

**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



TIME: 9:30 a.m.  
DATE: Thursday, May 26, 2011  
PLACE: Department of Finance  
915 L Street, Redwood Room  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

PEDRO REYES  
*(Commission Chair)*  
Representative for ANA MATOSANTOS  
Director, State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

KEN ALEX  
Director  
Office of Planning & Research

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

J. STEVEN WORTHLEY  
Supervisor and Chairman of the Board  
County of Tulare



COMMISSION STAFF PRESENT

DREW BOHAN  
Executive Director  
*(Item 18)*

NANCY PATTON  
Assistant Executive Director  
*(Item 16)*

KENNY LOUIE  
Staff Counsel  
*(Items 3, 4, 5, 6, 7 and 8)*

CAMILLE SHELTON  
Chief Legal Counsel  
*(Items 10, 11, 17)*

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Items 3 & 4 (Minimum Conditions for State Aid)**

For Claimants:

KEITH B. PETERSEN  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, California 92117

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Items 5 & 6 (California Public Records Act)**

For County of Riverside:

KEITH B. PETERSEN  
President  
SixTen and Associates

For County of Los Angeles:

LEONARD KAYE  
County of Los Angeles  
Department of Auditor-Controller  
500 West Temple Street, Suite 603  
Los Angeles, California 90012

JUDY GERHARDT (Lieutenant)  
Los Angeles County  
Sheriff's Department

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Items 5 & 6 (California Public Records Act)**

For Department of Finance:

DONNA FEREBEE  
Staff Counsel III  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 7 & 8 (School Bus Safety III)**

For San Diego Unified School District:

ART PALKOWITZ  
Stutz, Artiano, Shinoff & Holtz  
2488 Historic Decatur Road, Suite 200  
San Diego, California 92106

For Department of Finance:

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing Re Item 10 (IRC - Handicapped & Disabled Students):** *continued*

For County of Santa Clara:

GRETA S. HANSEN  
County of Santa Clara  
Office of the County Counsel  
70 W. Heddig St., East Wing, 9<sup>th</sup> Floor  
San Jose, California 95110

JUNIPER DOWNS  
County of Santa Clara  
Office of the County Counsel

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 10 (IRC - Handicapped & Disabled Students):** *continued*

For the Controller's Office:

CHRIS RYAN  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, California 95816

SHAWN SILVA  
State Controller's Office

For California Department of Mental Health:

CHARLES ANDERS  
Department of Mental Health  
Local Program Financial Support  
1600 Ninth Street  
Sacramento, California 95814

WILLIE DEON  
Department of Mental Health  
Local Program Financial Support





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1 BE IT REMEMBERED that on Thursday, May 26,  
2 2011, commencing at the hour of 9:30 a.m., thereof, at  
3 the Department of Finance, 915 L Street, Redwood Room,  
4 Sacramento, California, before me, DANIEL P. FELDHAUS,  
5 CSR #6949, RDR and CRR, the following proceedings were  
6 held:



8 CHAIR REYES: The meeting of the Commission on  
9 State Mandates will come to order.

10 You will note that we do not have microphones;  
11 so, please, everybody speak up.

12 I've had hearings before, and I know that the  
13 folks in the back have the hardest time. So when you  
14 come up to testify, please make sure that your voice  
15 carries so that people can participate. That would be  
16 greatly appreciated.

17 Would you please call the roll?

18 MR. BOHAN: Certainly.

19 Mr. Alex?

20 MEMBER ALEX: Here.

21 MR. BOHAN: Mr. Chivaro?

22 MEMBER CHIVARO: Present.

23 MR. BOHAN: Mr. Glaab?

24 *(No response)*

25 MR. BOHAN: He had a flight problem yesterday,

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1 so he's not going to make it.

2 Mr. Lujano?

3 MEMBER LUJANO: Here.

4 MR. BOHAN: Ms. Olsen?

5 MEMBER OLSEN: Here.

6 MR. BOHAN: Mr. Worthley?

7 MEMBER WORTHLEY: Here.

8 MR. BOHAN: And Chair Reyes?

9 CHAIR REYES: Here.

10 Thank you.

11 Are there any corrections to the March 24<sup>th</sup>

12 minutes?

13 *(No response)*

14 CHAIR REYES: Is there a motion to approve?

15 MEMBER OLSEN: Move it.

16 MEMBER CHIVARO: Second.

17 CHAIR REYES: It's been moved and seconded.

18 Are there any comments from the public?

19 *(No response)*

20 CHAIR REYES: Hearing none, unless I have an  
21 objection, can we do it as unanimous of those present?

22 MR. BOHAN: *(Nodding head.)*

23 CHAIR REYES: Thank you.

24 Consent Calendar. Does anybody wish to remove  
25 anything from the Consent Calendar?

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1                   And the Consent Calendar, Item 9, Items 12, 13,  
2                   and 14.

3                   Do we have a motion?

4                   MEMBER WORTHLEY: Move, Mr. Chairman.

5                   CHAIR REYES: Mr. Worthley moves.

6                   Is there a second?

7                   MEMBER OLSEN: Second.

8                   CHAIR REYES: Mrs. Olsen seconds.

9                   Are there any comments from the public?

10                  *(No response)*

11                  CHAIR REYES: Without objection, we'll make  
12                  that, again, the same roll call on that.

13                  We have appeals.

14                  MR. BOHAN: No appeals, Chairman, under Item 2.

15                  CHAIR REYES: Okay, so moving on to Item 3,  
16                  which is action -- and I'm going to take some liberties  
17                  here. And I will ask that we move to --

18                  MS. SHELTON: Item tab --

19                  CHAIR REYES: Item tab? Item tab 10?

20                  Thank you.

21                  We'll move to Item Tab 10, so we can dispense  
22                  with that item. Mr. Chivaro needs to take a phone call  
23                  shortly, and I want to make sure that he's here for this  
24                  conversation.

25                  Item 10, please.

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1 MR. BOHAN: Mr. Chairman, could we do the  
2 swearing in?

3 CHAIR REYES: Sure.

4 MR. BOHAN: So I will just ask, will the  
5 parties and witnesses for Items 3, 4, 5, 6, 7, 8, 10, and  
6 11, please rise?

7 *(Parties and witnesses stood.)*

8 MR. BOHAN: Thank you.

9 Do you solemnly swear or affirm that the  
10 testimony which you are about to give is true and correct  
11 based on your personal knowledge, information or belief?

