 1982, chapter 318, Statutes 1983, chapter 498, Statutes 1990, chapter 1231, and Statutes 1994, chapter 146;
- Education Code section 48916, as added by Statutes 1983, chapter 498 and amended by Statutes 1992, chapter 152;
- Education Code section 48915.1, as added by Statutes 1987, chapter 943 and amended by Statutes 1990, chapter 1231 and Statutes 1993, chapter 1257;
- Education Code section 48915.2, as added by Statutes 1993, chapter 1257.

The Commission further determined that certain of the foregoing sections imposed a new program or higher level of service only with respect to expulsion procedures instituted for certain specified offenses.

C. Expulsion Appeals

On March 27, 1997, the Commission on State Mandates adopted its Statement of Decision finding that certain provisions of Education Code sections 48919 and 48921 through 48924 impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution for school districts and county boards of education to hear and decide pupil expulsion appeals.

The Commission determined that the following provisions applicable to all student expulsion appeals establish costs mandated by the state pursuant to Government Code section 17514 for county boards of education to:

- Adopt rules and regulations establishing procedures for expulsion appeals.
- Notify persons appealing a school district expulsion of the procedures for the conduct of the appeal, as part of the county board's notice to the pupil regarding the appeal.
- Review the appeal and the record of the expulsion hearing conducted by the governing board (including the written transcript of the hearing and supporting documents).
- Conduct the initial hearing on the appeal, if the county board of education decides in such hearing to grant a hearing de novo.

- By either personal service or certified mail, notify the pupil and the school district of the final and binding order of the county board of education,
- Preserve the record of appeal.

The Commission determined that, limited to those expulsions which were based upon Education Code section 48915, subdivision (b) (as amended by Stats. 1993, ch. 1255 and 1256), the following provisions establish costs mandated by the state pursuant to Government Code section 17514 for school districts to:

- Provide copies of supporting documents and records from the district’s expulsion hearing (other than the transcript) to a pupil or the pupil’s parent or guardian, as follows:
 1. If the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
 2. If the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).¹
 3. Participate in the initial appeal hearing at the county board of education, if the county board decides in such hearing to grant a trial de novo.
 4. If the county board of education remands the matter to the school district, send notice of hearing, conduct the hearing and render a decision in the remand hearing.
 5. If ordered by the county board of education, expunge the district’s and the pupil’s records of the expulsion.

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. Charter schools are not eligible claimants.

¹The Federal Education Rights and Privacy Act of 1974 (“FERPA”) defines “education records” as those records, files, documents and other materials which (i) contain information directly related to a student, and (ii) are maintained by the school district or a person acting for the school district. 20 U.S.C. Section 1232g(a)(4)(B)) provides certain exceptions to the general definition (for example, records maintained by a law enforcement unit of a school district that were created by that law enforcement unit for the purpose of law enforcement).

III. PERIOD OF REIMBURSEMENT

These consolidated parameters and guidelines are operative for reimbursement claims filed for increased costs beginning July 1, 2006. Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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

Costs for *Pupil Suspensions, Expulsions, and Expulsion Appeals* (CSM-4456, 4455, 4463) that have been claimed for fiscal years 1993-1994 through 2005-2006 pursuant to the State Controller's claiming instructions for Program 176 may not be claimed and are not reimbursable under these parameters and guidelines.

However, costs for *Pupil Suspensions, Expulsions, and Expulsion Appeals* beginning with fiscal years 2006-2007 may be claimed for activities specified in section IV. of these parameters and guidelines.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except as specified in Section VII of these parameters and guidelines.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs 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, 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant may claim and be reimbursed for increased costs for reimbursable activities identified below by either the actual cost method or by the reasonable reimbursement methodology for additional hearing costs. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate. Only increased costs for reimbursable activities identified below are reimbursable.

For each eligible claimant, the following activities are reimbursable:

A. ADOPTION AND REVISION OF RULES AND PROCEDURES

1. County Boards of Education

- (a) Adopting rules and procedures for expulsion appeal hearings and revising those rules and procedures to conform to amendments of the statutory hearing requirements.
- (b) Printing and disseminating rules and procedures to each school district in the county.

2. School Districts and County Boards of Education

- (a) Adopting rules and procedures pertaining to pupil expulsions and revising those rules and procedures to conform to amendments of the statutory requirements.
- (b) Adopting rules and regulations establishing the procedure for the filing and processing of requests for readmission pursuant to Education Code section 48916.
- (c) Printing and disseminating rules and procedures to each school site.

B. SUSPENSION CONFERENCE AND REPORT

If the suspension is for possession of a firearm, then the following activities are reimbursable:

1. Attendance at Informal Conference

The attendance of the teacher, supervisor or other school district employee who referred the pupil to the principal for suspension in the pre-suspension conference between the principal (or principal's designee) or superintendent and the pupil.

2. Reporting the Cause to the District Office

Reporting the cause of the suspension to the school district's superintendent or governing board in accordance with the regulations of the school district's governing board. Such report may be oral or written.

C. RECOMMENDATION OF EXPULSION

The preparation of a report to the school district governing board concerning the principal's or superintendent's recommendation to expel a pupil for the following offenses:

- causing serious physical injury to another person, except in self defense;²
- possession of any firearm,³ knife,⁴ explosive,⁵ or other dangerous object⁶ of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code,⁷ except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis; or
- robbery or extortion.⁸

D. EXPULSION HEARING PROCEDURAL REQUIREMENTS

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

- causing serious physical injury to another person, except in self defense;⁹
- possession of any firearm,¹⁰ knife,¹¹ explosive,¹² or other dangerous object¹³ of no reasonable use to the pupil at school or at a school activity off school grounds;
- unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 1053) of Division 10 of Health and Safety Code,¹⁴ except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis ;
or
- robbery or extortion.¹⁵

Then the following activities are reimbursable:

² Education Code section 48915, subdivision (a)(1).

³ Education Code section 48915, subdivision (c)(1).

⁴ Education Code section 48915, subdivision (a)(2).

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

⁶ Education Code section 48915, subdivision (a)(2); the word "device" is replaced with "object" to conform with text of this section.

⁷ Education Code section 48915, subdivision (c)(3).

⁸ Education Code section 48915, subdivision (a)(4).

⁹ Education Code section 48915, subdivision (a)(1).

¹⁰ Education Code section 48915, subdivision (c)(1).

¹¹ Education Code section 48915, subdivision (a)(2).

¹² Education Code section 48915, subdivision (c)(5).

¹³ Education Code section 48915, subdivision (a)(2); the word "device" is replaced with "object" to conform with text of this section.

¹⁴ Education Code section 48915, subdivision (a)(2); the word "device" is replaced with "object" to conform with text of this section.

¹⁵ Education Code section 48915, subdivision (a)(4).

1. Including in the notice of hearing to the pupil:

- (a) a copy of the disciplinary rules of the district that relate to the alleged violation;
- (b) a notice of the parent's, guardian's or pupil's obligation, pursuant to Education Code section 48915.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and
- (c) notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.

2. Allowing a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:

- (a) if the requesting party is a pupil less than 18 years of age or the parent or guardian of a pupil who is 18 years of age or older, all documents; or
- (b) if the requesting party is the parent or guardian of a pupil under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).

3. Expulsion hearing costs:

(a) Preparation for Expulsion Hearing

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

(b) Conducting Expulsion Hearing

The attendance of the review panel and other district employees required to attend the expulsion hearing.

(c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board

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

(d) Record of Hearing

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

E. POST-EXPULSION PROCEDURES

If the expulsion hearing is for possession of a firearm, then the following activities are reimbursable:

1. Sending written notice to the pupil or the pupil's parent or guardian of: (a) any decision by the governing board to expel or suspend the enforcement of an expulsion order during a period of probation; (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the pupil, parent or guardian under Education Code section 48915.1 to notify a new school district, upon enrollment, of the pupil's expulsion. Costs of postage for mailing the notice is reimbursable under this activity.
2. Maintaining a record of the expulsion, including the cause of the expulsion.

3. Recording the expulsion order and the cause of the expulsion in the pupil's mandatory interim record.
4. Forwarding the student's mandatory interim record to any school in which the pupil subsequently enrolls upon the request of such school.

F. READMISSION PROCEDURES

If the governing board expelled a pupil for possession of a firearm, then the following activities are reimbursable:

1. setting a date when the pupil may apply for readmission to a district school; and
2. providing a description of the procedure for readmission to the pupil and the pupil's parent or guardian.

G. APPLICATION BY EXPELLED PUPIL TO ATTEND NEW DISTRICT

If a pupil ("applicant") seeking application to a school district (the "receiving school district") has been expelled by another school district for any offense and the receiving school district does not have a voluntary interdistrict transfer agreement with the expelling district, then the following activities associated with the receiving district's hearing are reimbursable, as specified below:

1. Including in the notice of hearing to the applicant: (a) a copy of the hearing procedure rules of the receiving district; and (b) notice of the opportunity for the applicant or the applicant's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.
2. Allowing an applicant or applicant's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:
 - (a) if the requesting party is an applicant less than 18 years of age, or the parent or guardian of an applicant who is 18 years of age or older, all documents; or
 - (b) if the requesting party is the parent or guardian of an applicant under the age of 18, only those documents which are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).¹⁶
3. Determination by the governing board whether a pupil expelled by another school district would pose a danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the pupil during or after the period of expulsion.
4. Maintaining a record of each admission denial, including the cause of the denial.
5. Notifying the applicant and the applicant's parent or guardian of the governing board's determination of whether the applicant poses a potential danger to the pupils or employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion.

H. RESPONDING TO REQUESTS FOR RECOMMENDATIONS

If the governing board expelled a pupil for possession of a firearm and the expelled student applies for admission to another school district (the "receiving district") then, unless the

¹⁶ See footnote 1.

expelling district entered into a voluntary interdistrict transfer agreement with the receiving district, the activities of the expelling district in responding to the receiving district's request for a recommendation regarding the admission of the applicant are reimbursable.

I. EXPULSION APPEAL HEARINGS

1. County Boards of Education (applicable to all student expulsion appeals)

(a) Providing Notice to the Parties

(1) Notifying the pupil and the pupil's parent(s) or guardian(s) of the procedures for the appeal.

(2) Notifying the school district and pupil in writing of the final order of the county board of education, either by personal service or certified mail.

(b) Review of Hearing Record

Reviewing the filed appeal and the transcript and record of the hearing conducted by the school district governing board.

(c) Conducting Hearings

Conducting the initial appeal hearing and rendering a decision. Reimbursement for this component is limited to appeals for which the county board of education decides to grant a hearing de novo.

(d) Preserving Records

Preserving the record of appeal.

2. School Districts

If the governing board expelled a pupil for possession of a firearm then the following activities are reimbursable

(a) Providing Copies of Documents

(1) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is less than 18 years of age.

(2) Providing copies of supporting documents and records from the district's expulsion hearing (other than the transcript) to a pupil who is 18 years of age or older, or to the parent or guardian of a pupil who is less than 18 years of age, if the documents or records are not "education records" as defined in 20 U.S.C. section 1232g(a)(4).¹⁷

(b) Participation In Hearings

Participation by a school district in the county board of education's hearing on appeal if the county board of education grants a hearing de novo,

(c) Remand Hearing

¹⁷ See footnote 1

If the county board of education remanded the expulsion to the school district's governing board following an appeal, sending notice of the hearing, conducting a hearing on remand, and rendering a decision in the remand hearing.

(d) Expunging Records

Expunging the school district's and pupil's records concerning the expulsion, when ordered by the county board of education.

J. TRAINING

Training school district personnel about the mandated suspension, expulsion, and expulsion appeal activities. This reimbursable component includes the labor time of administrators and other school district personnel involved with preparation of training sessions and the labor time of administrators and other school district personnel who conduct or attend training sessions. Labor time for teachers is not reimbursable. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

V. CLAIM PREPARATION AND SUBMISSION FOR ACTUAL COSTS

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes,

delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

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

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section V of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose.—These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives.

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

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

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. CLAIM PREPARATION AND SUBMISSION: REASONABLE REIMBURSEMENT METHODOLOGY

The Commission is adopting a *reasonable reimbursement methodology* to reimburse school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), *in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV.D. 3 above.*

A. Reasonable Reimbursement Methodology

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

Government Code Section 17518.5

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) 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.
 - (2) 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.
- (b) 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.
- (c) 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,

B. Uniform Cost Allowances and Formula for Reimbursable Activities

The *reasonable reimbursement methodology* shall consist of uniform cost allowances to cover all direct and indirect costs of performing activities in D. 3, as described under Section IV, Reimbursable Activities, and applied to a formula for calculating claimable costs.

1. The uniform cost allowances for reimbursement of activities, IV. D. 3 are *as follows*:

Reimbursable Component	Uniform Cost Allowance Fiscal Year 2005-2006
IV. D.3 (a) Preparation for Expulsion Hearing	\$157.00
IV. D. 3 (b). Conducting Expulsion Hearing	\$196.16
IV. D 3 (c) Hearing Officer or Panel's Expulsion Recommendation to the Governing Board	\$232.00
IV. D.3 (d) Record of Hearing	\$2.00
Total	\$587.16

The State Controller's Office shall update these Uniform Cost Allowances by the Implicit Price Deflator referenced in Government Code section 17523 for fiscal year 2006-2007 and each subsequent fiscal year.

2. Formula

Reimbursement of Activities IV. D. 3. (a) – (d) is determined by multiplying the uniform cost allowance for the appropriate fiscal year by the number of mandatory recommendations for expulsion that resulted in expulsion hearings. If a hearing does not result, claimant may claim increased costs incurred for Section IV.D 3 (a), Preparation for Expulsion Hearing.

VII. RECORD RETENTION

A. Actual Costs

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter¹⁸ 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 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 documentation used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

B. Reasonable Reimbursement Methodology

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs based on this reasonable reimbursement methodology filed by a school district pursuant to this chapter¹⁹ is subject to the initiation of an audit by the Controller

¹⁸ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

¹⁹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

School districts must retain documentation which supports the total number of mandatory expulsions initiated and hearings conducted during the period subject to audit.

VIII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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, services fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute, regulations, or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

X. REMEDIES BEFORE THE COMMISSION

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

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

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision on *Pupil Suspensions from School* and *Pupil Expulsion Appeals* 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 claims. The administrative records, including the Statements of Decision, are on file with the Commission.

The Statement of Decision on *Pupil Expulsions from School*, as modified pursuant to the

Supreme Court decision in *San Diego Unified School District. v. Commission on State Mandates* (2004) 33 Cal.4th 859, and adopted on May 26, 2005, is legally binding on all parties and provides 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 and the Supreme Court decision. The administrative record, including the Statement of Decision, as modified, and the Supreme Court decision is on file with the Commission.

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 1231, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; and filed on March 9, 1994, and

Education Code Sections 48900.3, 48900.4, and 48915, as added and amended by Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994; and filed on April 7, 1995,

By the San Diego Unified School District,
Claimant.

NO. CSM-4455

PUPIL EXPULSIONS

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

(Adopted on May 29, 1997)

(Effective on May 4, 1998)

*(Corrected on August 10, 1998,
Pursuant to Cal.Code.Regs.,
Tit. 2, § 1188.2, subd. (b).)*

(Vacated in part and amended in part,
pursuant to *San Diego Unified School District
v. Commission on State Mandates (2004) 33
Cal.4th 859.*)

(Adopted on May 26, 2005 and corrected on
July 11, 2006.)

STATEMENT OF DECISION

The Commission issued its Corrected Decision in this matter on August 10, 1998. San Diego Unified School District filed a petition for writ of mandate on October 22, 1999. After the challenge was heard in the lower courts, the California Supreme Court granted review of the case and issued its decision on August 2, 2004. On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate to the Commission, directing the Commission to:

“a. Set aside your decision dated August 10, 1998, Case No. CSM-4455, to the extent the Commission found that reimbursable costs in an expulsion proceeding under Education Code section 48915(b) are limited to the costs of those proceedings enumerated in the decision and not required by federal law, and to issue a decision in said case finding that all costs of expulsion proceedings brought under Education Code section 48915(b) are reimbursable costs for the reasons set forth in the opinion of the California Supreme Court; and

“b. Amend your decision dated August 10, 1998, Case No. CSM-4455, to the extent the Commission found that expulsions authorized by Education Code section 48915(c) result in no reimbursable costs, by issuing a decision finding that state mandated expulsion procedures costs incurred in cases when expulsion is discretionary are not reimbursable for the reasons set forth in the opinion of the California Supreme Court.”