12 *(A chorus of "yeses" was heard.)*

13 CHAIR REYES: Ms. Shelton? Tab 10 insert.

14 MS. SHELTON: Item 10 is an incorrect reduction  
15 claim filed by the County of Santa Clara on the  
16 *Handicapped and Disabled Students Program.*

17 The Controller made the reduction on the  
18 reimbursement claims on the ground that outpatient  
19 rehabilitation services to seriously emotionally  
20 disturbed pupils under the program are not reimbursable.  
21 The Controller contends that that service is not required  
22 by the regulations that implement the program, and not  
23 identified as a reimbursable activity in the parameters  
24 and guidelines.

25 The Controller --

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1 CHAIR REYES: Hold on.

2 Can everybody hear that in the back?

3 THE AUDIENCE: No.

4 CHAIR REYES: I didn't think so. I had a lot  
5 of folks going like this (*indicating*), so...

6 So if you would, please.

7 MS. SHELTON: I'll start over.

8 The Controller reduced this claim on the ground  
9 that outpatient rehabilitation services were not  
10 reimbursable under the program, and not identified in  
11 the parameters and guidelines as a reimbursable  
12 state-mandated activity. The Controller also questions  
13 the way the County reported the costs claimed.

14 Staff finds that outpatient rehabilitation  
15 services are included in the definition of mental health  
16 treatment services that are required to be provided to a  
17 student if the service is approved in the student's  
18 individualized education plan.

19 Except for the socialization services provided  
20 by the County that are not reimbursable under the  
21 parameters and guidelines, staff finds that the  
22 Controller incorrectly reduced the County's claims.

23 Will the parties and witnesses please state  
24 your names for the record?

25 MS. HANSEN: Greta Hansen, appearing on behalf

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1 of Santa Clara County.

2 MS. DOWNS: Juniper Downs, appearing on behalf  
3 of Santa Clara County.

4 MR. RYAN: Chris Ryan, State Controller's  
5 Office.

6 MR. SILVA: Shawn Silva, State Controller's  
7 Office.

8 CHAIR REYES: Thank you.

9 MS. HANSEN: Good morning. My name is Greta  
10 Hansen, again; and I am a deputy county counsel for  
11 Santa Clara County here today appearing on behalf of the  
12 Santa Clara County Mental Health Department.

13 Initially, I'm going to summarize what I  
14 believe are the most important issues before the  
15 Commission today, answer any questions you may have, and  
16 then save the balance of my time to respond to any issues  
17 raised by the Controller's office.

18 As you may have noticed, the record in this IRC  
19 is quite large, which is a bit surprising, given that the  
20 issue that the Commission is to decide today is fairly  
21 straightforward. And that issue is: Are plaintiff  
22 mental health rehabilitation services part of the  
23 *Handicapped and Disabled Students* mandate, and did the  
24 Controller's office therefore err in denying the County  
25 reimbursement for those services?



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1           The Commission staff did a very thorough  
2 analysis of all of the issues raised by the Controller's  
3 office, and concluded that, yes, they did disallow  
4 reimbursement in error.

5           Just to provide a little bit of background and  
6 context for the issues that we're talking about here  
7 today, as I'm sure all of you know, the origin of this  
8 mandate is the Individuals with Disabilities and  
9 Education Act, the IDEA, which is a federal mandate that  
10 is applicable to all states receiving federal education  
11 funding, and it requires those states to provide  
12 handicapped and disabled students with all of the special  
13 education and related services they need in order to be  
14 able to receive a free and appropriate public education.

15           The State Legislature, in response to that  
16 mandate, enacted AB 3632, which requires county mental  
17 health departments to provide all of the mental health  
18 services that children are entitled to under the IDEA.  
19 And the Commission thereafter determined that AB 3632  
20 imposes a mandate on counties and, therefore, they're  
21 entitled to reimbursement for provision of these mental  
22 health services.

23           The parameters and guidelines for the program  
24 were thereafter created to set forth the services that  
25 need to be provided in order to comply with the IDEA and

1 AB 3632.

2 So I want to start by saying that there are two  
3 issues that are not in dispute between the County and the  
4 Controller's office this morning.

5 The Controller's office does not dispute the  
6 fact that the services that we're talking about here were  
7 required to be provided by the County under the IDEA and  
8 AB 3632, which was also the conclusion of the Commission  
9 staff.

10 The Controller's office also doesn't contest  
11 the County's expert's assessment, which is that all of  
12 these mental health rehabilitation services were  
13 necessary for the children who received them to function  
14 in an educational environment.

15 The only issue that is in dispute between the  
16 County and the Controller's office is the Controller's  
17 sole justification for the disallowance, which is the  
18 Controller's office's view that these services are not  
19 included in the parameters and guidelines that govern  
20 this program.

21 So I'm going to start by summarizing the  
22 reasons that we believe the Commission staff correctly  
23 rejected the Controller's arguments; and then I'm going  
24 to conclude by addressing the one question that was left  
25 a bit open by the Commission's staff's analysis, which is

1 this question of, did the County provide non-reimbursable  
2 socialization services.

3 So, first, I want to note a key error that, in  
4 our view, pervades all of the Controller's office's  
5 analysis of whether these services are reimbursable. And  
6 that's the fact that the Controller's office -- and they  
7 state this quite straightforwardly, in the papers they've  
8 submitted for the IRC -- they did not look to the IDEA  
9 or to AB 3632 in assessing whether these services are  
10 reimbursable. Instead, they looked only to the  
11 parameters and guidelines to determine what other  
12 services might be reimbursable.

13 And in doing so, they failed to recognize that  
14 the parameters and guidelines are drafted to reflect the  
15 requirements of the IDEA and AB 3632 and its implementing  
16 regulations; and they must be interpreted in light of  
17 those requirements. Any interpretation of the parameters  
18 and guidelines that would render the guidelines  
19 inconsistent with the IDEA, AB 3632, and the regulations  
20 that implement AB 3632, render the parameters and  
21 guidelines invalid.

22 And the Controller's office in this case is  
23 advancing just that sort of an interpretation of the  
24 parameters and guidelines.

25 So the Controller's office makes two primary

1 arguments in support of its view that these services are  
2 not included in the parameters and guidelines.

3 First, they point to a footnote from the  
4 Commission's 2005 test-claim decision; and they argue  
5 that that footnote stands for the proposition that  
6 rehabilitation services are non-reimbursable.