On May 26, 2005, the Commission so modified its decision in accordance with the ruling in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.)

Issue: Do the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, and 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 1231, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994, impose a reimbursable state mandated program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code?

This test claim was heard by the Commission on State Mandates (Commission) on October 31, 1996, during a regularly scheduled hearing. Mr. Jose Gonzales and Mr. James Cunningham appeared for the San Diego Unified School District, and Ms. Caryn Becker appeared for the Department of Finance.

Supplemental hearings on this test claim were held on December 19, 1996 and March 27, 1997, during regularly scheduled hearings. Mr. James Cunningham appeared for the San Diego Unified School District, and Ms. Caryn Becker appeared for the Department of Finance.

At both hearings, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

BACKGROUND AND FINDINGS OF FACT

The San Diego Unified School District alleges that Education Code sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, and 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter

536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 1231, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994 impose a reimbursable state mandated program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution.

Therefore, the Education Code statutes which are the subject of this test claim, are as follows:

Section 48915, subdivision (a), as added by Chapter 498, Statutes of 1983, states in pertinent part : ¹

"(a) The principal or the superintendent of schools shall recommend a pupil's expulsion ... for any of the following acts, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstance, which shall be set out in the report of the incident:

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.
- (3) Unlawful sale of any controlled substance, as defined in Section 11007 of the Health and Safety Code....
- (4) Robbery or extortion."

Section 48915, subdivision (b), as amended by Chapter 1255, Statutes of 1993, states:

"(b) The principal or superintendent shall immediately suspend pursuant to section 48911, and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive [at school or at a school activity off school grounds]. The governing board shall expel that pupil or, as an alternative, recommend that pupil to an alternative education program, whenever the principal or superintendent of schools confirm that:

- (1) The pupil was in knowing possession of the item,
- (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the district.
- (3) There was no reasonable cause for the pupil to be in possession of the [firearm, knife, or explosive.]"

[The effective date of this chapter was October 11, 1993 through December 31, 1993.]

Section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993, states:

"(b) The principal or superintendent shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior or senior high school or housed at the school site attended by the pupil at the time the expulsion was recommended to the

¹ Unless otherwise indicated, all referenced sections are to the Education Code.

school board, whenever the principal or superintendent of schools and the governing board confirm the following:

- (1) The pupil was in knowing possession of the firearm.
- (2) An employee of the school district verifies the pupil's possession of the firearm.

[Effective date of this chapter was January 1, 1994.]

Section 48915, subdivision (c), as amended by Chapter 1256, Statutes of 1993; Chapters 146 and 1198, Statutes of 1994, states in pertinent part:

“(c) Upon recommendation of the principal, superintendent, hearing officer, or administrative panel, the governing board *may* order a pupil expelled upon finding that the pupil violated subdivisions (f), (g), (h), (i), (j), (k), or (l) of Section 48900, or Section 48900.2 or 48900.3, and either of the following:²

- (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- (2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.³”(Emphasis added.)

Section 48900, as amended by Chapter 909, Statutes of 1992, states:⁴

“A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

“(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

“(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

“(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

“(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

“(e) Committed or attempted to commit robbery or extortion.

²These subdivisions refer to damage to school property or private property (subd. (f).), theft of school property or private property (subd. (g).), tobacco related offenses (subd. (h).), obscenity, profanity or vulgarity (subd. (i).), drug paraphernalia related offenses (subd. (j).), disruption/defiance (subd. (k).), receipt of stolen property (subd. (l).), sexual harassment (§ 48900.2), hate crimes (§ 48900.3).

³The double underlined text was added by Chapters 146 and 1198, Statutes of 1994.

⁴According to West's Annotations, the 1992 amendment made nonsubstantive changes to the end of the second sentence of the paragraph, prohibiting suspension or expulsion of pupils for any of the enumerated acts. Section 48900 was also amended by Chapter 1198/1994, § 5 (AB 2543), without change to the text. (West's Ann.Cal.Ed.Code, § 48900 (1996).)

“(f) Caused or attempted to cause damage to school property or private property.

“(g) Stolen or attempted to steal school property or private property.

“(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

“(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

“(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

“(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

“(l) Knowingly received stolen school property or private property.

“No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school sponsored activity.

“It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.”

Section 48900.2, as added by Chapter 909, Statutes of 1992, states:

“In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.

“For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.”

Section 48900.3, as added by Chapter 1198, Statutes of 1994, states:

“In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the

pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 33032.5.”⁵

Section 48900.4, as added by Chapter 1017, Statutes of 1994, states:

“In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment.”

Section 48918, as added and amended by the subject chapters, states:

“The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

*“(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 school days after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.”*⁶

“The decision of the governing board as to whether to expel a pupil shall be made within 10 schooldays after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

“In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

*“(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement of the specific facts and charges upon which the proposed expulsion is based; **a copy of the disciplinary rules of the district that relate to the alleged violation; a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1;** and notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all*

⁵Education Code section 33032.5, subdivision (e), defines “hate violence” as “any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.”

⁶The italicized text in the first paragraph and in subdivision (a), was added as section 10608 by Chapter 1253, Statutes of 1975.

witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses.⁷ (Emphasis added.)

“(c) Notwithstanding Section 54593 of the Government Code and Section 35145 of this code, *the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting.* Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.⁸ [First paragraph]

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations. [Second paragraph]

“(d) *In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207 of this code, for a hearing officer to conduct the hearing. The governing board also may appoint an impartial administrative panel of three or more certificated persons, none of whom are members of the board or employed on the staff of the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all of the procedures established under this section.*⁹

“(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

“(f) If the hearing officer or administrative panel recommends expulsion, *findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.*”[First Paragraph.]

“*The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to*

⁷ The italicized text was added as section 10608, subdivision (b), by Statutes of 1975, Chapter 1253 and re-numbered section 48914, subdivision (b), by Statutes of 1977, Chapter 965; the bold text was added to re-numbered section 48918, subdivision (b), by Chapter 1231, Statutes of 1990.

⁸ The italicized text, referencing former section numbers, was added as former section 10608, subdivision (c), by Chapter 1253, Statutes of 1975.

⁹ The italicized text was added as section 10608, subdivision (d), by Chapter 1253, Statutes of 1975. Although the form of this text has changed since 1975, it has not undergone substantive alteration.

an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.¹⁰ [Second Paragraph.]

*“(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.”*¹¹

*“(h) Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.”*¹²

*“(i) Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian, and shall be accompanied by notice of the right to appeal the expulsion to the county board of education and of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the expulsion.”*¹³

“(j) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record. The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

Section 48916, as added by Chapter 498, Statutes of 1983, states:

“An expulsion order shall remain in effect until the governing board may, in the manner prescribed in this article, order the readmission of a pupil. At the time an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district.” [First paragraph]

“The governing board may recommend a plan of rehabilitation for the pupil, which may include, but not be limited to, periodic review as well as assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service, or other rehabilitative programs.” [Second paragraph]

“The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission. Upon completion of the readmission process,

¹⁰ The *italicized* text was added as former section 10608, subdivision (d), by Chapter 1253, Statutes of 1975; the ***bold italicized*** text was added to former section 48914, subdivision (b), by Chapter 965, Statutes of 1977; the double underlined text was added to former section 48914, subdivision (d), by Chapter 668, Statutes of 1978; the underlined text was added to re-numbered section 48918, subdivision (f), by Chapter 498, Statutes of 1983.

¹¹ The italicized text was added as former section 10608, subdivision (e), by Chapter 1253, Statutes of 1975.

¹² The italicized text was added as former section 10608, subdivision (f), by Chapter 1253, Statutes of 1975.

¹³ The italicized portion is substantially the same as former section 10608, subdivision (g), added by Chapter 1253, Statutes of 1975, as subdivision (g) of former section 10608.

the governing board shall not be required to readmit the pupil. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered." [Third paragraph]

Section 48915.1, as added by Chapter 942, Statutes of 1987, and amended by Chapter 1231, Statutes of 1990, states:

"(a) If the governing board of a school district receives a request from an individual, who has been expelled from another school district for an act described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger to either the pupils or employees of the school district. The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

"(b) If a pupil has been expelled from his or her previous school for any of the offenses listed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915 the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines that the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a)

"(c) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for any act described in paragraphs (1) to (4), inclusive of subdivision (a) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing that the individual poses a potential danger to either the pupils or employees of the school district.

"(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

- (1) Deny enrollment.
- (2) Permit enrollment.
- (3) Permit conditional enrollment in a regular school program or another educational program.

"(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for any act described in paragraphs (1) to (4), inclusive of subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts."

Section 48915.1, as amended by Chapter 1257, Statutes of 1993, states:

"(a) If the governing board of a school district receives a request from an individual who has been expelled from another school district for *an act other than those described in subdivision (a) of Section 48915*, for enrollment in a school maintained by the school district, the board shall hold a

hearing to determine whether that individual poses a continuing danger to either the pupils or employees of the school district. [First Sentence] The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request. (Emphasis added.)

“(b) If a pupil has been expelled from his or her previous school *for offenses other than those listed in subdivision (a) of Section 48915* the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines that the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a). (Emphasis added.)

“(c) The governing board of a school may make a determination to deny enrollment to an individual who has been expelled from another school district *for an act other than those described in subdivision (a) of Section 48915*, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing that the individual poses a potential danger to either the pupils or employees of the school district.

“(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

- (1) Deny enrollment.
- (2) Permit enrollment.
- (3) Permit conditional enrollment in a regular school program or another educational program.

“(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for an act other than those described in subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts.”¹⁴

Section 48915.2, as added by Chapter 1257, Statutes of 1993, states:

“(a) A pupil expelled from school for any of the offenses listed in subdivision (a) of Section 48915, shall not be permitted to enroll in any other school or school district *during the period of expulsion* unless it is a county community school pursuant to subdivision (b) of Section 1981, or a juvenile court school, as described in Section 48645.1. (Emphasis added.)

“(b) After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) of Section 48915 *does not pose a danger* to either the pupils or employees of the school district, the governing board of a school district *may permit* the individual to enroll in the school district *after the term of expulsion*, subject to one of the following conditions:

- (1) He or she has established legal residence in the school district, pursuant to Section 48200.

¹⁴The italicized text was added by Chapter 1257, Statutes of 1993.

(2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to chapter 5 (commencing with Section 46600) of Part 26.” (Emphasis added.)

Section 48915.7, as added by Chapter 1256, Statutes of 1993, states:

“It is the intent of the Legislature that where community school opportunities exist, the principal shall recommend for expulsion, and the governing board shall expel, any pupil who is found to be in possession of a firearm at school or at a school activity off school grounds and that the governing board shall request the county board of education to enroll the pupil in a community school.”

ORGANIZATION OF THE STATEMENT OF DECISION

The statutes which are the subject of this Statement of Decision are presented in the following order:

- A. Immediate Suspension, Initiating Expulsion, and Making the Decision to Expel (§ 48915.)
- B. Basis for Expulsions (§§ 48900, 48900.2, 48900.3, and 48900.4.)
- C. Procedures for Expulsions (§ 48918.) [Amended by ruling in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.]
- D. Procedures for Readmission (§§ 48916, 48915.1, 48915.2, 48915.7.)

THE COMMISSION FINDS THAT:

On November 29, 1984, the Board of Control¹⁵ adopted a “Brief Written Statement,” on section 48915, subdivision (a), which reads in part:

“The Board of Control determined that Chapter 498/83 constituted a state mandate because it requires an increased level of service. Specifically, the Board determined that the statute imposes costs by requiring the school administrator or principal to request expulsion hearings in certain instances or to explain in writing why expulsion is inappropriate. The school administrator or principal formerly had discretion in these matters and now is required by Chapter 498/83 to proceed with an expulsion action.”

The Board of Control’s decision states that, “the statute imposes costs by requiring the school administrator or principal to request expulsion hearings in certain instances or to explain in writing why expulsion is inappropriate.” However, the Department of Finance, California Department of Education and State Controller’s Office agreed that the only reimbursable activity was the requirement of the school administrator or principal to explain in writing why expulsion is inappropriate. That position was based on the premise that *expulsions are not new* with the enactment of section 48915 and that those activities outlined in 48915, subdivision (a) (1) through (4) *are not new actions* that require expulsion for the first time.

¹⁵Predecessor agency to the Commission on State Mandates.

In other words, any of the actions outlined could have resulted in expulsion and now the only new requirement is that a written report must be prepared when expulsion is inappropriate. Therefore, the parameters and guidelines¹⁶ called only for the reimbursement of written reports not to expel.¹⁷

Although pre-1975 law authorized governing boards to expel for “good cause,” no provisions expressly addressed the principal’s role in recommending an expulsion to the governing board¹⁸ or in explaining why an expulsion should not result when a pupil was suspected of committing certain offenses. In contrast, prior law concerning the discretionary authority of a principal to suspend a pupil from school for “good cause” was explicit.¹⁹ School districts had the authority to require principals to recommend that a pupil be expelled for specified offenses within the meaning of “good cause”²⁰ However, a directive requiring a principal to recommend expulsion for certain offenses could only have stemmed from a district’s rules and regulations, and not from a specific statute or executive order.

Therefore, *the Commission affirmed the Board of Control’s Brief Statement, adopted on November 29, 1984*, that section 48915, subdivision (a), as added by Chapter 498, Statutes of 1983, imposed a [new program or] higher level of service upon school districts by requiring principals and superintendents to recommend expulsion for specified offenses or to explain in writing why expulsion is inappropriate. It should also be noted that the downstream activities which would have been triggered by the school principal or superintendent’s recommendation to expel a pupil were not before the Board of Control in 1984, but are before the Commission on State Mandates in this test claim (CSM-4455).

**A. IMMEDIATE SUSPENSION, INITIATING EXPULSION, AND
MAKING THE DECISION TO EXPEL. (§ 48915.)**

The Commission found that prior law *did not require principals or superintendents* to immediately suspend a pupil from school for any specific offenses.

The Commission further found that the following provisions impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code:

The requirement for principals and superintendents to immediately suspend and to recommend the expulsion of pupils to their governing boards for specified offenses. (§ 48915, subs. (a) & (b).)

- For the period from October 11, 1993 through December 31, 1993, Education Code section 48915, as amended by Chapter 1255, Statutes of 1993, the requirement for governing boards to expel for specified offenses or in the alternative to recommend admission of a pupil to an alternative education program.

¹⁶As reported by State Controller’s Office, the Budget Acts of 1993, 1994 and 1995 appropriated \$420,000, \$434,000, and \$447,000 respectively for reimbursement of this mandate.

¹⁷Proposed Parameters and Guidelines for August 27, 1987 hearing.

¹⁸Section 48907, Chapter 1010, Statutes of 1976, stated in pertinent part: The governing board of any school district shall ... expel pupils for misconduct when other means of correction fail to bring about proper conduct.”

¹⁹Section 10601.5, as amended by Chapter 219, Statutes of 1973.

²⁰Section 10603, as amended by Chapter 1186, Statutes of 1970.

- Effective, January 1, 1994, Education Code section 48915, as amended by Chapter 1256, Statutes of 1993, the requirement for governing boards instead to expel pupils only for the possession of a firearm at school or at a school activity off grounds, or to recommend their admission to a community school.

The language added to Education Code section 48915 by Chapter 1255, Statutes of 1993, requiring the governing board to confirm that the pupil was in knowing possession of the firearm, and that a school employee had verified the pupil's possession of the firearm before expelling the pupil, does not result in a new program or higher level of service. These requirements are consistent with pre-existing federal due process requirements for expulsions and as specified for adoption by governing boards under section 48918, subdivisions (f) and (h).

The Commission further concluded that:

- The authorization for governing boards to expel pupils from school for inappropriate behaviors has been in existence since *before 1975*. The behaviors defined as inappropriate under current law, subdivisions (a) through (l) of section 48900, 48900.2, and 48900.3, meet prior laws' definitions of "good cause" and "misconduct" as reasons for expulsion.
- The introductory language to section 48915, subdivision (c), recognizes those persons who are now authorized to recommend expulsion to the governing board pursuant to section 48915, subdivisions (a) and (b), and section 48918, subdivision (e), and authorizes the governing board to expel pupils based on their recommendations.
- Section 48915, subdivision (c), authorizes the governing board to order the expulsion of a pupil, based upon findings of specific violations and the occurrence of certain conditions; however, this subdivision does not require any new activity or an expulsion on the part of the governing board, or upon any of the persons authorized to recommend expulsions to the governing board.

Therefore, any expulsions which result from the offenses listed in subdivision (c) are *discretionary*. Accordingly, the Commission found that section 48915, subdivision (c), as amended by Chapter 1256, Statutes of 1993 and Chapters 146 and 1198, Statutes of 1994, *does not impose a new program or higher level of service*.

B. THE BASIS FOR EXPULSION

The Claimant alleged that sections 48900, 48900.2, 48900.3, and 48900.4 impose a new program or higher level of service upon school districts.²¹ However, no allegations which are specific only to these sections are made by claimant.

Therefore, limited to the provisions of Education Code sections 48900 et seq., the Commission incorporated the analysis, findings, and conclusions contained in the Test Claim on Pupil Suspensions from School (CSM-4456) into this Statement of Decision with appropriate modifications.

Prior Law

The recodification of the Education Code by Chapter 1010, Statutes of 1976 (Chapter 1010/76) did not significantly alter pre-1975 law on grounds for expulsion. Therefore, the 1976 recodified version and its section numbers are used here as the Commission's reference point

²¹References to section 48900 et seq." shall mean "sections 48900, 48900.2, 48900.3, and 48900.4."

for prior law (pre-1975 law). The earliest claimed chapter in this test claim on “grounds for expulsion” is Chapter 965, Statutes of 1977.²²

Former section 48902²³ stated that “good cause” was not limited to those offenses enumerated in section 48903:²⁴

“As used in Sections 48900 and 48901, ‘good cause’ includes those offenses enumerated in Section 48903, but is not limited to those offenses.” (§ 48902, Ch. 1010/76, derived from former § 10601.6.)

As defined in section 48903, “good cause” included the following offenses:

“Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension ...from school; however, no pupil shall be... expelled unless the conduct for which he is to be disciplined is related to school activity or school attendance.” (§ 48903, Ch. 1010/76, derived from former § 10602.)

In 1977, Chapter 965 repealed sections 48902 and 48903 and replaced them with Education Code section 48900. The claimant alleged that section 48900 “...did not merely restate the existing grounds for expulsion, it changed the statutory construction philosophy: Whereas former section 48902 clearly indicated that “good cause” for expulsion included several stated pupil behaviors and acts, new section 48900 stated that no expulsion could be made except for the enumerated causes, thereby substituting (and mandating) the statutory judgment of the Legislature for the judgment of school personnel, thus establishing the parameters of the state mandate to expel pupils for specified behavior.”

The test claim legislation -- Education Code sections 48900, 48900.2, 48900.3, and 48900.4, provides that no pupil shall be expelled from school unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any offense from 15 categories. Section 48900 further defines the parameters for expulsions by specifying that the act must be related to school activity or attendance. However, the law does not limit the occurrence of these acts to school grounds; while going to or coming from school; during lunch or off campus; or during, or while going to or coming from, a school-sponsored activity.

Education Code section 48900 lists and simultaneously limits the grounds for pupil expulsion. Sections 48900.2, 48900.3, and 48900.4 added sexual harassment, hate crimes, and verbal harassment or intimidation to the grounds for expulsion.

The first sentence of each of these three new sections states that a recommendation for expulsion *may* be made if the superintendent or principal determines the pupil has engaged in

²² During the October 31, 1996 hearing, the claimant expressed concerns about the Commission’s reference to 1976 statutes. In response to claimant’s concerns, pre-1975 section numbers are incorporated into this decision.

²³ Derived from section 10601.6, added by Chapter 164, Statutes of 1972.

²⁴ Derived from section 10602, amended Chapter 102, Statutes of 1970 and by Chapter 65, and Statutes of 1975.

one of the proscribed acts. As in section 48911, the word *may* is included to indicate the Legislature’s intent that suspensions based on these offenses are permissive.

The claimant cited the importance of the repeal and replacement of section 48900 made through Chapter 965, Statutes of 1977, and Chapter 498, Statutes of 1983: “... after two repeals of prior law, school districts were required beginning in 1977 to expel pupils for specified acts, rather than just ‘good cause,’ after other means of correction failed.”

The Commission noted that in a previous, related test claim (*Pupil Classroom Suspensions - CSM-4458*), section 48900 of the Education Code had been examined and found *not to* require suspensions; rather, section 48900 prohibits them unless the superintendent or principal of the school determines that the pupil has committed any of the enumerated acts set forth therein. In that claim, the Commission found that a determination of whether the repeal and replacement of statutes imposes a new program or higher level of service upon a local agency requires substantive analysis of prior law and subsequent claimed chapters to ascertain if a new program or higher level of service has been created.

Claimant contended that section 48900 expands the definition of “good cause” under prior law and requires school officials to suspend pupils from school for enumerated acts. The Commission disagreed with claimant’s contentions for the reasons discussed below:

1. The definition of “good cause” under prior law was not expanded by section 48900.

The opening phrase of section 48900, “... a pupil shall not be suspended from school ... or recommended for expulsion unless ... [engaging in the proscribed acts],” restricts the imposition of suspension from school or recommendation for expulsion to the enumerated acts. Education Code section 48900 et seq. differs from the relevant provisions of prior law by providing a closed listing of offenses which can lead to suspension or expulsion.

Upon examination, the Commission found that the enumerated acts in current law are consistent with prior law and its concept of “good cause.”

Further, the recent additions to the proscribed acts also include discretionary language. Education Code section 48900.2, explicitly states that “... *a pupil may be expelled* from school ...” if determined to have committed sexual harassment. The same phrase “*may be suspended*” is also included in new sections 48900.3 and 48900.4 which add hate crimes and harassment or intimidation. The Commission noted that all of these more recent, permissive statutory provisions are consistent with the former section’s definition of good cause.

As under prior law, the acts upon which a discretionary expulsion may be based are included in statute. The Commission found that the school expulsion program has not been substantively altered by the repeal and replacement of statutes as alleged by claimant because the behaviors defined as inappropriate under current law meet the definition of “good cause” for suspension under prior law. Further, the Commission concluded that, while the provisions of Education Code section 48900 narrow prior law’s non-exclusive definition of “good cause,” such legislation does *not* impose a new program or a higher level of service.

2. Section 48900 et seq. does not require school officials to recommend the expulsion of pupils for the enumerated acts.

Section 48900 et seq. limits the discretionary authority of school officials to recommend the expulsion of pupils from school for specific enumerated acts. Although the form of section 48900 differs from the form of prior law, the substantive provisions, namely the authority for school expulsions based on specific acts or good cause, have continuously been in effect since *before 1975*.

Also, even though section 48900 has been amended, nothing has been added which can be construed to require school officials to recommend expulsion of pupils from school each time one of these acts is committed. Thus, the Commission found that the limiting language which follows the categorical listing of enumerated offenses (a) through (l) is not a new requirement, but stems from former section 48903's limitation of expulsions to conduct related to school activity or attendance.

In *Pupil Classroom Suspensions*, CSM-4458, the Commission reaffirmed a previous, related finding that the authorization to suspend pupils from school for inappropriate behaviors has been in existence since *before 1975*. Moreover, in *Pupil Suspensions from School*, the Commission concluded that sections 48900, 48900.2, 48900.3, and 48900.4, as enacted by the subject chapters, do not impose upon school districts a new program or higher level of service within the meaning of section 6 of article XIII B of the Constitution and section 17514 of the Government Code.²⁵

C. PROCEDURES FOR EXPULSION

Determination by Ruling of California Supreme Court

With respect to Education Code section 48918, the California Supreme Court determined the issue of state-mandated costs arising from hearing costs, as follows:

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

“We also conclude that *no* hearing costs incurred in carrying out those expulsions that are *discretionary* under Education Code section 48915 –including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the

²⁵The Commission also observed that the current enumeration of inappropriate behaviors originally enacted in 1977 is consistent with case law, providing the specificity needed to avoid pupil due process violations for vagueness. See *Abella v. Riverside Unified Sch. Dist.* (December 21, 1976) 65 C.A.3d 153, 169-170; 135 Cal.Rptr. 177); *Meyers v. Arcata School Dist.*, 269 Cal.App.2d 549, 558; in a similar case, the term “misconduct” was held to violate the due process clause of the Fourteenth Amendment by reason of its vagueness. (*Soglin v. Kauffman* (W.D.Wis. 1968) 295 F.Supp. 978, 991.)” Former section 48907 authorized school boards to suspend pupils for “misconduct” when other means of correction failed to bring about proper conduct. The Legislature’s decision to change the approach and enumerate inappropriate behavior, narrowed the basis for discretionary suspensions. Thus, the elimination of the open-ended phrase “good cause” represented the Legislature’s intent to codify this constitutional standard. As such, it would not be a reimbursable state mandated program or higher level of service, because the subject chapters conformed state law to constitutional requirements.

hearing procedures set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis original.)

(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*.)

For expulsions triggered by Education Code section 48915, subdivision (b) (mandatory expulsions), the Court ruled:

“Because it is state law (Education Code section 48915’s mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, [. . .] that we cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), *all* such hearing costs—those designed to satisfy the minimum requirements of federal due process, and those that might exceed those requirements—are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.” (Emphasis original.)

(*Id.* at pp. 881-882.)

On the issue of “whether reimbursement is required for the costs associated with hearings triggered under discretionary expulsion provisions,” the Court ruled that Education Code section 48915 does not require subvention for such costs:

The discretionary expulsion provision of Education Code section 48915 does not constitute a ‘new’ program or higher level of service, because provisions recognizing discretion to suspend or expel were set forth in statutes predating 1975.

(*Id.* at p. 884.)

Finally, the Court ruled that Education Code section 48918, by itself, does not impose state-mandated costs because the hearing procedures are “part and parcel” of the procedures required by federal law:

[. . .] we conclude that there can be no doubt that the assertedly “excessive due process” aspects of Education Code section 48918 for which the District seeks reimbursement in connection with hearings triggered by discretionary expulsions ([. . .] primarily, as noted, various notice, right of inspection, and recording rules) fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost. Accordingly, for purposes of the District’s reimbursement claim, all hearing costs incurred under Education Code section 48918, triggered by the District’s exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable, under Government Code section 17556, subdivision (c).

(*Id.* at p. 890.)

D. PROCEDURES FOR READMISSION

1. Expulsion Orders, Readmission Date; Rehabilitation Plan (§ 48916.)

The Commission found that prior law did not address how school districts should act upon requests for readmission from previously expelled pupils. Therefore, the Commission determined that section 48916 imposes a new program or higher level of service upon school district governing boards, limited to mandated expulsions resulting from section 48915, subdivision (b) (as amended by Stats. 1993, ch. 1255 and ch. 1256). The reimbursable mandate consists of the requirements for districts to perform the following activities at the time expulsion is ordered or entered:

- set a date, as specified, when the pupil may apply for readmission to a district school;
- make available to the pupil and his or her parent or guardian a description of the procedure for readmission.

The Commission found that the second paragraph of section 48916 does not impose a new program or higher level of service upon school districts because it merely authorizes governing boards to recommend a plan of rehabilitation for a pupil.

The Commission further concluded that the requirement in the third paragraph of section 48916 for governing boards to adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission, imposes a new program or higher level of service. Although a one-time cost for the initial development of the rules and regulations would have been eligible for reimbursement after enactment of each subject chapter and determination of subsequent mandate claims, the eligible claiming period for this test claim begins on July 1, 1993. Accordingly, much of the reimbursable cost mandated by the state for adoption of regulations required by the subject chapters are not covered by this test claim because the reimbursement period begins on July 1, 1993. Any state mandated regulations required on or after July 1, 1993, will be negligible.

2. Admission of an Individual Expelled From Another School District (§ 48915.1, subd. (a).)

The intent of Chapter 942, Statutes of 1987 (Ch. 942/87), is set forth in the following legislative findings and declarations:

“The Legislature finds and declares that a pupil who is expelled from a school district for the serious offenses specified in Section 48915 of the Education Code may enroll, through subterfuge or the failure of communication between school districts, in a school in another school district in the state.” [First paragraph.]

“The Legislature finds and declares that the presence of these pupils in any other school during the period of the expulsion represents a possible danger to pupils or employees of the district and that school districts should not evade the responsibility of prohibiting these pupils from enrolling at a school in their school district.” [Second paragraph.]

“The Legislature finds and declares that the law is silent regarding the responsibilities of a school district with respect to enrolling a pupil during the period of his or her expulsion from another school district if the pupil has satisfied the residency requirements of the enrolling district.” [Third paragraph.] (Ch. 942/87, § 1.)

The Commission noted that except for section 48916, there is no prior law addressing post-expulsion admission procedures. Therefore, the subject chapter created a new program of post-expulsion admission procedures. If an individual who has been expelled from another school district for an act

described in section 48915, subdivision (a),²⁶ requests enrollment in a school maintained by the district, section 48915.1, subdivision (a), (as added by Stats. 1987, ch. 942, as amended by Stats. 1990, ch. 1231 and Stats. 1991, ch. 756) requires the governing board to provide notice and conduct a hearing to determine whether the individual poses a continuing danger to either the pupils or employees of the [receiving] school district pursuant to the rules and regulations governing procedures for expulsion of pupils as described in section 48918. Chapter 1256, Statutes of 1993 amended section 48915.1 by changing the scope of its application to acts other than those described in section 48915, subdivision (a). At the same time, the hearing requirements to admit pupils whose expulsions were based on section 48915, subdivision (a), were moved to new section 48915.2.

3. Hearing and Notice Procedures (§ 48915.1)

Section 48915.1 requires school districts to use the notice and hearing procedures established by section 48918 in determining whether to admit or deny an otherwise qualified individual who was previously expelled by another school district. The Commission examined section 48918 and determined that some portions codify federal due process requirements and court decisions. The Commission also determined that some provisions impose a reimburseable state mandated program or higher level of service.

The Commission recognized that a school-aged individual's legitimate claim of entitlement for admission to a California school district is based upon age and residency or a voluntary interdistrict transfer agreement. Once a pupil has been expelled from one district, and otherwise qualifies for admission to another district, a new claim of entitlement for admission arises and cannot be taken away without minimum due process protection.

Moreover, the Commission noted that *Goss* also defines a liberty interest in "a person's good name, reputation, honor, or integrity." (*Goss v. Lopez, supra*, 419 U.S. at 574, 95 S.Ct. at 736.) The Commission found that the requirement for a governing board hearing and determination on the issue of whether an individual applicant would pose a potential danger to pupils or employees would impair an individual's reputation by lowering his or her esteem in the eyes of pupils, teachers, and others who might afford education or employment opportunities to the child in the future, and thus qualifies for due process protection (§ 48915.1, subd. (a).) (*Goss v. Lopez, supra* at 574-575, 95 S.Ct. at 736-737)

Although the post-expulsion admission hearing would be conducted in closed session, unless otherwise requested, the governing board is required to act in public session. Thus, the Commission acknowledged that an admission determination [order] is a public record. However, a finding that an individual poses a "potential danger" is a new consideration. Whether or not all of the facts of the matter are made known in public, an individual's reputation is impaired by virtue of the necessity for the hearing, and the board's obligation to make a decision in public. Under this rationale, the determination of "potential danger" required by section 48915.1, subdivision (a), to enroll an individual applicant who is otherwise qualified by residency or through an interdistrict transfer agreement clearly impacts an individual's liberty interest in his or her good name.

Having determined that an individual who has been expelled by *another* school district still possesses liberty and property interests in his or her public education, it follows that any *subsequent* state action tending to deprive the individual of these interests must comply with the due process requirements of the Fourteenth Amendment. The subject chapters address the *potential deprivation*

²⁶ Causing serious physical injury to another person (except in self defense); possession of any firearm, knife, explosive, or other dangerous object...; unlawful sale of any controlled substance...; robbery or extortion.

of the right to attend public school. A governing board is required to determine *after a hearing* if the admission of an individual who has previously been expelled by another school district would pose a potential danger to the pupils or employees of the new school district.

The Commission found that determinations which will affect an individual's liberty interests in his or her good name and property interests in his or her continuing a public education require due process.

Due process procedures will provide some assurance against unfair or mistaken findings. In regard to the issue of what process is due, an individual facing interference with the liberty interest in his or her good name and property interest in a public education, "must be given some kind of notice and afforded some kind of hearing ... the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved." *Goss v. Lopez*, *supra*, 419 U.S. at 579, 95 S.Ct. at 739.