7 The Commission staff correctly rejected this  
8 argument, concluding that this footnote is wholly  
9 irrelevant to this question. Instead, the footnote  
10 simply states that the Commission does not believe the  
11 Medi-Cal definition of "rehabilitation services" is the  
12 definition of "rehabilitation services" that should be  
13 used in the AB 3632 context.

14 The second argument advanced by the Controller,  
15 is that the way that the County classifies these services  
16 for Medi-Cal billing purposes means that they're not  
17 reimbursable under the AB 3632 program.

18 And I'd submit that that argument is a bit of  
19 a red herring. It adds a lot of unnecessary complexity  
20 to the issues that the Commission has to decide.

21 As I mentioned, the Commission specifically  
22 rejected use of the Medi-Cal definition of  
23 "rehabilitation" in its 2005 test-claim decision. And as  
24 the Commission staff noted, the evidence in the record  
25 demonstrates that the services we're talking about here

1 fall within the broad definition of "day rehabilitation,"  
2 which is included in the parameters and guidelines, which  
3 is in the implementing regulations for AB 3632.

4 The only relevance of these Medi-Cal billing  
5 codes, is the fact that the County uses the Medi-Cal  
6 cost-report method for submitting its SB 90 claims. So  
7 there are portions of our Medi-Cal cost reports that are  
8 included in the claiming materials. But that doesn't  
9 change the fact that these Medi-Cal codes are wholly  
10 irrelevant to whether a service is reimbursable under the  
11 AB 3632 program.

12 There are two categories of rehabilitation in  
13 the Medi-Cal context, only one in the AB 3632 context.  
14 And, again, as the Commission has already decided, that  
15 definition from the Medi-Cal system just simply does not  
16 apply in the AB 3632 context.

17 I want to just touch briefly on this question  
18 of whether there should have been an offset in the  
19 County's claims for the funds the County received from  
20 the state wraparound program. As the Commission staff  
21 concluded, the Commission doesn't have jurisdiction to  
22 look at this question because it wasn't a basis for the  
23 Controller's office's audit, and the time to audit the  
24 County on that question has now run.

25 Furthermore, if the Controller's office had

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1 audited us on that basis, they would have found that  
2 wraparound services and mental health rehabilitation  
3 services are distinct services. One is a mental health  
4 service, one is a non-mental health service -- and that  
5 the funding streams and the way that those monies is run  
6 in the County are totally separate and distinct.

7 CHAIR REYES: Just if I may interrupt you for a  
8 second --

9 MS. HANSEN: Sure.

10 CHAIR REYES: -- just to clear this Board  
11 member's mind.

12 So you're telling me you were not double  
13 dipping?

14 MS. HANSEN: No.

15 CHAIR REYES: Okay, proceed.

16 MS. HANSEN: Thank you.

17 The last question I want to touch upon is this  
18 question of socialization services. And at the outset,  
19 I want to note that we agree with the Commission staff  
20 that the Commission has declared socialization services  
21 non-reimbursable; and the County has not sought  
22 reimbursement for any services we believe fall under that  
23 category.

24 Staff identified a bit of a conundrum with  
25 respect to this question of socialization services. They

1 concluded that Dr. Rea, the County's expert's analysis  
2 was correct, that there was a component of the services  
3 provided that benefited children's social skills, and  
4 specifically allowed them to develop socially appropriate  
5 behaviors for a classroom environment.

6 And this makes sense, the children that are  
7 receiving these services are severely emotionally  
8 disturbed children. They are children who, in response  
9 to frustration they might experience in a classroom, have  
10 a tendency to act out violently or to behave in other  
11 socially inappropriate ways for a school environment.  
12 So providing them with mental health services that allow  
13 them to behave in a socially appropriate manner in a  
14 classroom setting is absolutely necessary for them to  
15 function in school.

16 And as a result, those services, as the  
17 Commission staff found and as the County believes, are  
18 required to be provided under the IDEA and AB 3632.  
19 However, staff concluded that the Commission is bound by  
20 its prior decision that socialization services are  
21 non-reimbursable services. And, therefore, the portion  
22 of the County's mental health rehab services that were  
23 geared towards developing children's social skills are  
24 non-reimbursable.

25 And this creates a conundrum, as I said,

1 because the County is required to provide these services  
2 under the IDEA and AB 3632, and yet there's this decision  
3 from the Commission that seems to not allow for  
4 reimbursement for those services.

5 But I would submit that there is a way to  
6 interpret the Commission's decision on socialization  
7 services that they're non-reimbursable, that allows it be  
8 to harmonized at the requirements of the IDEA and  
9 AB 3632. And that's that the exclusion of socialization  
10 services should be construed to be an exclusion of  
11 reimbursement for services that solely benefit a child's  
12 socialization skills in a general way.

13 Where you have narrowly tailored rehabilitation  
14 services designed to specifically allow a child to  
15 function in a school environment in socially appropriate  
16 ways, those narrow specific, educationally driven  
17 services that are part of a child's IEP are, in fact,  
18 reimbursable and are not part of this general  
19 socialization services bubble.

20 If the Commission, instead, decides to adopt  
21 the proposed decision from staff "as is" on this issue on  
22 this socialization problem, I think that there will be  
23 two problems that will result.

24 One is a legal problem, which is then the  
25 County's in a position of not being reimbursed for these



1 services, which, as you know, if they're mandated by  
2 AB 3632, creates problems with the County's  
3 constitutional right to be reimbursed for state-mandated  
4 services. Or if the County declines to provide the  
5 services, given that it's not going to be reimbursed,  
6 then the State comes out of compliance with the federal  
7 IDEA requirements, which creates a whole host of  
8 problems -- or could.

9           And then there's the practical problem, which  
10 is that the progress notes that describe the nature of  
11 the services that were provided are in narrative form.  
12 You'll see a narrative that describes a three-and-a-half  
13 hour meeting between a counselor and a child. And  
14 Dr. Rea used her expertise in the field of psychology to  
15 identify what interventions to her looked like social  
16 skills development for an educational setting. The  
17 Controller's staff doesn't have that sort of expertise,  
18 nor could they identify what portion of the three and a  
19 half hours were spent on developing these educationally  
20 necessary social skills. So practically, it would be  
21 nearly impossible to audit on that basis.

22           So in sum, we believe that the Commission staff  
23 has correctly analyzed the arguments made by the  
24 Controller and rejected each of them, rejected the  
25 argument that the footnote has any bearing on the

1 reimbursable nature of these services, rejected the  
2 notion that the Medi-Cal billing codes have anything to  
3 do with the reimbursable nature of these services, and  
4 correctly concluded that mental health rehabilitation  
5 services fall under this mental health services category  
6 that's mandated and reimbursable.