The Commission noted that sections 48915.1 and 48915.2 specify that admission determination hearings follow the same procedures established for expulsion hearings under section 48918. Thus, the Commission incorporated its findings regarding section 48918 into its determination regarding this section. Specifically, the Commission determined that the following requirements, limited to determinations regarding applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district, are outside the scope of federal due process and thus, impose a new program or higher level of service:

- Include in the notice of the hearing, a copy of the rules of the receiving district (hearing procedures), and notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing, as specified. (§§ 48915.1, 48915.2 and 48918, subd. (b).)
- Notify the applicant and his/her parent or guardian of (1) the governing board's determination of whether a pupil expelled by another school district would pose a potential danger to the pupils and employees of the receiving district and (2) the decision to accept or deny admission. (§§ 48915.1, 48915.2, and 48918, subd. (i).)
- Maintain a record of each pre-admission denial, including the cause thereof. (§§ 48915.1, 48915.2, and 48918, subd. (j).)

4. Requesting Information and Providing Recommendations (§ 48915.1, subd. (a).)

The Commission found that a discretionary request made by a receiving district to an expelling district, pursuant to section 48915.1, subdivision (a), does not constitute a new program or higher level of service for the receiving district. The Commission noted that the use of the word "may" in subdivision (a) indicates that this is an optional or discretionary activity for the receiving district.

However, the Commission found that the requirement for expelling districts to respond to requests for recommendations is reimbursable, limited to requests from receiving districts that are not parties to voluntary interdistrict transfer agreements with expelling districts. Reimbursement for this provision is further limited to expulsions for the following offenses, during the specified time periods:

1. For the period from October 11, 1993 to December 31, 1993, expulsion of pupils for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1255.)

2. For the period from January 1, 1994 to the present, expulsion of pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

The Commission found that expelling districts are not entitled to reimbursement when responding to requests concerning discretionary expulsions. Thus, any activities following the exercise of a discretionary decision to expel will not result in reimbursement for expelling districts.

5. Disclosure of Prior Expulsions by Parent, Guardian or Pupil (§ 48915.1, subd. (b).)

Since there were no requirements in prior law, the Commission found that subdivision (b) of section 48915.1 imposes a new program or higher level of service upon school districts, by requiring districts to ask applicants and their parents or guardians if the applicants have been expelled from their previous school, and if so, the term and the basis for the expulsion. The Commission noted that districts would have revised enrollment applications soon after enactment of the 1987 statute and would have incurred start-up costs before the claiming period.

6. Board Determination on Enrollment of Individual Expelled from Another District (§ 48915.1, subds. (c) & (d).)

Prior law was silent as to the responsibility of governing boards to determine who should be admitted and who should be denied admission based on their potential danger to pupils and employees. Although making enrollment determinations would have been required under prior law, no standards or requirements were specified for the governing board to make such determinations.

July 1, 1993 through December 31, 1993

The Commission found that section 48915.1, subdivisions (c) and (d), impose a new program or higher level of service upon school districts by requiring governing boards to determine whether an applicant may pose a potential danger to either the pupils or employees of the school district and whether to admit, deny, or conditionally admit the applicant during or after the period of expulsion. Further, this finding is limited to determinations on applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.

January 1, 1994 (§ 48915.1, subds. (c) & (d), as amended by Stats. 1993, ch. 1257.)

The Commission determined that section 48915.1, subdivisions (c) and (d), imposes a new program or higher level of service upon school districts by requiring governing boards to determine whether an applicant may pose a potential danger to either the pupils or employees of the school district and whether to admit, deny admission, or conditionally admit the applicant during the period of expulsion. The Commission's finding is limited to determinations on applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.

7. Enrollment of Individuals Expelled From Another District (§ 48915.1, subd. (e).)

Under prior law, there were no enrollment restrictions based upon prior expulsion from another district.

July 1, 1993 through December 31, 1993

Subdivision (e) of section 48915.1 of the test claim legislation codifies the affirmative duty of school districts to admit certain individuals who have met residency requirements or enrollment criteria. Thus, the Commission determined that no new program or higher level of service is imposed by subdivision (e) because it codifies the existing right of certain pupils to receive an education during the term of expulsion.

January 1, 1994 (§ 48915.1, subd. (e), as amended by Stats. 1993, ch. 1257.)

Effective January 1, 1994, subdivision (e) of section 48915.1 requires districts to permit enrollment by non-dangerous individuals during the term of the expulsion upon establishment of legal residence or pursuant to an interdistrict agreement. Although the most recent amendment changes the scope of who is permitted to enroll, it does not alter the right of pupils to enroll when all requirements are met. Thus, the Commission concluded that section 48915.1 (e) does *not* impose a new program or higher level of service upon school districts because it codifies the right of certain pupils to receive an education.

8. Enrollment of Individuals Expelled from Another District During and After Period of Expulsion. (§ 48915.2) (New § for Preadmission Hearing Requirement for Pupils Expelled For Any Offense Listed in § 48915, sub. (a).)

Section 48915.2 was added by Chapter 1256, Statutes of 1993, effective January 1, 1994. Prior to this enactment, school districts were required under section 48915.1 to hold preadmission hearings for pupils expelled for any offense listed in section 48915, subdivision (a). Effective, January 1, 1994, section 48915.2 does not require any new activities of school districts, but changes the time in which the activities occur. Also, the requirement previously included in section 48915.1, subdivision (a) (as added and amended by Stats. 1987, ch. 842 and Stats. 1990, ch. 1231) moved to new section 48915.2. After a pupil is expelled by a school district for specified offenses, that pupil is restricted to enrollment in a county community school or a juvenile court school during the term of expulsion. (§ 48915.7, subd. (a).) Upon completion of the term of expulsion, the pupil has the following options:

- Seek readmission to the original expelling school district;
- Seek admission to another district based on a voluntary interdistrict transfer agreement; or
- Seek admission to another district based on new residency.

Admission of this pupil after the term of expulsion still requires the governing board to conduct a preadmission hearing pursuant to section 48918 before determining if the individual would pose a danger to the pupils and employees of the receiving district. The Commission further found that, unless previously excepted, the notice and hearing provisions are required under principles of constitutional law.

Therefore, the Commission concluded that, after January 1, 1994, receiving school districts are eligible for reimbursement for these activities, pursuant to section 48915.2.

9. Legislative Intent; Expulsion; Possession of Firearm. (§ 48915.7)

Claimant did not allege and the Commission did not find that section 48915.7 imposed a new program or higher level of service. See analysis of section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993.

CONCLUSION

BASED ON THE FOREGOING FINDINGS:

The Commission concludes that the following provisions in Education Code section 48915, subdivisions (a) and (b) impose a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code:

- The requirement for principals and superintendents to immediately suspend and recommend expulsion of pupils to governing boards for specified offenses, as follows:

*IMMEDIATELY SUSPEND*²⁷

Date of Offense

Offenses

October 11, 1993 through December 31, 1993

Possession of a firearm, knife of no reasonable use to the student or explosive.

January 1, 1994 through present.

*Possession of a firearm.*²⁸

RECOMMEND EXPULSION

Offenses

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion.

(§ 48915, subd. (a), as added by Stats. 1983, ch. 498 and amended by Stats. 1993, ch. 1255 and ch. 1256; § 48915, subd. (b), as amended by Stats. 1993, ch. 1255 and ch. 1256.)

The Commission adopts the ruling in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 899, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of

²⁷ Emphasis added to indicate text that was inserted on August 10, 1998 to correct the Statement of Decision.

²⁸ Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 48915, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim.

service' under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

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

(*San Diego Unified School District v. Commission on State Mandates*, *supra*, 33 Cal.4th at p. 867.)

Reimbursement for the activities required under section 48918 is limited to expulsions for the following specified offenses:

- (a) Causing serious physical injury to another person, except in self defense;
- (b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;
- (c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;
- (d) Robbery or extortion.

(§ 48915, subd. (a), as added by Stats. 1983, ch. 498 and amended by Stats. 1993,²⁹ ch. 1255 and ch. 1256; § 48915, subd. (b), as amended by Stats. 1993, ch. 1255 and ch. 1256.)

Reimbursement for the requirements in section 48918 is limited to expulsions for the following offenses during the following time periods:

- (1) For the period from October 11, 1993, to December 31, 1993, the requirement for governing boards to expel pupils for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1255.)
- (2) For the period from January 1, 1994 to the present, the requirement for governing boards to expel pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

The Commission determines that Education Code section 48916 imposes a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code, by requiring school districts to:

²⁹ Corrected on July 11, 2006 from "1983" in the Amended Statement of Decision.

- Set a date when a pupil expelled pursuant to Education Code section 48915, subdivision (b), may apply for readmission to a district school;
- Make available to the same pupil and his or her parent or guardian a description of the procedure for readmission; and
- Adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission.

The Commission further determines that the following activities, limited to applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district, impose a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code, by requiring governing boards to:

- Determine whether a pupil expelled by another school district, would pose a potential danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion. (§ 48915.1, subd. (d).)
- Respond to a receiving district’s request for recommendation. (§ 48915.1.) Reimbursement for this provision is limited to expulsions for the following offenses during the following time periods:
 - (1) For the period from October 11, 1993 to December 31, 1993, the requirement for governing boards to expel pupils for possession of a firearm, knife of no reasonable use to the student, or explosive. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1255.)
 - (2) For the period from January 1, 1994 to the present, the requirement for governing boards to expel pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)
- Include in the notice of hearing (1) a copy of the rules of the receiving district (hearing procedures) and (2) notice of the opportunity for the pupil or the pupil’s parent or guardian to inspect and obtain copies of all documents to be used at the hearing. (§§ 48915.1, 48915.2, and 48918, subd. (b).)
- Upon request, allow a pupil or pupil’s parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:
 - (1) If the requesting party is a pupil less than 18 years of age; or
 - (2) If the requesting party is the parent or guardian of a pupil who is 18 years of age; or
 - (3) If the requesting party is the parent or guardian of a pupil less than 18 years of age, and the requested documents are not “education records” as defined in 20 U.S.C. section 1232g(a)(4).
 (§§ 48915.1, 48915.2, and 48918, subd. (b).)
- Maintain a record of each pre-admission denial, including the cause thereof. (§§ 48915.1, 48915.2, and 48918, subd. (j).)
- Notify the applicant and parent/guardian of the governing board’s determination of whether a pupil expelled by another school district poses a potential danger to the pupils and employees of the receiving district, and whether to admit, deny admission, or conditionally admit the

applicant during or after the period of expulsion. (§§ 48915.1, subd. (a), 48915.2, and 48918, subd. (i).)

Except as expressly stated above, the Commission determines that the remaining portions of Education Code sections 48916, 48915.1, 48915.2, and 48915.7, as added and amended by the subject chapters, do not impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code.

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, and 48911, as added and amended by Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 73, Statutes of 1980; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 536, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 856, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 134, Statutes of 1987; Chapter 383, Statutes of 1987; Chapter 1306, Statutes of 1989; and Chapter 909, Statutes of 1992; filed on March 9, 1994; and,

Education Code Sections 48900, 48900.3, 48900.4, 48911, as added and amended by Chapter 146, Statutes of 1994; Chapter 1017, Statutes of 1994; and Chapter 1198, Statutes of 1994; filed on April 7, 1995;

By the San Diego Unified School District,
Claimant.

NO. CSM - 4456

Pupil Suspensions From School

PROPOSED 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 STATEMENT OF DECISION

Issue: Do the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48911, as added and amended by Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 73, Statutes of 1980; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 536, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 856, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 134, Statutes of 1987; Chapter 383, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 909, Statutes of 1992; Chapter 146, Statutes of 1994; Chapter 1017, Statutes of 1994; and Chapter 1198, Statutes of 1994, impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code?

This test claim was heard by the Commission on State Mandates (Commission) on October 31, 1996, in Sacramento, California, during a regularly scheduled hearing.

Mr. Jose Gonzales and Mr. Jim Cunningham appeared on behalf of the San Diego Unified School District, and Ms. Caryn Becker represented the Department of Finance.

At that hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

BACKGROUND AND FINDINGS OF FACT

The claimant alleges that the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48911, as added and amended by the test claim chapters imposed a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code. Therefore, the statutes which are the subject of this test claim, are as follows:

Education Code section 48900, as last amended by Chapter 909, Statutes of 1992, states:¹

“A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

“(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

“(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

“(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

“(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

“(e) Committed or attempted to commit robbery or extortion.

¹According to West's Annotations, the 1992 amendment made nonsubstantive changes to the end of the second sentence of the paragraph, prohibiting suspension or expulsion of pupils for any of the enumerated acts. Section 48900 was also amended by Statutes of 1994, ch. 1198, § 5 (AB 2543). The 1994 amendment amended the section without changing the text. (West's Ann.Cal.Educ.Code § 48900 (1996)).

“(f) Caused or attempted to cause damage to school property or private property.

“(g) Stolen or attempted to steal school property or private property.

“(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

“(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

“(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

“(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

“(l) Knowingly received stolen school property or private property.

“No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school sponsored activity.

“It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.”

Education Code section 48900.2, as added by Chapter 909, Statutes of 1992, states:

“In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.

“For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.

Education Code section 48900.3, as added by Chapter 1198, Statutes of 1994, states:

“In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused,

attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 33032.5.”²

Education Code section 48900.4, as added by Chapter 1017, Statutes of 1994, states:

“In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment.”

Education Code section 48911, as last amended by Chapter 134, Statutes of 1987, states:

“(a) The principal of the school, the principal’s designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.”

“(b) Suspension by the principal, the principal’s designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal’s designee or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal’s designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.”

“(c) A principal or the principal’s designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal’s designee or the superintendent of schools determines that an emergency situation exists. ‘Emergency situation,’ as used in this article, means a situation determined by the principal, the principal’s designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil’s right to a conference, and the pupil’s right to return to school for the purpose of a conference. The conference shall be held within two

schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.”

“(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil’s parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.”

“(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.”

²Education Code section 33032.5, subdivision (e) defines “hate violence” as “any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.”

- “(f).....”
- “(g).....”
- “(h).....”

THE COMMISSION FINDS THAT:

The Authority to Suspend (Ed. Code § 48911, subd. (a).)

The recodification of the Education Code by Chapter 1010, Statutes of 1976, (Ch. 1010/76) did not significantly alter pre-1975 law on suspensions. Therefore, the 1976 recodified version and its section numbers are used as the Commission’s reference point for prior law (pre-1975 law). The earliest claimed chapter in this test claim is Chapter 965, Statutes of 1977 (Ch. 965/77).³

The following Education Code sections, excerpted from Ch. 1010/76, were used by the Commission to serve as the benchmark for prior law:

The principal’s authority to suspend was codified in former Education Code section 48901 (Ch. 1010/76), which stated:⁴

“The principal may suspend, for good cause, any pupil from the school, subject to the provisions of Sections 48910, 48911, and 48912....”

Governing boards were authorized to suspend pupils under former sections 48904, subdivision (a), 48906, and 48907, (Ch. 1010/76), which stated:

“For protection of other pupils in the public school, the governing board of any school district may suspend, or expel, and the superintendent or a principal of any school district when previously authorized by the governing board may suspend, a pupil whenever it is established...that the pupil has...[engaged in specified behaviors]... .” (§48904, subd. (a).)

“Any governing board may enforce the provisions of Section 35291 by suspending, or if necessary, expelling a pupil in any elementary or secondary school who refuses or neglects to obey any rules prescribed pursuant to that section.” (§ 48906.)

“The governing board of any school district shall suspend or expel pupils for misconduct when other means of correction fail to bring about proper conduct.” (§48907.)

The discretionary authority to suspend pupils from school has been in statute since *before* 1975. Therefore, the Commission found that suspension from schools is a discretionary program and

³ During the October 31, 1996 hearing, the claimant expressed concerns about the Commission’s reference to 1976 statutes. In response to claimant’s concerns, a table illustrating pre-1975 and 1976 Education Code section numbers is incorporated into this Statement of Decision. (See Attachment A.).

⁴All section citations refer to the Education Code unless otherwise stated.

existed in prior law. The Commission also made this determination in the test claim entitled “Pupil Classroom Suspensions, CSM-4458.”⁵

In 1977, Chapter 965 repealed former section 48901 and simultaneously added Education Code section 48903, subdivision (a), which stated:

“The principal of the school may suspend a pupil from the school for any of the reasons enumerated in Section 48900 for no more than five consecutive schooldays” (§ 48903, subd. (a), Ch. 965/77.)

In 1978, the Legislature enacted Chapter 668 (Ch. 668/78) and in 1980, Chapter 73 (Ch. 73/80) to amend Education Code section 48903. Subsequently, in 1983, Chapter 498, renumbered section 48903 to become new section 48911, subdivision (a), which stated:

“The principal of the school, the principal’s designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays” (§ 48911, Ch. 498/83.)

Education Code section 48911, subdivision (a), authorizes the principal, designee, or superintendent of schools to suspend a pupil from school for no more than five consecutive schooldays for any of the reasons enumerated in Education Code section 48900 and pursuant to Education Code section 48900.5.

The most significant change to prior law by the test claim legislation is the inclusion of the words, “school superintendent” and the “principal’s designee” as persons authorized to “suspend pupils from school”. By expanding the list of personnel authorized to suspend pupils from school, the Legislature recognized that the absence or unavailability of a principal from the school site should not impede a school district from suspending a pupil from school and/or protecting its employees and pupils.

Accordingly, the Commission concluded that the specific inclusion of these persons does *not* create a new program or higher level of service because no new activity was created by the inclusion of the principal’s designee and the superintendent in section 48911, subdivision (a).

“...[F]or any of the reasons enumerated in section 48900.”

Section 48911, subdivision (a), also states that suspensions may be made “for any of the reasons enumerated in section 48900. The Commission noted that the definition of “good cause” under

⁵In Pupil Classroom Suspensions (heard by the Commission on January 19, 1995), the Commission found that the authorization for teachers to suspend pupils from the classroom for inappropriate behaviors had been in existence since pre-1975 and that the behaviors defined as inappropriate under current law would have met the definition of good cause for suspension under prior law. (§§ 48910 and 48900.) In making this finding, the Commission reviewed prior law and noted that pertinent provisions which were recodified, acknowledged that suspension as a disciplinary tool may be necessary, but that other methods of discipline should first be attempted. When comparing the pre-1975 law with current Education Code section 48900.5, the Commission found that the continuity in legislative intent is clear: suspension may in fact be necessary but other means of discipline should first be considered. To the extent the suspensions are at times unavoidable, the authority to suspend and the requirement to consider alternatives existed in pre-1975 law. Accordingly, the Commission concluded that the provisions of Education Code section 48910, subdivision (a), did not impose a new program or higher level of service upon school districts to suspend students from the classroom.

prior law was not expanded by section 48900, as contended by claimant. Further, the Commission found that the school suspension program has not been substantively altered by the repeal and replacement of statutes as alleged by claimant because the behaviors defined as inappropriate under current law meet the definition of good cause for suspension under prior law.

Thus, the Commission concluded that while section 48900 et seq. limits the discretionary authority of school officials to suspend pupils from school for enumerated acts, nevertheless, the substantive provisions, namely the authority for school suspensions based on specific acts or good cause, has been continuously in effect since *before* 1975.

“...[P]ursuant to Education Code Section 48900.5.”

Section 48900.5 states in pertinent part, "Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil may be suspended for any of the reasons enumerated in section 48900 upon a first offense... ." ⁶ This phrase limits a school official's discretionary authority to suspend. This limitation is not new to the Education Code or to schools: A 1966 Attorney General's Opinion (48 Ops.Cal. A.G. 7 (1966)) noted that under then section 10605 the exercise of the power of expulsion or suspension was expressly limited to cases where other means to correct misconduct had failed. The citation for this statement is the 1915 case of *Wooster v. Sunderland*, 27 Cal.App. 51, 56 (1915). The Commission observed that the current phrasing of section 48900.5 is substantially the same as the 1966 statement of prior law which was recodified as former section 48907 by Ch. 1010/76.

Therefore, the Commission found that the incorporation of section 48900.5 into section 48911, subdivision (a), of the test claim legislation does *not* result in the creation of a new program.

Based on the foregoing review, the Commission found that Education Code section 48911, subdivision (a), as enacted by the subject chapters, does *not* impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code.

The Basis For Suspension (Ed. Code, §§ 48900, 48900.2, 48900.3, 48900.4.)

Under prior law, the principal was authorized to suspend, “for good cause, any pupil from the school...” (§ 48901, Ch. 1010/76). Former section 48902 plainly stated that “good cause” was not limited to those offenses enumerated in section 48903:

“As used in Sections 48900 and 48901, ‘good cause’ includes those offenses enumerated in Section 48903, but is not limited to those offenses.” (§ 48902, Ch. 1010/76.)

As defined in section 48903, “good cause” included the following offenses:

“Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of

⁶After 1987, sections 48900.2, 48900.3, and 48900.4, were added to authorize principals, their designees, and superintendents to suspend [or expel] pupils for sexual harassment, hate crimes, and harassment/intimidation. (Ch. 909/92; Ch. 1198/94; Ch. 1017/94.)

force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension ...from school; however, no pupil shall be suspended...unless the conduct for which he is to be disciplined is related to school activity or school attendance.” (§ 48903, Ch. 1010/76.)

In 1977, Chapter 965 repealed sections 48902 and 48903 and replaced them with Education Code section 48900. The claimant alleged that section 48900 “...did not merely restate the existing grounds for suspension, it changed the statutory construction philosophy: Whereas former section 48902 clearly indicated that “good cause” for suspension included several stated pupil behaviors and acts, new section 48900 stated that no suspension could be had except for the enumerated causes, thereby substituting (and mandating) the statutory judgment of the Legislature for the judgment of school personnel, thus establishing the parameters of the state mandate to suspend pupils for specified behavior.”

The test claim legislation, Education Code sections 48900, 48900.2, 48900.3, and 48900.4⁷, provides that no pupil shall be suspended from school unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any offense from 15 categories. Section 48900 further defines the parameters for suspensions by specifying that the act is related to school activity or attendance. It also specifies that this does not limit the occurrence of such acts to school grounds; while going to or coming from school; during lunch or off campus; or during, or while going to or coming from, a school-sponsored activity.

Education Code section 48900 lists and simultaneously limits the grounds for pupil suspension. Sections 48900.2, 48900.3, and 48900.4 added sexual harassment, hate crimes, and verbal harassment or intimidation to the grounds for suspension or recommendation for expulsion.

The first sentence of new sections 48900.2, 48900.3, and 48900.4, states that the suspension *may* be made if the superintendent or principal determines the pupil has engaged in one of the proscribed acts. As in section 48911, the word *may* is included to indicate the Legislature’s intent that suspensions based on these offenses are permissive.

The claimant cited the importance of the repeal and replacement of section 48900 made through Chapter 965, Statutes of 1977, and Chapter 498, Statutes of 1983: “... after two repeals of prior law, school districts were required beginning in 1977 to suspend pupils for specified acts, rather than just ‘good cause,’ after other means of correction failed.”

The Commission recognized that in a previous, related test claim (*Pupil Classroom Suspensions - CSM-4458*), section 48900 of the Education Code had been examined and found *not to* require suspensions. In that test claim, the Commission found that section 48900 prohibits suspensions unless the superintendent or principal of the school determines that the pupil has committed any of the enumerated acts set forth therein. The Commission also found that a determination of whether the repeal and replacement of statutes imposes a new program or higher level of service upon a local agency requires substantive analysis of prior law and subsequent claimed chapters to ascertain if a new program or higher level of service has been created.

⁷References to “section 48900 et seq.” shall mean “sections 48900, 48900.2, 48900.3, and 48900.4.”

Claimant contended that section 48900 expands the definition of “good cause” under prior law and requires school officials to suspend pupils from school for enumerated acts. The Commission disagreed with claimant’s contentions for the reasons discussed below:

1. The definition of “good cause” under prior law was not expanded by section 48900.

The opening phrase of section 48900, “... a pupil shall not be suspended from school ... unless ... [engaging in the proscribed acts],” restricts the imposition of suspension from school to the enumerated acts. Education Code section 48900 et seq. differs from the relevant provisions of prior law by providing a closed listing of offenses which can lead to suspension.

Upon examination, the Commission found that the enumerated acts in current law are consistent with prior law and its concept of “good cause.”

Further, the recent additions to the proscribed acts also include discretionary language. Education Code section 48900.2, explicitly states that “... *a pupil may be suspended* from school ...” if determined to have committed sexual harassment. The same phrase “*may be suspended*” is also included in new sections 48900.3 and 48900.4 which add hate crimes and harassment or intimidation. The Commission noted that all of these more recent, permissive statutory provisions are consistent with the former section’s definition of good cause.

As under prior law, the acts upon which a discretionary suspension may be based are included in statute. The Commission found that the school suspension program has not been substantively altered by the repeal and replacement of statutes as alleged by claimant because the behaviors defined as inappropriate under current law meet the definition of “good cause” for suspension under prior law. Further, the Commission concluded that while the provisions of Education Code section 48900 narrow prior law’s non-exclusive definition of “good cause,” such legislation does *not* impose a new program or a higher level of service.

2. Section 48900 et seq. does not require school officials to suspend pupils from school for the enumerated acts.

Section 48900 et seq. limits the discretionary authority of school officials to suspend pupils from school for specific enumerated acts. Although the form of section 48900 differs from the form of prior law, the substantive provisions, namely the authority for school suspensions based on specific acts or good cause, has continuously been in effect since *before* 1975.

Also, even though this section has been amended, nothing has been added which can be construed to require school officials to suspend pupils from school each time one of these acts is committed. Thus, the Commission found that the limiting language which follows the categorical listing of enumerated offenses (a) through (l), is not a new requirement, but stems from former section 48903’s limitation of suspensions to conduct related to school activity or attendance.

Thus, as evidenced by prior law, the Commission found that the authorization to suspend pupils from school for inappropriate behaviors has been in existence since *before* 1975.

Accordingly, the Commission concluded that sections 48900, 48900.2, 48900.3, 48900.4, as enacted by the subject chapters, do *not* impose upon school districts a new program or a higher

level of service within the meaning of section 6 of article XIIB of the Constitution and section 17514 of the Government Code.⁸

The Suspension Process: Non-Emergency Suspensions (Ed. Code, § 48911, subd. (b).)

Pre-1975 law (former § 10607) and former section 48910 required the school to invite the parent or guardian of the pupil to a meeting with school officials, on or before the third day after the suspension. The school officials were required to inform the parent or guardian of the “causes, the duration, the school policy involved, and other matters pertinent to the suspension”. (§ 48910, Ch.1010/76.) However, under prior law there was no requirement for a pre-suspension conference with the pupil.

Section 48911, subdivision (b), requires principals, their designees, or the superintendent to hold an informal conference with the pupil prior to making a non-emergency suspension to inform the pupil of the reasons for the disciplinary action and the evidence against the pupil and to give the pupil the opportunity to present his or her version and evidence in defense.

The Commission found that the California Legislature amended former Education Code section 48903 in response to the U.S. Supreme Court’s landmark decision requiring due process procedures for pupil suspensions. A 1977 Report on Selected California Legislation stated that Statutes of 1977, Chapter 965 (first claimed legislation), appears to codify these requirements [rudimentary due process] by mandating a principal-pupil conference that incorporates all of the procedural due process elements outlined by *Goss* and by requiring that such a conference be held prior to the imposition of any disciplinary suspension....⁹ In *Goss v. Lopez* (1975) 419 U.S. 565, 42 L.Ed 2d 725, 95 S.Ct. 729, the U.S. Supreme Court held that in states which have chosen to extend the right to education (as has California), students facing temporary suspension have interests qualifying for protection of the due process clause. In connection with a public school students’ suspension of 10 days or less, the Supreme Court held that:

“[T]he due process clause requires that the student be given oral or written notice of the charges against him and if he denies them, an explanation of the evidence the school authorities have and an opportunity to present his side of the story; the due process clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school, under the following rules:

⁸The Commission also observed that the current enumeration of inappropriate behaviors originally enacted in 1977 is consistent with case law, providing the specificity needed to avoid pupil due process violations for vagueness. See *Abella v. Riverside Unified Sch. Dist.* (December 21, 1976) 65 C.A.3d 153, 169-170; 135 Cal.Rptr. 177); *Meyers v. Arcata School Dist.*, 269 Cal.App.2d 549, 558; in a similar case, the term “misconduct” was held to violate the due process clause of the Fourteenth Amendment by reason of its vagueness. (*Soglin v. Kauffman* (W.D.Wis. 1968) 295 F.Supp. 978, 991.)” Former section 48907 authorized school boards to suspend pupils for “misconduct” when other means of correction failed to bring about proper conduct. The Legislature’s decision to change the approach and enumerate inappropriate behaviors, narrowed the basis for discretionary suspensions. Thus, the elimination of the open-ended phrase “good cause” represented the Legislature’s intent to codify this constitutional standard. As such, it would not be a reimbursable state mandated program or higher level of service, because the subject chapters conformed state law to constitutional requirements.

⁹See 9 Pacific L.J. 505, 507, as cited in 62 Ops.Cal.A.G. 400 (1979); also acknowledged in *John A. v. San Bernardino City Unified School Dist.*, 33 Cal.3d 301, 313, 187 Cal.Rptr. 422, 654 P.2d 242 (Dec. 1982)(dis.opn. of Mosk, J.).

- (1) there need be no delay between the time 'notice' is given and the time of the hearing;
- (2) in the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred;
- (3) in being given an opportunity to explain his version of the facts at this discussion, the student first must be told what he is accused of doing and what the basis of the accusation is;
- (4) since the hearing may occur almost immediately following the misconduct, notice and hearing should, as a general rule, precede the removal of the student from the school;
- (5) however, there are recurring situations in which prior notice and hearing cannot be insisted upon;
- (6) students whose presence possess a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school;
- (7) in such cases, the necessary notice and rudimentary hearing should follow as soon as practicable."

A comparison of Chapter 965/77 with the *Goss* decision reveals that subdivision (b) of section 48911 codifies *Goss* in all respects except one.¹⁰ *Goss* uses the word "disciplinarian" to specify who is required to meet with the pupil prior to the suspension. While the *Goss* decision does not require the principal to be the disciplinarian, a 1978 Attorney General's Opinion concluded that when the school principal is present at school, the *Goss* due process procedures require the attendance of the principal [as the disciplinarian] at the informal conference conducted with the pupil prior to a suspension. (62 Ops.Cal.A.G. 402 (1978).)

Therefore, with respect to the participation of the principal or designee in the conference and its purpose, the Commission noted that these requirements clearly stem from the *Goss* decision. Accordingly, the statutory activities of section 48911, subdivision (b), are mandated by the federal due process requirements of the 14th Amendment of the United States Constitution and, thus, are *not* reimbursable state mandated activities.

Further, the Commission noted that "the Commission shall not find costs mandated by the state, as defined in Section 17514, in any claim...if...the commission finds the statute or executive order affirmed for the state that which had been declared existing law...by action of the courts or the statute...implemented a federal law ...and resulted in costs mandated by the federal government, unless the statute...mandates costs which exceed the mandate in that federal law..." (Government Code, § 17556, subs. (b) & (c).)

With respect to section 48911, subdivision (b)'s provision for the participation of the referring school employee (whenever practicable) in the pre-suspension conference, the Commission found that this provision did not exist in prior law and was not mandated by the courts or federal law.

¹⁰ Section 48903, as amended in 1977, stated in relevant part: "...(b) Suspension by the principal shall be preceded by an informal conference between the pupil, the principal or the principal's designee, and, whenever practicable, the teacher or supervisor who referred the pupil to the principal..." (Ch. 965/77, § 9.)

The Commission construed the statute to require the attendance of the referring school employee in a pre-suspension informal conference when attendance is feasible. But even with this construction, the Commission noted that any statutory activity which flows from a discretionary act, namely, the suspension of a pupil, does not cause subsequent, required activities to be reimbursable state mandates. However, when principals or superintendents carry out mandatory suspensions from school for possession of a firearm, knife, or explosive (§ 48915, as amended by Chapters 1255 and 1256, Stats. of 1993), the attendance of the referring school employee in the informal pre-suspension conference with the principal and the pupil, whenever practicable, results in the imposition of a reimbursable state mandated program or higher level of service upon school districts.¹¹

Therefore, based on the foregoing analysis, the Commission found that:

- Except for the provisions requiring participation of the referring school employee in the presuspension conference, Education Code section 48911, subdivision (b)'s requirements codify the U.S. Supreme Court's decision in *Goss v. Lopez, supra*, 419 U.S. 565.
- A pupil's rights to procedural due process guaranteed by the provisions of the 14th Amendment to the U.S. Constitution, are obligatory. In the absence of Education Code section 48911 (b), school districts would still be required to have the principal [or designee] hold a pre-suspension conference with the pupil to give the pupil notice of the charges against him or her and the evidence the school authorities have, and to provide the pupil with an opportunity to give his or her own version in defense.
- As to the activities described above, the requirements in subdivision (b) of Education Code section 48911 do not result in a new program or higher level of service on an existing program upon school districts within the meaning of section 6 of article XIIB of the California Constitution and Government Code section 17514 because the statute affirmed for the state that which had been declared existing law by the U.S. Supreme Court and by the federal due process requirements of the 14th Amendment to the U.S. Constitution.
- Furthermore, the Commission found that section 48911, subdivision (b)'s requirement for the attendance of the referring school employee in the pre-suspension conference, whenever practicable, is outside the scope of federal due process. Accordingly, the Commission found that implementation of this requirement to carry out mandatory suspensions for possession of a firearm, knife, or explosive (§ 48915, as amended by Chapters 1255 and 1256, Stats. of 1993), imposes a new program or higher level of service on an existing program upon school districts within the meaning of section 6 of article XIIB of the California Constitution and Government Code section 17514.