7 The only request that we make is that the  
8 Commission direct staff to change its analysis of the  
9 socialization-services question to construe its earlier  
10 decision to exclude reimbursement to harmonize it with  
11 the IDEA and AB 3632.

12 CHAIR REYES: Okay, thank you.

13 Is there something you'd like to add to that,  
14 or --

15 MS. DOWNS: No.

16 CHAIR REYES: Okay. Controller's staff,  
17 please?

18 MR. SILVA: Shawn Silva with the Controller's  
19 office.

20 A couple issues up-front that I wanted to  
21 address, and that is the fact that they assert that we  
22 don't dispute that the services provided were appropriate  
23 and necessary for the students or that they might not  
24 fall within the IDEA Act. We don't assert that or  
25 dispute it because that's not within our purview.

1           When the Controller's office goes in to audit  
2           an agency, we look at parameters and guidelines. Those  
3           are our instructions on how to review the documentation  
4           and the claims submitted by the individual claimants.  
5           So to the extent that that's all we're looking at, we  
6           aren't in a position to even address or dispute those  
7           assertions.

8           And then as far as looking at the IDEA Act and  
9           the state statutes that effectuate that, in interpreting  
10          the P's & G's, I think the problem is, they are  
11          attempting to use it not simply to interpret, but to  
12          expand.

13          The reimbursement process is limited to  
14          statutes and regulations that are brought in front of  
15          the Commission, through the test-claim process, through  
16          the parameter-and-guideline process; and those are the  
17          activities that are reimbursable.

18          The remedy for a claimant, such as the County,  
19          is to seek an amendment to the parameters and guidelines,  
20          not to claim an activity that they believe is covered by  
21          the statute but not the parameters and guidelines, and  
22          then fall back on an IRC. These things should be  
23          addressed up-front in the parameters-and-guidelines  
24          process.

25          Having said that, I think our biggest concern,

1 especially from a legal perspective is, the Commission  
2 staff's assertion that they do not have jurisdiction to  
3 determine offsetting revenues.

4 If not the Commission, then who? The sole  
5 authority over mandates is given to the Commission. And  
6 the Commission's own parameters and guidelines require  
7 that any offsetting reimbursements or revenues that the  
8 County receives, be claimed and deducted from the claim.  
9 And it's clear when you look at the statutes governing  
10 the Commission, that you have the powers to do just that.

11 Not to be too legalistic, but under  
12 section 17527, the Commission has the power to examine  
13 any document, report, or data held by any local agency or  
14 school district. And they also, under that section, have  
15 the power to issue subpoenas to compel attendance of  
16 witnesses and the production of documents.

17 And I see no citation to statute or regulation  
18 from staff that points to the Commission not having the  
19 authority to review the issues presented to it.

20 And the Commission's hearings are not simply  
21 kind of a dry appellate-level, appellate-court type of  
22 review, where you have to look at just what's presented  
23 to you.

24 Clearly, from the powers given to pull in  
25 documents, to subpoena witnesses, and to look at any

1 documents that you feel are appropriate, you have a much  
2 broader authority than an appellate court might.

3 And, you know, we could see, as mentioned, the  
4 voluminous documents submitted, that far more documents  
5 than were in front of the auditors have come in front of  
6 the Commission now.

7 So all we are seeking is that some additional  
8 documents which go to the issue of the wraparound funds  
9 be brought forth before the Commission and considered.

10 And one other issue is that the staff's  
11 analysis cites that there's a lack of notice. However,  
12 they get to a very hypertechnical interpretation, and say  
13 that we didn't specifically say that the reduction was  
14 based on the lack of wraparound funds.

15 However, if you looked at the finding --  
16 specifically, Finding 3 in the audit -- the County was  
17 clearly on notice that the failure to include those funds  
18 was an issue.

19 In fact, on Finding 3 -- specifically, in one  
20 paragraph therein, it says, "As regard to rehabilitation  
21 and other services provided relative to the wraparound  
22 program, we reiterate that the County should identify  
23 all relevant revenues associated with the services  
24 provided to mandated clients. These revenues include  
25 wraparound program funds provided by the California

1 Department of Social Services.”

2 And when the auditors requested those  
3 documents, they were denied the documents.

4 Now, the County can assert now that, well, they  
5 were for different activities or services, but the whole  
6 purpose of audits is to look at the documents and see if  
7 that’s correct. And if that was an accurate assertion,  
8 the auditors would look at that and could come into  
9 agreement on that. If not, then, of course, that could  
10 be brought to the Commission as well.

11 At this point, the staff’s analysis precludes  
12 any review of whether that is, in fact, an accurate  
13 representation by the County.

14 And this requirement for these magic words,  
15 that they have to say something specific in the finding,  
16 is elevating essentially form over substance. The  
17 judicial system has gone away from what they used to call  
18 “code pleading,” or very specific language, in order to  
19 be on notice that you’re alleged to have done something  
20 or not done something which was required by law. And we  
21 seem to be going back to that, where they’re looking for  
22 a specific term or word in the finding rather than  
23 looking at the issue of notice.

24 Now, in the courts, notice is simply whether  
25 a reasonable person, looking at the document -- the

1 complaint, whatever -- the audit, as the case may be --  
2 is on notice that they're alleged to have done something  
3 or not done something that they should have done.

4 And clearly, from what I pointed out in  
5 Finding 3, that the wraparound funds are identified in  
6 the requirement to the claimant as identified.

7 And finally, in that conclusion, the staff's  
8 analysis, it reaches the conclusion that they don't have  
9 jurisdiction, they state that we cannot reopen the audit.  
10 However, the Controller's office never asked nor sought  
11 to reopen the audit. We're simply asking that the  
12 Commission use the authority that they already have to  
13 look at all the documents related to the issues presented  
14 to them in this claim, this IRC.

15 And then that also creates an odd juxtaposition  
16 with the staff's request that the Commission remand the  
17 issue of socialization and vocational training back to  
18 the Controller's office to determine what portion claimed  
19 was not reimbursable and what portion of the other stuff  
20 that they have concluded is reimbursable is in these  
21 claims and to separate them out.

22 The only problem is, about the only way to do  
23 that is to get additional documentation. And wouldn't  
24 that essentially be reopening the audit?

25 As I said, we're not looking to reopen the

1 audit, but simply to have the Commission utilize its  
2 powers to review the documents that are appropriate to  
3 the question of the wraparound funds.