The Suspension Process: Emergency Situations. (Ed. Code, § 48911, subd. c.)

¹¹ In a related test claim on Pupil Expulsions (CSM-4455), the Commission found that by eliminating the principal's discretion to suspend pupils from school for certain acts, that section 48915 of the Education Code, as amended by Statutes of 1993, Chapters 1255 and 1256, imposes a new program or higher level of service upon school districts by requiring principals to suspend pupils for certain acts.

Subdivision (c) of section 48911, authorizes school officials to suspend pupils without a pre-suspension conference with the pupil in emergency situations. The statute defines an emergency situation, specifies who may make that determination, and describes post-suspension notice and meeting procedures. The principal, designee, or superintendent of schools is authorized to immediately suspend a pupil when it is determined that an emergency situation, defined as a “clear and present danger” to the lives or health of pupils or school personnel, exists. In an emergency situation, the pupil may be suspended immediately. However, a conference must still be held within two schooldays after the suspension, with specified exceptions.

The Commission determined that the test claim legislation does not create a new program or higher level of service in section 48911, subdivision (c), for the following reasons:

First, current law is consistent with prior law by requiring school authorities to supervise and protect pupils. Under this duty, any investigative activity to determine an “emergency situation” would have been performed under prior law and is still required today. The California Supreme Court recognized the duty of school authorities to protect pupils, stating in pertinent part:

“California law has long imposed on school authorities a duty to supervise at all times the conduct of children on the school grounds and to enforce those rules and regulations necessary to their protectionSuch regulation is necessary precisely because of the commonly known tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to serious physical harm.”
(*Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 741, 747.)

Secondly, prior law authorized the principal of a school to suspend, for good cause, any pupil from the school. (§ 48901, Ch. 1010/76.) *Good cause*, as defined by statute included assault and battery, assault with a deadly weapon, being under the influence of an alcoholic beverage, an intoxicant, or controlled substance, and other offenses pertaining to property damage. The commission of any of these offenses could have resulted in the creation of a “clear and present danger to the lives, safety, and health of pupils or school personnel” in the past and certainly today. Thus, a level of investigation to determine “good cause” before suspending a pupil is not a new program because it was implied under prior law.

Based on the foregoing analysis, the Commission found that section 48911, subdivision (c), does *not* impose a new duty or higher level of service upon school authorities to investigate potential suspensions to determine if an emergency situation exists because situations which are “emergency situations” under the test claim legislation also existed under prior law.

The plain text of section 48911, subdivision (c), does not include language specifying any new requirements for investigating pupil conduct. The addition of the words “emergency situation, defined as a ‘clear and present danger’ to the lives or health of pupils or school personnel, exists” was added to define those extraordinary circumstances which justify the exception to the constitutional requirement that a pupil must be afforded procedural due process *before* being suspended from school.

Also, the Commission noted that in *Goss*, the U.S. Supreme Court stated that “...there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose

presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable....” (*Goss v. Lopez, supra*, 419 U.S. 565, 582-583.)

The Commission found that the statute merely provides for the postponement of due process until after the emergency suspension. Further, the statute simply codifies the balance of two competing interests, namely, protection of pupils and school employees from imminent danger which justifies the postponement with the federal due process requirements of notice and an informal hearing.

Subdivision (c) of section 48911 also specifies that if a pupil is suspended without a conference prior to suspension, *both the parent and the pupil* shall be notified of the pupil’s right to a conference which shall be held within two schooldays [of the suspension]. Prior law, required *on or before the third consecutive schoolday* of any given period of suspension, *the parent or guardian* of the suspended pupil be asked to attend a meeting with school officials, at which time the causes, the duration, the school policy involved, and other matters pertinent to the suspension shall be discussed. (§ 48910, Ch. 1010/76.) The language of the test claim legislation is nearly identical with prior law.

Therefore, the Commission found that the requirement to notify the parent or guardian under subdivision (c) of section 48911 does not constitute a new program or higher level of service for schools. However, the requirement for a school to notify the pupil of the right to a conference is new and was added as a direct result of the *Goss* decision.

The Commission determined that subdivision (c) of section 48911 codifies a pupil’s rights as guaranteed by the provisions of the 14th Amendment, under *Goss v. Lopez, supra*, 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729; that in the absence of Education Code Section 48911, subdivision (c), school districts would still be required to notify pupils of their right to have a post-suspension conference, as specified.

Therefore, the Commission concluded that the requirements in section 48911, subdivision (c), are *not* state mandated, but stem from the due process clause of the 14th Amendment to the U.S. Constitution, prior law, and that which had been declared existing law by the U.S. Supreme Court.

Communicating the Suspension to the Parent or Guardian (Ed. Code, § 48911, subd. (d).)

Former Education Code sections 48910 and 48912 of Chapter 1010, Statutes of 1976¹², stated *similar* requirements, as follows:

“...On or before the third consecutive schoolday of any given period of suspension, the parent or guardian of the pupil involved shall be asked to attend a meeting with school officials, at which time the causes, the duration, the school policy involved, and other matters pertinent to the suspension shall be discussed. If the parent or guardian fails to

¹²The recodification of the Education Code by Chapter 1010, Statutes of 1976, (Ch. 1010/76) did not change pre-1975 law on suspensions. Therefore, the 1976 recodified version and its section numbers are used as the Commission’s reference point for prior law (pre-1975 law). Also, see note 3.

join in such a conference, the school officials shall send him by mail a letter stating the fact that suspension has been implemented and setting forth all other data pertinent to the action.” (§ 48910, Ch. 1010/76, as derived from § 10607, as amended by Ch. 1006/68.)

“Whenever a pupil is suspended from school, the parent, or guardian shall be notified of such action. Any notification to a pupil's parent or guardian concerning the suspension of the pupil shall be signed by the school principal or his designee.”
(§ 48912, Ch. 1010/76, as derived from § 10607.8, as added by Ch. 219/73.)

The Commission found that notification of the parent in person or by phone, and also in writing, is *not* a new program or higher level of service because the activity was required under prior law. As noted above, prior law required notification of the parent or guardian whenever a pupil was suspended. This contact had to be in writing since former section 48912 states that the notification shall be signed by the principal or his/her designee. Current law gives the school more flexibility by eliminating specificity concerning the signatory of the letter. An additional contact by phone or in person is implied in the requirement to ask the parent or guardian to attend a meeting with school officials on or before the third consecutive schoolday.

Therefore, the Commission concluded that section 48911, subdivision (d), as added by Chapter 134, Statutes of 1987, does *not* contain a reimbursable state mandated program or higher level of service in an existing program.

Reporting Suspensions to the Governing Board (Ed. Code, § 48911, subd. (e).)

Prior law required the principal to report pupil suspensions to the governing board of the school district or to the district superintendent pursuant to the governing board's regulations.¹³ Education Code section 48911, subdivision (e), as amended by Chapter 134, Statutes of 1987, enhances this requirement by specifying that a school employee (not strictly the principal) report a school suspension and its cause, to the district governing board or to the superintendent in accordance with the board's adopted regulations.

The recent amendment changes the responsible person for reporting the suspension from “principal” to “a school employee”. This change allows school districts to determine who will report suspensions to the superintendent or governing board. Additionally, the amendment to section 48911 now requires schools to report the cause of the suspension to the district office. Under prior law, reporting the cause of suspension would have been optional.

Therefore, the Commission found that disclosure of the cause of the suspension is a new state requirement. However, the Commission also noted that the program of school suspensions is a discretionary act and that any subsequent, downstream activities stemming from a discretionary act are not reimbursable state mandated activities. (See *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 79.) Moreover, the Commission noted that school districts are required to suspend a pupil for possession of firearms, knives, and explosives, pursuant to section 48915,

¹³ Former Education Code section 48901 stated: “...The principal shall report the suspension of such a pupil to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.” (Ch. 1010/76.)

subdivision (b), as amended by Chapters 1255 and 1256, Statutes of 1993. Accordingly, the Commission found that the new provision requiring disclosure of the cause of each suspension to the governing board is a reimbursable state mandated program, limited to suspensions based on pupil possession of firearms, knives, or explosives. (§ 48915, subdivision (b), as amended by Chapters 1255 and 1256, Stats. of 1993.)

Education Code section 48911, subdivisions (f), (g), and (h).

The claimant did not request, and the Commission did *not* find, a state mandated program in subdivisions (f), (g), and (h), of section 48911.

CONCLUSION

Based on the foregoing findings, the Commission approves the test claim in part.

The Commission determines that:

- Portions of the test claim statutes, as specified above, were enacted by the legislature to extend the federal requirements of procedural due process mandated by the United States Supreme Court in *Goss v. Lopez* (1975) 419 U.S. 565, to California public school students facing suspension from school.
- The following requirements are outside the scope of federal due process and were not required under prior law:
 - The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable (§ 48911, subd. (b));
 - A report of the cause of each school suspension to the district office. (§ 48911, subd. (e).)
- Implementation of these requirements under section 48911, subdivisions (b) and (e), to carry out suspensions for (1) possession of a firearm (for the period from October 11, 1993 through present) and (2) possession of a knife or explosive (for the period from October 11, 1993 through December 31, 1993,) impose a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code.

Finally, the Commission determines that, except as expressly stated above, the remaining portions of this test claim be denied because the subject statutes do *not* impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code.

ATTACHMENT A

CONVERSION TABLE

Derivation Table Pre-1975 Education Code	1976 Education Code Recodification Chapter 1010/1976
§ 10601.5	§§ 48900, 48901
§ 10601.6	§ 48902
§ 10602	§ 48903
§ 10603, subd. (a)	§ 48904, subd. (a)
§ 10604.3	§ 48906
§ 10605	§ 48907
§ 10607	§ 48910
§ 10607.5	§ 48911
§ 10607.8	§ 48912

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48919, 48920, 48921, 48922, 48923, and 48924, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; and Chapter 498, Statutes of 1983; and filed on September 22, 1994,

By the San Diego Unified School District and the San Diego County Office of Education.

NO. CSM - 4463

Pupil Expulsion Appeals

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

Adopted on March 27, 1997

Statement of Decision

Issue: Do the provisions of Education Code sections 48919, 48920, 48921, 48922, 48923, and 48924, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; and Chapter 498, Statutes of 1983, impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code?

This test claim was heard by the Commission on State Mandates (Commission) on October 31, 1996, during a regularly scheduled hearing. Mr. Jose Gonzales and Mr. James A. Cunningham appeared for the San Diego Unified School District, Ms. Caryn Becker appeared for the Department of Finance, and no one appeared for the San Diego County Office of Education.

On March 27, 1997, a supplemental hearing was held by the Commission to take testimony limited to the applicability of the federal Family Educational Rights and Privacy Act of 1974 and to review the Commission's findings and determinations concerning production of the written transcription and other documents by the expelling district. Mr. James A. Cunningham appeared on behalf of the San Diego Unified School District, Dr. Carol Berg represented the Education Mandated Cost Network, Ms. Caryn Becker represented the Department of Finance, and no one appeared for the San Diego County Office of Education.

At both hearings, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

BACKGROUND AND FINDINGS OF FACT

The San Diego Unified School District and the San Diego County Office of Education alleged that Education Code sections 48919, 48920, 48921, 48922, 48923 and 48924, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978, Chapter 498, Statutes of 1983, impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution. The statutes which are the subject of this test claim are as follows:

Education Code Section 48919, as added by Chapter 498, Statutes of 1983.

“If a pupil is expelled from school, the pupil or the pupil’s parent or guardian may, within 30 days following the decision of the governing board to expel, file an appeal to the county board of education which shall hold a hearing thereon and render its decision. [First Paragraph.]

“The county board of education shall hold the hearing within 20 schooldays following the filing of a formal request under this section and shall render a decision within three schooldays of the hearing, unless the pupil requests a postponement. [Second Paragraph.]

“The period within which an appeal is to be filed shall be determined from the date a governing board votes to expel even if enforcement of the expulsion action is suspended and the pupil is placed on probation pursuant to Section 48917. A pupil who fails to appeal the original action of the board within the prescribed time may not subsequently appeal a decision of the board to revoke probation and impose the original order of expulsion. [Third Paragraph.]

“The county board of education shall adopt rules and regulations establishing procedures for expulsion appeals conducted under this section. The adopted rules and regulations shall include, but need not be limited to, the requirements for filing a notice of appeal, the setting of a hearing date, the furnishing of notice to the pupil and the governing board regarding the appeal, the furnishing of a copy of the expulsion hearing record to the county board of education, procedures for the conduct of the hearing, and the preservation of the record of the appeal. [Fourth Paragraph.]

“The pupil shall submit a request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the county board of education. The school district shall provide the pupil with the transcriptions, supporting documents, and records within five schooldays following the pupil’s request. The pupil shall immediately file suitable copies of these records with the county board of education.” [Fifth Paragraph.]

Education Code Section 48920, as added by Chapter 498, Statutes of 1983.

“Notwithstanding the provisions of Section 54950 of the Government Code and Section 35145 of this code, the county board of education shall hear an appeal of an expulsion order in closed session, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted in a public meeting.^{1, 2} Upon the timely submission of a request for a public meeting, the county board of education shall be required to honor the request. Whether the hearing is conducted in closed or public session, the county board may meet in closed session for the purpose of deliberations. If the county board admits any representative of the pupil or the school district, the board shall, at the same time, admit representatives from the opposing party.”

Education Code Section 48921, as added by Chapter 498, Statutes of 1983.

“The county board of education shall determine the appeal from a pupil expulsion upon the record of the hearing before the district governing board, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the school board may be heard unless a de novo proceeding is granted as provided in Section 48923. [First Paragraph]

“It shall be the responsibility of the pupil to submit a written transcription for review by the county board. The cost of the transcript shall be borne by the pupil except in either of the following situations: [Second Paragraph]

- (1) Where the pupil’s parent or guardian certifies to the school district that he or she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both.
- (2) In a case in which the county board reverses the decision of the local governing board, the county board shall require that the local board reimburse the pupil for the cost of such transcription.
- (3) If the findings are not supported by the evidence.

“A county board of education may not reverse the decision of a governing board to expel a pupil based upon a finding of an abuse of discretion unless the county board of education also determines that the abuse of discretion was prejudicial.” [Third Paragraph.]

Education Code Section 48922, as added by Chapter 498, Statutes of 1983.

“(a) The review by the county board of education of the decision of the governing board shall be limited to the following questions:

- (1) Whether the governing board acted without or in excess of its jurisdiction.
- (2) Whether there was a fair hearing before the governing board.
- (3) Whether there was a prejudicial abuse of discretion in the hearing.
- (4) Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or

¹ Government Code section 54950 refers to the Brown Act concerning the open meeting requirements for local boards and commissions.

² Education Code section 35145 specifically addresses “Closed Sessions” held by the governing body of a school district.

which was improperly excluded at the hearing before the governing board.

“(b) As used in this section, a proceeding without or in excess of jurisdiction includes, but is not limited to, a situation where an expulsion hearing is not commenced within the time periods prescribed by this article, a situation where an expulsion order is not based upon the acts enumerated in Section 48900, or a situation involving acts not related to school activity or attendance.

“(c) For purposes of this section, an abuse of discretion is established in any of the following situations:

- (1) If school officials have not met the procedural requirements of this article.
- (2) If the decision to expel a pupil is not supported by the findings prescribed by Section 48915.”

Education Code Section 48923, as added by Chapter 498, Statutes of 1983.

“The decision of the county board shall be limited as follows:

“(a) Where the county board finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board, it may do either of the following:

- (1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending such reconsideration.
- (2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.

“(b) In all other cases, the county board shall enter an order either affirming or reversing the decision of the governing board. In any case in which the county board enters a decision reversing the local board, the county board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.”

Education Code Section 48924, as added by Chapter 498, Statutes of 1983.

“The decision of the county board of education shall be final and binding upon the pupil and upon the governing board of the school district. The pupil and the governing board shall be notified of the final order of the county board, in writing, either by personal service or by certified mail. The order shall become final when rendered.”

Claimants asserted that, "Prior to January 1, 1975, Education Code Section 10608 was the only Education Code section pertaining to the appeal of a school district expulsion to the county board of education ... However, no due process was specified." Claimant further explained that, "Chapter 1253, Statutes of 1975, repealed Education Code section 10608 and added the several new sections which established for the first time a description of the county board of education due process required for the determination of appeals of school district expulsions ... Chapter 498, Statutes of 1983 then repealed all previous Education Code sections regarding expulsions and expulsions appeals... Notwithstanding the repealer, several technical and substantive changes were made as compared to previous law." Claimants submitted that the replacement of

repealed legislation should be considered as new (regardless of whether or not changes in the requirements of the legislation exist in the replacement). Prior law and the sections relevant to this test claim are discussed below.

Prior Law

Section 10608 (Chapter 831/1972) authorized the parent or guardian of an expelled pupil to appeal the expulsion to the county board of education and required county boards of education to hold hearings on the appeal. Further, county boards were required to “notify the governing board of the time and place of such hearing and either the governing board or its appointed designee was authorized to appear and present testimony at such hearing.”

Section 10608 stated:

“If a pupil is expelled from school, the parent or guardian of the pupil may appeal to the county board of education which shall hold a hearing thereon and render a decision. The county board of education shall notify the governing board of the time and place of such hearing and either the governing board or its appointed designee may appear and present testimony at such hearing. The decision of the county board of education shall be final and binding upon the parent or guardian and the governing board expelling the pupil.” (As amended by Chapter 831/1972.)

The Commission noted that county boards would have notified the pupil (parent or guardian) of the intent to call and hold an executive session to consider an appeal in “writing, by registered or certified mail or by personal service,” pursuant to former section 967.

Section 967, as added by Chapter 629, Statutes of 1963, stated:

“Notwithstanding the provisions of Section 966 of this code and Section 54950 of the Government Code, the governing body of a school district may hold executive sessions to consider the expulsion, suspension, or disciplinary action in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Section 10751 of the Education Code.

“Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters may be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public. Whether the matter is considered at any executive session or at a public meeting, the final action of the governing board of the

school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.”

Although prior law did not specifically reference notice of the county’s “acceptance of the filed appeal” this fact was implicit in the issuance of a notice of hearing to the pupil. If the appeal was not accepted, it would not be set for hearing and noticed. Prior law only specified that the time and place of such hearing be noticed.

THE COMMISSION FINDS THAT:

Education Code Section 48919

- First Paragraph of Section 48919

The first paragraph of section 48919 authorizes a pupil or the pupil’s parent or guardian to appeal a pupil expulsion within 30 days of the governing board’s act. Upon filing a timely appeal, the pupil and the parent/guardian will be entitled to a county board of education hearing on the appeal and a decision.³ The Commission noted that the parent or guardian’s right of appeal, a hearing before the county board of education, and a decision, existed in prior law. Under prior law the appeal period was unspecified in statute, and would have been determined by each governing board.

Accordingly, the Commission found that the first paragraph of section 48919 does not impose a new program or higher level of service upon county boards of education or school districts.

- Second Paragraph of Section 48919

The second paragraph of section 48919 requires the county board of education to hold a hearing within 20 schooldays following the filing of an appeal and to render a decision within three schooldays of the hearing (unless postponement is requested by the pupil).

Upon receipt of an expulsion appeal, prior law required county boards of education to conduct a hearing and render a decision. Although a wealth of activity is *implied* in this simple sentence, little more is expressly stated. Fortunately, a 1974 Attorney General’s Opinion examined what section 10608 actually required.⁴ The Commission relied upon a 1974 Attorney General’s Opinion (57 Ops.Cal.Atty.Gen.439) that addressed the question of whether a pupil expulsion appeal to a county board of education contemplates a hearing de novo in all instances or only in those instances where a record of the proceedings before the governing board is unavailable for review by the County Board of Education.⁵ The conclusion stated that, “County

³ The term “section” refers to the Education Code unless otherwise indicated.

⁴ This Attorney General’s Opinion, 57 Ops.Cal.Atty.Gen. 439 (1974), will be referred to as “the Opinion.”

⁵ The Opinion considers what hearing procedures were intended by the Legislature under section 10608 for the county board of education, other than that relating to testimony (although, the county board does not have power to subpoena). “As in every other instance of statutory construction,” the Opinion explains, “the primary focus is upon the legislative intent, reinforced, however, by considerations of the minimum guarantees of the due process provisions of the United States and California Constitutions as they are applicable to pupils.” (*Id.* at p.440.) The

boards of education shall hold a trial *de novo* on appeal from a governing board decision expelling a student.”⁶ Therefore, it found that section 10608 essentially required county boards of education to hold an entirely new hearing for each and every pupil expulsion appeal it received.

The claimants opposed the Commission’s reliance on this Opinion. The Commission recognized that the courts usually have held that Opinions of the Attorney General, while not binding, are entitled to great weight. In the absence of controlling authority, these opinions are persuasive ‘since the Legislature is presumed to be cognizant of that construction of the statute.’⁷

Therefore, based on the 1974 Attorney General’s Opinion, the Commission noted that prior law required the county board of education to hold a hearing *de novo* on every appeal and to render a decision. After the Attorney General’s Opinion was rendered, a number of changes were enacted to the system of pupil discipline. Among these changes was the revamping of the expulsion appeals process in first chapter claimed. (Chapter 1253/1975.) Although requirements have, in some instances, changed, the overall requirement for the county board to hold a hearing and render a decision in the case of an expulsion appeal remains *unchanged* through the last chapter claimed. (Chapter 498/1983.)

The second paragraph of section 48919 requires a county board of education to “hold a hearing ... following the filing of an appeal and to render a decision...” Section 48923 limits the county board’s decision on the appeal to four possible outcomes: If relevant and material evidence exists which was not included in the local board hearing, (1) remand the matter for the governing board’s reconsideration, or (2) grant a hearing *de novo*; in all other cases, (3) affirm the governing board decision, or (4) reverse the governing board decision. If the county board of education decides that the appeal warrants a hearing *de novo*, a second hearing will result. [See analysis of section 48923 below, beginning on page 12.]

The county board of education will hold only one hearing on the appeal when it decides to (1) remand, (2) affirm the governing board decision, (3) reverse the governing board decision. Because prior law required one hearing on the appeal, the Commission observed that when only one hearing results that it is equivalent to the hearing required under prior law (former § 10608), and therefore, is not a new program or higher level of service for the county board or the local district.

It was the claimant’s contention that the district is entitled to reimbursement for (a) every second hearing on appeal because pre-1975 law required only one post-expulsion order hearing and (b)

Opinion points out that with the 1972 amendment to section 10608, the legislature “clarified the type of proceeding it intended to be conducted by the County Board, *i.e.*, *evidence may be introduced.*” (emphasis added).

⁶ Black’s Law Dictionary, defines a “hearing *de novo*” as “Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. Trying matter anew the same as if it had not been heard before and as if no decision had been previously rendered. On hearing ‘*de novo*’ court hears matter as court of original and not appellate jurisdiction.” [(6th ed.1990) p.721, col.2]

⁷ *California Assn. of Psychology Providers v. Rank* (51 Cal.3d 1, 17; 270 Cal.Rptr. 796, 793 P.2d 2 (1990), citing *Napa Valley Educators’ Assn. v Napa Valley Unified School Dist.* [(1987) 194 Cal.App.3d 243, 251; 239 Cal.Rptr. 395.]

all activities mandated by post-1975 expulsion appeals statutes to the extent such activities are not expressly mandated by the pre-1975 provisions of section 10608.

Despite the claimant's contention, the Commission found that when the county board of education decides in the initial hearing that a second hearing (hearing de novo) is necessary, district and county participation in the initial hearing on the appeal is a new requirement because prior law required only one hearing (de novo). However, since prior law required a hearing de novo, the Commission found that current law's hearing de novo is not a new program or higher level of service. Thus, the Commission found that district participation at the initial hearing on an appeal will result in a reimbursable state mandated program when a county board of education holds a hearing de novo on an appeal of a pupil expulsion for possession of a firearm, knife or explosive, pursuant to section 48915.⁸ Moreover, the Commission found that county board participation in the initial hearing will only result in a reimbursable state mandated program when the appeal results in a second county board hearing, which is a hearing de novo.

- Third Paragraph of Section 48919

Prior law did not specify the length of the appeal period. Therefore, the appeal period would have been determined by each governing board. The third paragraph of section 48919 clarifies how days will be counted to set the appeal period. The statute specifies that the 30 day appeal period begins on the date a governing board votes to expel, even if enforcement of the expulsion is suspended and the pupil is placed on probation, or the board revokes probation and imposes the original expulsion order. The Commission noted that this clarification does not impose a new program or higher level of service upon school districts or county boards of education.

- Fourth Paragraph of Section 48919

- A. Adoption of rules and regulations.

The first sentence of the fourth paragraph of section 48919 expressly requires county boards of education to adopt rules and regulations establishing procedures for expulsion appeals. This requirement did not exist in prior law and, therefore, does impose a reimbursable state mandated program.

However, the Commission found that reimbursement should be limited only to those rules and regulations required in the fourth paragraph of section 48919 and specified by the words "shall include... ." Any additional rule or regulation authorized by the words "but need not be limited

⁸ For the period from October 11, 1993 through December 31, 1993, Section 48915, subdivision (b), as amended by Chapter 1255/1993 stated in pertinent part: The principal or superintendent shall immediately suspend ... and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds... The governing board shall expel that pupil or, as an alternative recommend that pupil to an alternative education program, whenever the principal or superintendent of schools confirm that: (1) The pupil was in knowing possession of the item, (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the district. (3) There was no reasonable cause for the pupil to be in possession of the [firearm, knife, or explosive.]” For the period beginning on January 1, 1994, Section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993, limited such mandatory expulsions by the governing board to possession of a firearm at school or at a school activity off school grounds.

to...,” but not required, would be discretionary if adopted and therefore not reimbursable. Further, the requirement for county boards to adopt rules and regulations regarding expulsion appeals first appeared in section 10609 of Chapter 1253, Statutes of 1975.⁹ Although a one-time cost for the initial development of the rules and regulations would have been eligible for reimbursement, after enactment of the subject chapters, the eligible claiming period for this test claim begins on July 1, 1993.¹⁰ Accordingly, because the reimbursement period begins on July 1, 1993, most of the state mandated reimbursable cost for adoption of regulations pursuant to the subject chapters, is not covered by this test claim. The Commission noted that any state mandated regulations required on or after July 1, 1993, will be negligible, but reimbursable.

B. Requirements for filing a notice of appeal.

The fourth paragraph of section 48919 requires the county board of education to adopt rules and regulations on the “requirements for filing a notice of appeal.” However, this clause does *not* require the county board to furnish this information to anyone.

Even though section 48919 contains no language stating, or even implying, that the county board must notify pupils of the requirements of filing an appeal, the claimants allege that this is inconsistent with the requirement for the county board to adopt a rule or regulation regarding requirements for filing.

Prior law did not require county boards of education to adopt rules and regulation nor did it specify any requirements for filing a notice of appeal. Section 10608 (last amended by Chapter 831/1972) required the county board of education to, “... notify the governing board of the time and place of such hearing...” Section 48918, subdivision (i), currently requires, in pertinent part, that, “Written notice of any decision to expel ... shall be sent by the superintendent of schools [of the district] or his or her designee to the pupil or the pupil’s parent or guardian and shall be accompanied by notice of the right to appeal the expulsion to the county board of education....”

Thus, when a district governing board elects to expel, section 48918 requires that a notice of the decision to expel and a notice of the right to appeal be sent to the pupil.¹¹ This notice is to be sent after the local board decides to expel the child, but before the child files an appeal.

Therefore, the Commission concluded that the fourth paragraph of section 48919 does not require county superintendents of schools to notify persons appealing a school district expulsion of the requirements for filing an appeal.

C. Setting a hearing date.

⁹ Section 10609 was renumbered (without substantive amendments) as section 48915 by Chapter 1010/76. Chapter 498/83 repealed and replaced all sections relevant to this test claim. Although both technical and substantive changes were included in the replacement, the requirement for county boards to adopt rules and regulations regarding expulsion appeals remained and is now located in section 48919.

¹⁰ Government Code 17557 reads, in pertinent part, “...A test claim shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for that fiscal year.”

¹¹ Section 48918 is the subject of test claim CSM-4455, *Pupil Expulsions*.

The requirement to adopt rules and regulations on the setting of a hearing date was not explicitly specified in statute, but setting a hearing date was implied because appeal hearings were required under prior law.

D. Furnishing notice to the pupil and the [local] governing board regarding the appeal.

The county board of education is required to adopt rules and regulations on the “furnishing of notice to the pupil and the governing board regarding the appeal which has been filed. (§ 48919, 4th par.) Under prior law these activities were required.

After an appeal was filed, former section 10609 required the county board to notify the local governing board of the “time and place” of such hearing, but was silent concerning notice to the pupil. However, the pupil’s due process rights would have required the county board to send the appellant the same notice.¹² The Commission noted that the county board would have notified the pupil (parent or guardian) of the intent to call and hold an executive session to consider an appeal in “writing, by registered or certified mail or by personal service,” pursuant to former section 967. Thus, the Commission determined that the requirement to notify the governing board and the parent or guardian is not a new program or higher level of service because it was addressed in prior law.

Claimants’ contention that the county board notice must include procedures on the conduct of the appeal hearing is reasonable. Since rules and regulations address the rights and responsibilities of parties in the appeals process, they must be made known to the appellant. The Commission noted that district governing boards will already have knowledge of the county board of education’s rules and regulations for the conduct of the hearing. However, an appellant will not have such procedures, unless provided by the county board of education after an appeal is filed.

Therefore, the Commission found that the requirement for county boards of education to notify appellants of the procedures for the conduct of the appeal hearing as part of the county board of education’s notice to the pupil regarding the appeal. . .” pursuant to the fourth paragraph of section 48919 constituted a reimbursable state mandated program.

E. Furnishing a copy of the expulsion hearing record to the county board of education.

There was no requirement in prior law for county boards of education to adopt rules and regulations on the “furnishing of a copy of the expulsion hearing record by the pupil to the county board of education.” (See discussion of the fifth paragraph of section 48919 and the second paragraph of section 48921 for analysis and conclusion that the requirement to furnish a copy of the expulsion hearing record does not impose a reimbursable state mandated program upon school districts.)

F. Procedures for the conduct of the hearing.

¹²Opinion of the Attorney General of California, Opinion No. CV 71-19, September 6, 1974, states “Although the statute is silent on the right of the parent or guardian of the child to appear at the hearing before the County Board of Education and ‘present testimony’ similar to the express right of the governing board, the minimum requirements of due process compel recognition of such right. See *Perlman v. Shasta Joint Junior College District Board of Trustees*, 9 Cal.App. 3d 873 (1970); *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961)” (57 Ops. Cal. Atty. Gen, p. 439).

There was no explicit statutory requirement in prior law for county boards to adopt rules and regulations for the conduct of the hearing. However, appeals by the county boards were conducted under prior law, so the procedures and proceedings themselves do not impose a reimbursable state mandated program, only the mere adoption of the rules.

G. Preservation of the record of the appeal.

Finally, prior law contained no requirement for county boards to adopt a regulation regarding preservation of the record of the appeal hearing. Although not specifically alleged by the claimant, the adoption of this regulation would also result in a new requirement for county boards of education to preserve the record of the appeal, thus creating a new program or higher level of service. If the Legislature had not intended for the county board of education to preserve the record of the appeal, this phrase would not have been included after the words “shall include, but need not be limited to...”. Therefore, this new requirement contained in section 48919 imposes a reimbursable state mandated program upon county boards of education.

- Fifth Paragraph of Section 48919

The fifth paragraph of section 48919 requires the pupil to request a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal. It also states that the school district shall provide the pupil with the transcriptions, supporting documents, and records within five school days following the pupil’s request. Section 48921 directs the pupil to submit and to bear the cost of the written transcription for the county board’s review. However, if the pupil’s parent/guardian certifies this cost cannot be reasonably met, the school district must cover the cost. If the county board reverses the decision of the local governing board, the county board must require the governing board to reimburse the pupil for the cost. The original legislation, Chapter 1253/1975, contained an appropriation to reimburse districts for the cost of furnishing transcripts to indigent appellants and appellants whose expulsions are reversed by the county board of education.¹³

The Commission found that the fifth paragraph of section 48919 requires districts to provide a copy of the transcription, supporting documents, and records within five schooldays following the pupil’s request. Notwithstanding this requirement, the Commission noted that written transcripts, supporting documents and records are “educational records” under the federal Family Educational Record and Privacy Act of 1974. Federal law and state law require school districts to give a parent or guardian or an 18-year old appellant access to such records upon their request.