4 CHAIR REYES: Okay, would staff like to respond  
5 to any of the comments made that Santa Clara thinks that  
6 you did a very good job on the analysis; however, the  
7 recommendations that you're proposing either will not  
8 provide reimbursement, will cause the County to decline,  
9 and is not practical?

10 The Controller is saying you did a good job;  
11 however, the recommendation that we remand it back to the  
12 Controller's office doesn't make any sense, since they're  
13 not requesting a new audit; and by asking them to go  
14 back, you're essentially asking for a new audit.

15 Would staff like to comment on those?

16 MS. SHELTON: Yes. Let me just respond to  
17 Mr. Silva's comments first, since those were the last  
18 comments made.

19 The Controller's office is the body that does  
20 the audit on the reimbursement claims, under the  
21 Government Code statutes. The Commission is not. The  
22 Commission is set up as the reviewing body on the  
23 reductions made during an audit process.

24 The reason why the Commission does not have  
25 jurisdiction to address the wraparound issue is because



1 in the audit report, the Controller states that they did  
2 not pursue the issue because they denied the costs on the  
3 ground that outpatient rehabilitation services were not  
4 a reimbursable activity.

5 So it was not denied on the ground that there  
6 were offsetting issues.

7 If they had written their final audit report  
8 to say, these reductions are made on the following  
9 independent grounds: One, not a reimbursable activity;  
10 two, that they failed to identify offsetting revenue;  
11 then we would have jurisdiction to ask for any  
12 documentation to look at that, and to remand it back.  
13 That's not the case here.

14 There is a Government Code statute, 17558.5,  
15 that does require that the audit be completed within two  
16 years after it has started. And that time has been  
17 exhausted. We don't have time to open it up to look at  
18 that. So that's the reason.

19 With respect to the statute that Mr. Silva  
20 mentioned on 17527, that does give the authority to the  
21 Commission and to the Executive Director to hire auditors  
22 and a whole slew of other experts to help the Commission  
23 in their duties.

24 And we have used that before when we have been  
25 doing incorrect reduction claims for the investment

1 reports. Actually, that person was hired to do the  
2 parameters and guidelines amendment.

3 So the Commission has hired those persons in  
4 the past. But we don't have jurisdiction to reanalyze or  
5 analyze an issue that was not asserted as a ground for a  
6 reduction, and that's the reason for that issue.

7 With respect to the socialization services, the  
8 County is arguing that they have to provide socialization  
9 services as required by federal law and under the AB 3632  
10 program.

11 In the Statement of Decision and parameters  
12 and guidelines for *Handicapped and Disabled II*, the  
13 Commission had to analyze 1998 regulations that  
14 implemented the program. And those regulations deleted  
15 socialization services from the services required to be  
16 provided. And the finding was made by the Commission  
17 that they were no longer mandated just based on the plain  
18 language. So they're not in the parameters and  
19 guidelines because the Department of Mental Health took  
20 them out of their regulations.

21 Whether or not that's correct or not -- it may  
22 not be correct -- nobody litigated that, and the statute  
23 of limitations to litigate that issue is over.

24 I don't have jurisdiction to suggest that that  
25 finding be changed now, and the Commission and the

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1 parties are stuck with that finding.

2 So what they have to do under the federal law  
3 and under the program is one thing, and what they get  
4 reimbursed for is something different.

5 CHAIR REYES: Okay, I have a couple other folks  
6 from Mental Health.

7 Do they want to step up and say something or  
8 hold back for questions?

9 Yes, please?

10 MR. ANDERS: Well, I just want to introduce  
11 myself. I'm Chuck Anders, Chief of Local Program  
12 Financial Support. And I'm here to answer any questions  
13 regarding our cost report and the units of service  
14 reported in there.

15 CHAIR REYES: Thank you.

16 MR. DEON: And I'm Willie Deon from the  
17 Department of Mental Health. I've been involved with the  
18 County program, technical assistance program, dealing  
19 with AB 3632. So I'm here to hopefully offer any  
20 input regarding program services.

21 CHAIR REYES: Thank you.

22 I'll turn it over for the Board members.

23 Any questions from Board members?

24 *(No response)*

25 CHAIR REYES: No questions.

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1 Is there a motion?

2 MEMBER OLSEN: I'll move adoption of the staff  
3 recommendation.

4 CHAIR REYES: The staff recommendation, which  
5 is to adopt the analysis and approve the incorrect  
6 reduction, and then also to send certain items back to  
7 the Controller's for audit.

8 Is there a second?

9 MEMBER WORTHLEY: Second.

10 CHAIR REYES: It's been moved and seconded.  
11 Okay, do we need to take roll call on this,  
12 or --

13 MR. BOHAN: Yes.

14 Mr. Alex?

15 MEMBER ALEX: Yes.

16 MR. BOHAN: Mr. Chivaro?

17 MEMBER CHIVARO: No.

18 MR. BOHAN: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MR. BOHAN: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MR. BOHAN: Mr. Worthley?

23 MEMBER WORTHLEY: Yes.

24 MR. BOHAN: And Mr. Reyes?

25 CHAIR REYES: Aye.

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1 Thank you.

2 Okay, we'll come back to the first action item.

3 MR. BOHAN: Mr. Chairman, we just need to do  
4 Item 11 first because it's the same decision that  
5 supports this.

6 CHAIR REYES: I'm sorry, yes. Thank you.

7 Item 11.

8 MS. SHELTON: Item 11 is just a Statement of  
9 Decision. And it just adopts what you just adopted here.

10 MEMBER OLSEN: Move adoption.

11 CHAIR REYES: It's been moved.

12 Is there a second?

13 MEMBER WORTHLEY: Second.

14 CHAIR REYES: Mr. Worthley seconds.

15 Can we assume the same roll call or,  
16 Mr. Chivaro, would you like to add to that one or stay  
17 off as well?

18 MEMBER CHIVARO: Stay off as well.

19 CHAIR REYES: Okay, the same roll call as  
20 before.

21 MR. BOHAN: Shall I read it, or we'll just take  
22 it as the same?

23 CHAIR REYES: Take it the same.

24 MR. BOHAN: Both motions carry.

25 CHAIR REYES: Thank you.

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Item 3.

MR. BOHAN: Mr. Chairman, Mr. Louie is with us today -- Kenny Louie, across from me -- and he'll be presenting this item, *Minimum Conditions for State Aid*. We're switching witnesses at our table.