The Commission noted that: “The courts have concluded that no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. ‘When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no ‘true choice’ in the manner of implementation of the federal mandate.’ (*Hayes v. Commission on*

¹³ In the 1996-97 Budget Act, \$6,000 is appropriated to reimburse school districts for “Expulsion Transcripts.” (See Item 6110-295-0001, Category 15, on page 400 of Chapter 162, Statutes of 1996.)

State Mandates (1992) 11 Cal.App.4th 1564, 1593 [citation omitted]; see also *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76 [citation omitted]; *County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 349 [citation omitted].” (*County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th 805, 816-817.)

The Commission found that under the Family Educational Rights and Privacy Act of 1974 (FERPA, 20 U.S.C.A. 1232g), federal subventions to California school districts would have been cut unless school districts granted parents or guardians or 18-year old students to inspect and review any and all official records, files, and data directly related to their children.

The Commission recognized that California implementation of FERPA was accomplished by the enactment of Statutes of 1976, Chapter 1010, § 2, operative April 30, 1977. The first paragraph of Education Code section 49060 - Legislative Intent - indicates that the purpose of this enactment was “to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding parental access to, and the confidentiality of, pupil records in order to insure the continuance of federal education funds to public educational institutions within the state, and to revise generally and update ht law relating to such records.”¹⁴

Written transcriptions, supporting documents, and other records of an expulsion are *education records* under FERPA and *pupil records* under California law. (20 U.S.C.A., § 1232g(a)(4)(A); see also 34 C.F.R. § 99.3; Ed. Code, § 49061, subd. (b).)

Federal and state law allow a parent or guardian or student who is 18 years of age or older, the right to inspect, review, and obtain copies of education records and pupil records. An appellant who is less than 18 years of age does not have a federal or state right of *access* to their education or pupil record. (20 U.S.C.A., § 1232g (a)(1)(A); Ed. Code, § 49069.) *Access* means a personal inspection and review of a record or receipt of an accurate copy of a record, an oral description or communication of a record and a request to release a copy of any record. (Ed. Code, § 49061, subd. (e).) Parents of former pupils have an absolute right of access to any and all pupil records. (Ed. Code, § 49069.)

“Pupil record” means any item of information directly related to an identifiable pupil ... which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfiche or any other means.” (Ed. Code, § 49061, subd. (b).)

California school districts are required to adopt procedures for the granting of requests by parents for copies of all pupil records pursuant to section 49065. (Ed. Code, § 49069.) As defined in section 49061, subdivision (a), ‘parent’ includes a pupil who has attained the age of 18 years. Section 49065 authorizes school districts to make a “reasonable charge in an amount not exceeding the actual cost of furnishing copies of any pupil record...”

¹⁴ Government Code section 17556, subdivision (c) states: “The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.”

A school district is not required to prepare and provide a copy of a transcript until a request is made by an appellant. (Ed. Code, § 48919, fifth paragraph.) In unambiguous language, section 48921 states that the cost of the transcript shall be borne by the pupil. The Commission recognized that if the cost of the transcript, in all cases, was to be borne by the district, the actual language of the section would be different. Section 48921 further specifies those situations in which the District shall bear the cost of the transcript. State reimbursement is already provided in these situations. The Controller's claiming instructions, state that reimbursement is provided for the cost of *providing a written transcript* of the initial expulsion hearing.

There is no question that the fifth paragraph of section 48919 requires an expelling district to provide the transcriptions, supporting documents, and records within five schooldays following the appellant's request. However, the application of Government Code section 17556, subdivision (d), changes the scope of this reimbursement finding, as follows:

The requirement to provide copies of supporting documents and records of the expulsion, upon request of the appellant, is not a reimbursable state mandated program in the following situations because the district is authorized to recover costs pursuant to Education Code section 49065:

- When documents are requested by and furnished to the parent or guardian of an appellant who is less than 18 years of age;
- When documents are requested by and furnished to an appellant who is at least 18 years of age.

However, the Commission found that providing copies of the same kinds of records to an appellant who is under 18 years of age does result in a reimbursable state mandated program for expelling districts because the appellant does not have a federal or state right to obtain access to these records and the district lacks the authority to recover copying costs.

Therefore, the Commission found that the following activity imposes a reimbursable state mandated program upon expelling districts:

Providing copies of documents and records, other than the transcript, to an appellant who is less than 18 years of age and is filing an appeal of an expulsion based on

- possession of a firearm (on or after October 11, 1993);
- possession of a knife of no reasonable use to the pupil, or an explosive at school (on or after October 11, 1993 and up to December 31, 1993.)

Education Code Section 48920

The Commission noted that the requirement to conduct an expulsion appeal hearing existed under prior law. Generally, meetings and hearings of county boards of education are held in accordance with the Brown Act. (§ 1010, recodified by Chapter 1010/1976, derived from § 608, Chapter 2/1959; Brown Act, Gov. Code, § 54950 et seq.) However, for matters concerning pupils, the specific provisions contained in the Education Code are followed.

The Commission observed that prior to enactment of the test claim legislation, county board of education hearings on pupil expulsion appeals were conducted pursuant to former Education

Code section 967. Former section 967 authorized executive sessions to “consider the expulsion, suspension, or disciplinary action in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils....” Upon receiving notice of the intent of the board to call and hold an executive session, the pupil or parent was authorized to request that the hearing be held as a public meeting within 48 hours after receipt of the written notice of intention.

Former section 967 further specified that whether the matter was considered at an executive session or at a public meeting, the final action of the governing board was to be taken at a public meeting and the result of such action was deemed a public record of the school district. (Chapter 1253/1975 amended § 967).

The changes noted by the Commission are the change in timing for receipt of the pupil’s request for a public hearing to be filed five days in advance of the hearing, instead of 48 hours after receipt of notice; this change does not impose a higher level of service upon the county board. Also section 48920 specifies that if a representative of one party is admitted to a closed session that the representative of the other party must also be admitted; this procedure ensures the conduct of a fair hearing. There is no new state mandate associated with either of these changes. Therefore, the Commission concludes that section 48920 does not impose a new program or higher level of service upon school districts within the meaning of section of article XIII B of the California Constitution and section 17514 of the Government Code.

Education Code Sections 48921 and 48922

Under prior law, there were no requirements specifying how the county board would review an expulsion appeal.

- First Paragraph of Section 48921 and Section 48922, subd. (a).

The first paragraph of section 48921 now specifies that when an expulsion decision is appealed to the county board, the board must first “determine the appeal upon the record of the hearing before the district governing board, together with such applicable documentation or regulations as may be ordered.” Further, section 48922 defines the scope of the county board’s initial review of the local board’s expulsion record to four questions: 1) Whether the local board acted without or in excess of its jurisdiction; 2) Whether there was a fair hearing before the local board; 3) Whether there was a prejudicial abuse of discretion in the hearing; and 4) Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the local board.¹⁵ Subdivisions (b) and (c) further define “a proceeding without or in excess of jurisdiction” and “an abuse of discretion.”

¹⁵ Section 48922 further defines “a proceeding without or in excess of jurisdiction” and an “abuse of discretion.”

Accordingly, the Commission found that sections 48921 and 48922 impose a reimbursable state mandated activity by requiring the county board, or delegated staff, to first review the record of the local board hearing and expulsion order, before acting upon the appeal.

- Second Paragraph of Section 48921.

The first sentence of the second paragraph of section 48921 places responsibility for submission of a written transcript and the cost of the transcript upon the pupil. The second sentence defines exceptions when the district shall bear the cost of the transcript. The original legislation authorized state reimbursement of districts when the pupil's parent or guardian certifies that the cost of the transcript cannot reasonably be met and when the county board of education reverses the decision of the local board. The cost of transcripts under these exceptions is currently being reimbursed by the state.¹⁶ For all other situations, the district is authorized to recover the cost of the transcript from the pupil. Therefore, except for those exceptions set forth in subparagraphs (1) and (2) of section 48921 which are currently reimbursed, Government Code section 17556, subdivision (d), precludes the Commission from finding costs mandated by the state, as defined in Government Code section 17514, because section 48921 provides necessary authorization for school districts to recover the transcript production cost from appellants.

¹⁶ For those situations set forth in subparagraphs (1) and (2) of section 48921, school districts may obtain reimbursement for the costs of providing transcripts pursuant to the State Controller's Office's Claiming Instructions for Expulsion of Students, Transcript Cost for Appeals (Chapter 1253, Statutes of 1975, re-numbered by Chapter 498, Statutes of 1983), revised October 1996.

Education Code Section 48923

Section 48923 limits a county board's determination of an expulsion appeal to four possible outcomes. If relevant and material evidence was not included in the local board hearing, the county board may (A) remand the matter for the governing board's reconsideration, or (B) grant a hearing de novo; in all other cases, the county board may (C) affirm the governing board decision, or reverse the governing board decision.

In the related test claim on Pupil Expulsions (CSM-4455), the Commission determined that a hearing before expulsion, with full opportunity to present all the evidence and arguments, is required under the federal guaranty of procedural due process. Accordingly, rehearings held by a local board, pursuant to a county board's remand are not essential to due process. Thus, the Commission concluded that section 48923, subdivision (a)(1), imposes a new requirement upon local boards to conduct another evidentiary hearing, albeit limited, and to render a new or modified decision. Therefore, the Commission determined that section 48923, subdivision (a)(1), imposes a new program or higher level of service upon local boards of school districts, by requiring them to respond to the county board's remand order. The Commission limited this determination to re-hearings of mandatory expulsions of pupils for possession of firearms. (§ 48915, as amended by Statutes of 1993, Chapter 1256.)

A. Remand to the district governing board for reconsideration.

When a county board determines that relevant and material evidence exists which was not included in the local board hearing, it may remand the expulsion action back to the local board. Unquestionably, for a county board, a decision to remand provides a *lower level of service* than the full-blown hearing de novo required by prior law.

However, because prior law did not provide for remand, section 48923, subdivision (a)(1), imposes a new requirement upon district governing boards to reconsider their expulsion decisions. Since no other statutes specify how a local board will conduct a hearing on remand from the county board, the notice and hearing procedures prescribed by section 48918 will undoubtedly have to be followed. (See *Pupil Expulsions*, CSM-4455.)

In the test claim on *Pupil Expulsions*, the Commission determined that the requirement for local boards to expel pupils under section 48915,¹⁷ does constitute a reimbursable state mandated program. Moreover, the Commission found that most of the notice and hearing procedures required under section 48918 were requirements of federal due process and as such could not constitute a reimbursable state mandated program. The Commission also determined that

¹⁷ For the period from October 11, 1993 through December 31, 1993, Section 48915, subdivision (b), as amended by Chapter 1255/1993 stated in pertinent part: The principal or superintendent shall immediately suspend ... and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds... The governing board shall expel that pupil or, as an alternative recommend that pupil to an alternative education program, whenever the principal or superintendent of schools confirm that: (1) The pupil was in knowing possession of the item, (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the district. (3) There was no reasonable cause for the pupil to be in possession of the ... [firearm, knife, or explosive.]” For the period beginning on January 1, 1994, Section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993, limited such mandatory expulsions by the governing board to possession of a firearm at school or at a school activity off school grounds.

required activities (outside the scope of due process) that followed expulsions made at the discretion of a governing board, did not constitute a new program or higher level of service. In sum, the Commission determined that only required activities (exclusive of due process procedures) that followed mandatory expulsions, constituted a new program or higher level of service.

B. Hearing de novo by the county board of education.

When a county board determines that relevant and material evidence exists which was not included in the local board hearing, another option for the county board is to grant a hearing de novo. If the county board grants a hearing de novo, this hearing is not a new state mandated program, because it was required under prior law. Former section 10608 (Chapter 831/1972) required county boards to hold appeal hearings for pupils expelled from school if the parent or guardian appealed the expulsion. Further, county boards were required to, “notify the [local] governing board of the time and place of such hearing and either the [local] governing board or its appointed designee may appear and present testimony at such hearing.”

Regarding a hearing de novo, section 48923 further states that, “[t]he hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.” (See Fourth Paragraph of Section 48919, beginning on page 15.

Although current section 48923 does not expressly require the local board to participate in the hearing de novo, the local board cannot ignore a request of the county superintendent of schools, if witness testimony is required.¹⁸ A local board must participate in a hearing de novo as a necessary party if the county board so requests. However, this required participation does not necessarily result in a reimbursable mandate. The same reasoning would apply to hearings required by section 10608 in prior law. As noted above, section 10608 required governing boards to be notified of appeal hearings (which were all de novo) and allowed their appearance and testimony. Prior to January 1, 1975, it was the governing board’s decision to expel that was being appealed under section 10608. If the county board asked the district to participate, they had no option but to respond. Further, district participation in every hearing de novo would have been implied, because, absent its decision, there would be no hearings de novo.

Therefore, the Commission finds district participation in hearings de novo is not a “new program or higher level of service.” (See also analysis of §§ 48921, 48922, and 48923.).

C. County board affirms or reverses expulsion.

The other options available to the county board - to affirm or reverse the decision of the governing board -- were impliedly available under prior law. However, the second sentence of section 48923, subdivision (b), provides that “In any case in which the county board enters a decision reversing the local board, the county board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and

¹⁸ The Commission previously determined in CSM-4437, *Charter Schools*, that, “while [the section] phrases [the response] as a request, it is clear that a school district cannot simply ignore such a request from the review panel [which is selected and convened by the county superintendent of schools].”

such expulsion shall be deemed not to have occurred.” For the county board, this is a new *discretionary* activity, and thus is not reimbursable.

However, when a county board reverses an expulsion made pursuant to section 48915 for a pupil’s possession of a firearm, and orders the local board to expunge the record of the pupil and the records of the district, pursuant to section 48923, subdivision (b), a reimbursable state mandated program or higher level of service is imposed upon the expelling district.

Education Code Section 48924

Prior law required county boards of education to “render a decision” and specified that the decision “shall be final and binding upon the parent or guardian and the governing board expelling the pupil.” (§ 10608, Chapter 831/1972.) Although notifying the pupil (or parent/guardian) and governing board of this decision was obviously implied in prior law, *no method of notification was specified*. Therefore, the section 48924 requirement for this notice to be, “. . . in writing, either by personal service or by certified mail,” imposes a “new program or higher level of service” upon county boards of education.

CONCLUSION

Based upon the foregoing analysis, the Commission approves the test claim in part.

Specifically, the Commission determines that the following requirements imposed upon *county boards of education*, constitute a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code:

- Notifying appellants of the procedures for the conduct of the appeal hearing, as part of the county board of education’s notice to the pupil regarding the appeal. (§ 48919, 4th par.)
- Reviewing the appeal and record of the expulsion. (§§ 48921-48922.)
- Conducting an initial hearing on an appeal and rendering a decision, limited to appeals which result in a hearing de novo. (§§ 48919, 2nd par. and 48923.)
- Preserving the record of the appeal. (§ 48919, 4th par.)
- Notifying appellants of the final order of the county board, in writing, either by personal service, or by certified mail. (§ 48924.)
- Adopting rules and regulations establishing procedures for expulsion appeals. (§ 48919, 4th par.)

And, limited to appeals of mandatory expulsions made for possession of a firearm, knife, or explosive (§ 48915, as amended by Chapters 1255/1256, Statutes of 1993),¹⁹ the Commission determines that for school districts, the following requirements, *impose* a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code:

¹⁹ Possession of a firearm (on or after October 11, 1993)(Chapter 1256); possession of a knife of no reasonable use to the pupil, or an explosive at school (on or after October 11, 1993 and up to December 31, 1993) (Chapter 1255).

- Providing copies of supporting documents and records, other than the transcript, to an appellant who is less than 18 years of age. (§ 48919, 5th par.)
- Participating in the county board of education's initial hearing on the appeal of an expulsion when the appeal results in a hearing de novo. (§ 48919, 1st & 2d pars.)
- Sending notice, conducting a supplemental hearing, and rendering a modified decision of an expulsion pursuant to a county board of education's remand of an expulsion appeal. (§ 48923, subd. (a) (1).)
- Expunging the pupil's and district's records of an expulsion if so ordered by the county board of education. (§ 48923, subd. (b).)

Finally, the Commission determines that the remaining portions of Education Code sections 48919, 48921, 48922, 48923, and 48924 and that section 48920 do not constitute a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code.