But Kenny will be presenting.

CHAIR REYES: Okay, thank you.

Okay, we have Finance.

Anybody else up at the table?

MS. GEANACOU: Claimant's representative stepped out. Mr. Petersen, I think he's here on this one. I'm not sure.

CHAIR REYES: Well, go ahead, Mr. Louie.

MR. LOUIE: Item 3 is *Minimum Conditions for State Aid* test claim.

CHAIR REYES: Yes.

MR. LOUIE: This test claim addresses activities -- very core activities of community college districts as the establishing standards for grading and curriculum and building new colleges, things of that nature.

We've approved some activities; however, we've denied many activities also.

The major issues in dispute is actually one of the same issues that we discussed last year in regards to

1     *Discrimination Complaints Procedures*, the larger item  
2     that we dealt with. The issue is whether or not the  
3     minimum condition regulations, the satisfaction of which  
4     entitles a community college district to state aid,  
5     whether or not those regulations impose state-mandated  
6     activities. We found that they do not.

7             So staff recommends the test claim be partially  
8     approved for the activities listed on pages 157 through  
9     170 of the analysis.

10            And will the parties and witnesses state their  
11     names for the record, please?

12            MR. PETERSEN: Keith Petersen, representing the  
13     test claimants.

14            MS. GEANACOU: Susan Geanacou for the  
15     Department of Finance.

16            MR. PETERSEN: Good morning. I'm sorry about  
17     my tardiness. It's the second time in 17 years.

18            CHAIR REYES: Actually, you were here earlier.  
19     You just stepped out for a minute. I saw you when you  
20     arrived earlier.

21            If you could please speak up because the people  
22     in the back are having difficulty hearing due to lack of  
23     microphones.

24            MR. PETERSEN: Do you want to hear this?

25            MR. BURDICK: Speak up.

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1 MR. PETERSEN: Okay, this test claim has three  
2 threshold legal issues:

3 The first being the coercive effect of  
4 section 51000, Title 5; the second being the application  
5 of the *Kern* case; and the third being the measurement  
6 date for new activities or higher levels of service.

7 Regarding the first threshold legal issue, the  
8 coercive effect, that was decided in the context of the  
9 *Discrimination Complaints Procedure* test claim decided  
10 two months ago at the previous hearing.

11 The second coercive issue, the second issue is  
12 the *Kern* case. It's been applied consistently by staff  
13 from our viewpoint -- not correctly but consistently --  
14 for several years.

15 And the third issue of the measurement date,  
16 our position is Government Code section 17514 says the  
17 measurement date is 1975. The Commission staff has been  
18 citing the *San Diego* case for several years for the  
19 proposition that the measurement point of what's new  
20 or increased is the statute immediately preceding the  
21 statute pled in the test claim.

22 Unless four of you have changed your mind -- at  
23 least four of you changed your mind on any of those three  
24 threshold issues, I haven't got anything new to add to  
25 that today.



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1           So we can proceed to the next step, which is me  
2 standing by to respond to any questions you might have.

3           CHAIR REYES: Okay, thank you.

4           Finance?

5           MS. GEANACOU: Thank you.

6           Susan Geanacou, Department of Finance. Good  
7 morning.

8           We've reviewed this very long analysis. Thank  
9 you for your thoroughness.

10           We may have some concerns with small issues in  
11 it; but we don't have any additional comments to add at  
12 the hearing, either.

13           We will stand by to answer any questions as  
14 well.

15           CHAIR REYES: Okay, any questions from Board  
16 members?

17           *(No response)*

18           CHAIR REYES: Any comments from the public?

19           *(No response)*

20           CHAIR REYES: Anybody else?

21           *(No response)*

22           CHAIR REYES: Okay, is there a motion?

23           MEMBER CHIVARO: I'll move staff  
24 recommendation.

25           MEMBER OLSEN: I'll second.

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1 CHAIR REYES: It's been moved and seconded.  
2 Take the roll call, please.  
3 MR. BOHAN: Mr. Alex?  
4 MEMBER ALEX: Yes.  
5 MR. BOHAN: Mr. Chivaro?  
6 MEMBER CHIVARO: Yes.  
7 MR. BOHAN: Mr. Lujano?  
8 MEMBER LUJANO: Aye.  
9 MR. BOHAN: Ms. Olsen?  
10 MEMBER OLSEN: Aye.  
11 MR. BOHAN: Mr. Worthley?  
12 MEMBER WORTHLEY: Aye.  
13 MR. BOHAN: And finally, Chair Reyes?  
14 CHAIR REYES: Aye.  
15 MR. BOHAN: The motion carries, 6-0.  
16 CHAIR REYES: And without objection, can we  
17 take the same roll call on Item 4?  
18 Thank you. Item 4, that shall be the order.  
19 Moving on to Item 5.  
20 MR. LOUIE: Item 5 is the *California Public*  
21 *Records Act* test claim. This addresses various  
22 activities associated with providing public access to  
23 public records.  
24 MR. PETERSEN: Actually, we're on the decision;  
25 aren't we?

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1 MEMBER ALEX: He just zipped through it.

2 MEMBER OLSEN: We just substituted the roll  
3 call.

4 MR. PETERSEN: I'm sorry, my fault. I  
5 apologize.

6 It's this room, lack of oxygen.

7 Thank you very much. Sorry.

8 I'm on the next one, too.

9 MR. LOUIE: Okay, so once again, Item 5 is the  
10 *California Public Records Act* test claim.

11 This test claim addresses various activities  
12 associated with providing public access to public  
13 information, activities such as providing electronic  
14 copies or assisting individuals in searching for specific  
15 information.

16 We have approved some of the activities and  
17 denied some of the activities.

18 So I guess the only real major issue in  
19 dispute other than individual findings of denial for  
20 reimbursement, Finance argues that the test-claim  
21 statutes are necessary to implement a ballot measure;  
22 and as a result, reimbursement should be denied.

23 Will the parties and witnesses state their  
24 names for the record?

25 MR. PETERSEN: Keith Petersen, representing

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1 Riverside Unified School District, the test claimant.

2 MS. FEREBEE: Donna Ferebee, Department of  
3 Finance.

4 LT. GERHARDT: Judy Gerhardt, Los Angeles  
5 County Sheriff's Department.

6 MR. KAYE: Leonard Kaye, Los Angeles County.

7 CHAIR REYES: Thank you.

8 MR. BOHAN: Chairman, before we begin,  
9 Mr. Petersen has indicated to us that he wasn't sworn in.  
10 He had stepped out of the room. So if you will, I'll  
11 just swear him quickly.

12 CHAIR REYES: Please.

13 MR. BOHAN: Mr. Petersen, do you solemnly swear  
14 or affirm that the testimony which you are about to give  
15 is true and correct based on your personal knowledge,  
16 information or belief?

17 MR. PETERSEN: Yes, I do.

18 MR. BOHAN: Thank you.

19 CHAIR REYES: Okay, thank you.

20 The floor is yours, sir.

21 MR. PETERSEN: I'm going to defer to Mr. Kaye.

22 CHAIR REYES: Okay.

23 MR. KAYE: Thank you.

24 Good morning. It's good to see you all this  
25 morning.

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1           We agree with Commission staff analysis. And  
2 we do have one small exception, and that is regarding  
3 legal services. And we feel that, in plain language,  
4 without legal services, you only have the tip of the  
5 iceberg.

6           And as we speak, throughout California,  
7 hundreds, if not thousands, of attorneys are involved in  
8 drafting various determinations denying Public Records  
9 Act requests. We feel this is a reasonable and necessary  
10 component, and should be reimbursable under the terms  
11 and the conditions of the parameters and guidelines.  
12 However, we recognize that this hearing this morning  
13 deals merely with the Statement of Decision and the  
14 reimbursable activities as defined by Commission staff.  
15 However, many times, it's been my experience over the  
16 years, that sometimes if things are not included formally  
17 in the Statement of Decision, they may be forgotten  
18 during the parameters and guidelines phase.

19           So, therefore, we merely ask that right after  
20 Item 7 -- and Item 7 has to do with providing a written  
21 response to a request for a Public Records Act which has  
22 been denied. And that written response also has to  
23 include a determination.

24           Now, we toyed with the idea of adjusting that  
25 language to include a legal determination of whether or

1 not to make other things. But I think at this point,  
2 because we've waited nine years for this decision, we  
3 certainly don't want to delay or defer it, so that we can  
4 go back and do a lot of further analysis.

5 We think a lot of factual analysis will be  
6 required to develop appropriate parameters and  
7 guidelines.

8 So, therefore, we recommend that a simple  
9 sentence after the last item, 7, to the effect of the  
10 scope of legal services reasonably necessary in drafting  
11 written responses and determinations when a Public  
12 Records Act request is denied can be addressed in the  
13 parameters and guidelines phase. So that would put  
14 everyone on notice, so to speak, that these requirements  
15 could be not fully disclosing the extent of the  
16 reimbursable activities to follow in the parameters and  
17 guidelines. So I thank you for that.

18 CHAIR REYES: Before I go to Finance, does  
19 anybody -- Mr. Louie, do you have off-the-cuff comments  
20 or thoughts on this?

21 MR. LOUIE: It can be handled in the P's & G's  
22 stage, to the extent that, I guess, to repeat the  
23 sentence that you were looking for, is that the scope of  
24 legal services that are reasonably necessary for the  
25 denial are not precluded or are included in the activity?

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1 MR. KAYE: Well, they'll be addressed.

2 MR. LOUIE: Addressed in the P's & G's stage?

3 MR. KAYE: Addressed in the P's & G's stage.

4 We recognize that at this moment, I think it would take a  
5 lot of discussion, a lot of understanding, a lot of  
6 fact-gathering to determine the exact scope of legal  
7 services.

8 I have been talking to --

9 CHAIR REYES: So you're asking that we defer to  
10 that and take care of that at the P's & G's -- work it  
11 out in the P's & G's?

12 MR. KAYE: Right. But we recognize that it is  
13 coming; that the Statement of Decision that is before  
14 you today doesn't include any sort of understanding or  
15 disclosure that this very large area of discussion is  
16 coming for resolution in the P's & G's phase.

17 All we ask for is a simple sentence indicating  
18 that.

19 CHAIR REYES: Okay --

20 MEMBER WORTHLEY: Mr. Chairman?

21 CHAIR REYES: Yes -- Ms. Shelton?

22 MS. SHELTON: I need to get a clarification  
23 because there is a finding in this decision that says  
24 that these statutes don't create a new mandated duty to  
25 litigate. And so if you adopt this analysis --

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1 CHAIR REYES: It opens it up?

2 MS. SHELTON: No, that's the finding. There is  
3 no state-mandated duty to litigate.

4 Okay, I'm not sure what Mr. Kaye is suggesting.  
5 If he is suggesting legal services is part of making the  
6 determination whether or not a document can be  
7 disclosed --

8 MR. KAYE: Yes.

9 MS. SHELTON: -- that's a different issue, and  
10 that is an issue for parameters and guidelines.

11 MR. KAYE: Yes.

12 MS. SHELTON: But the litigation of the  
13 decision is denied under this analysis.

14 MR. LOUIE: Right. And that's been noted in  
15 the footnote of the analysis.

16 CHAIR REYES: Right.

17 MR. KAYE: Okay. And all I'm saying is, I  
18 didn't use the term litigation, court costs, attorney's  
19 services, or anything like that.

20 I recognize and respect the Commission's  
21 analysis. We don't necessarily agree with it, but we  
22 understand it. And we think it would take quite a bit of  
23 argument and analysis and so forth to go ahead and  
24 challenge that part.

25 But what we are very, very aware of is that --



1 and Lieutenant Gerhardt can testify to this -- that we,  
2 as well as hundreds, if not thousands of public agencies  
3 throughout California are confronted with trying to make  
4 legally cognizable determinations in our written denials.  
5 And many times, it's actually written into the  
6 requirements before sometimes determinations can be made  
7 and the written justification that we must consult with  
8 our County counsel and so forth.

9 And these activities are reasonably  
10 necessary -- in many cases, absolutely required in order  
11 to do that. As a matter of fact, it's inconceivable that  
12 we couldn't do that. So that's all I'm asking.

13 I'm not saying it's part of this or that and so  
14 forth. I'm leaving in a tiny crack so that we can  
15 define -- you know, get our arms around this and say what  
16 it is in the parameters and guidelines phase.

17 MS. SHELTON: And those issues to determine --  
18 you know, the verb here "to determine whether or not a  
19 document can be made public" can be reserved for the  
20 P's & G's stage. You can make that decision later.

21 MR. LOUIE: Okay, I don't think it's necessary  
22 to add a sentence to keep that open.

23 CHAIR REYES: Because the notes will  
24 memorialize the fact that this was part of the  
25 conversation for the P's & G's?

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1 MS. SHELTON: Right. And I would urge you not  
2 to make a ruling on that, because your issue today is  
3 whether, as a matter of law, these are state-mandated  
4 duties.

5 CHAIR REYES: Yes, parameters...

6 MS. SHELTON: You don't have at this point  
7 jurisdiction until you adopt a Statement of Decision to  
8 determine whether something is reasonably necessary.

9 CHAIR REYES: Okay, so, point taken.

10 Lieutenant, did you want to add something?

11 LT. GERHARDT: Thank you for having me.

12 I'll just add that I'm the fortunate one of  
13 20,000 members in our department that oversees the Public  
14 Records Act desk.

15 CHAIR REYES: My sympathies.

16 LT. GERHARDT: Thank you. I need that from  
17 somebody.

18 Particularly in the Sheriff's Department in  
19 LA County, obviously, it's a huge endeavor when somebody  
20 asks for a record from us because we are so large. And  
21 so searching for those records, the type of records being  
22 requested from our agency are usually very complex.

23 Because of the nature of our business, we have  
24 to go through them with a fine-toothed comb for  
25 redaction, both from the personnel side and the security

1 side. So it is a burdensome, complex process that we try  
2 very hard to make sure it's accurate.

3 CHAIR REYES: Thank you.

4 Mr. Petersen, you had raised your hand earlier,  
5 and then waved it off. I'm not sure where you are.

6 MR. PETERSEN: I didn't mean to wave it off.  
7 I'm sorry.

8 Mr. Kaye said he wanted to open a small crack  
9 here to embrace the concept of reasonable necessary  
10 activities. I'd like to wedge that open a little bit  
11 further.

12 Regarding section 6259, the legal costs, I  
13 think the staff analysis is framed inappropriately.  
14 It says that one of the bases for the decision is that  
15 districts are not required to engage in litigation.  
16 That's not how this works. The staff analysis finds that  
17 providing the written justification is necessary as a  
18 matter of law and reimbursable.

19 The written justification requires the analysis  
20 of the records being requested, and that analysis is run  
21 against a list of records you cannot disclose to the  
22 public. In other words, the public agency has a duty to  
23 make sure certain things are not released, especially  
24 regarding peace officers and that sort of thing.

25 If the person requesting those records is

1 dissatisfied, they can file a petition in court.

2 The public agency does not engage in  
3 litigation. A public agency cannot file a petition to  
4 rule itself out of order in replying to the petition.  
5 The standing is for the person requesting the records to  
6 file a petition. The District -- excuse me, the local  
7 agency has no standing to engage, start, commence any  
8 litigation on this issue.

9 It's up to the requesting party. Therefore,  
10 it's out of the hands of the local agency.

11 Once the requesting party files a petition, the  
12 public agency has a duty to defend itself. And that  
13 would seem to be obviously reasonable and necessary. And  
14 I want to make sure that that carries over to the  
15 parameters-and-guidelines discussion, notwithstanding the  
16 staff's analysis.

17 CHAIR REYES: The staff's analysis is contrary  
18 to that.

19 Mr. Louie --

20 MR. LOUIE: That would preclude that activity.  
21 In terms of engaging in litigation, the staff analysis  
22 would preclude that.

23 CHAIR REYES: Whether you are doing the  
24 litigant, the defense or the plaintiff, right?

25 MR. PETERSEN: What does "engaging" mean?

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1 MR. LOUIE: Yes.

2 MR. BOHAN: True, true. And it couldn't be  
3 fixed in the P's & G's.

4 MR. LOUIE: It's not something that can be  
5 addressed in the P's and G's.

6 CHAIR REYES: Right.

7 MR. BOHAN: If you adopt the staff analysis,  
8 that's precluded, clearly.

9 MR. PETERSEN: I guess that leaves us,  
10 Mr. Chair, with the concept of what does "engaging" mean.

11 Any defending? Responding? Anything?

12 CHAIR REYES: Staff?

13 MR. LOUIE: It's essentially based off of, if  
14 litigation is brought pursuant to 6258, which was -- I  
15 don't believe it was pled -- or 6259.

16 And the duties that the court has to engage in  
17 based on 6259, any response from that would be  
18 "engaging." Based off the language of 6259, there's no  
19 duty to engage in litigation.

20 MR. PETERSEN: I still don't understand what  
21 that means, Mr. Chair.

22 MR. LOUIE: There's no duty to participate.  
23 There's no -- I guess the activity that you are asking  
24 for is not found in 6259.

25 MR. PETERSEN: There is no duty to respond to

1 a lawsuit in the California courts?

2 MR. LOUIE: Not from 6259. Not from the  
3 statutes that have been pled in the test claim.

4 MR. PETERSEN: I understand that.

5 Thank you.

6 CHAIR REYES: Finance?

7 MS. FEREBEE: Well, I would also -- I guess I  
8 would like to be clear on exactly what the proposal was.  
9 I think I'm a little bit confused.

10 Is it the portion of the analysis that begins  
11 on page 27, "court costs and attorney fees"?

12 The other thing that I would like to observe  
13 is -- first of all, I think we agree with the staff  
14 analysis as to this point. We thought it was well  
15 analyzed, and should be -- if the Commission is so  
16 inclined to adopt this proposed decision as it is, we  
17 think that should be included.

18 But I also wanted to ask, there is a portion in  
19 the middle of page 29 that notes that litigation has been  
20 present, duties to litigate have been present since the  
21 original enactment of the CPRA in 1968, and would have  
22 been present since 1968.

23 And I'm not sure, in light of that, how...

24 MR. PETERSEN: Okay, Can I --

25 CHAIR REYES: Okay, let her finish her thought,

1 and then Mr. Petersen, and then Mr. Kaye.

2 Go ahead.

3 MS. FEREBEE: I'm not sure, in light of that,  
4 that seems to be one additional reason, and this analysis  
5 seems to have more than one reason why, and as Mr. Louie  
6 has stated why, that should not be allowed.

7 But I guess back to my first statement: I'm  
8 not quite clear on exactly what the proposal was to  
9 extract out of this analysis and to bump over into the  
10 P's & G's.

11 CHAIR REYES: Ms. Shelton?

12 MS. SHELTON: Let me try to make that clear.

13 What Mr. Kaye is suggesting is something  
14 different than what Mr. Petersen is suggesting. That is  
15 number one.

16 What Mr. Kaye is suggesting, if you look at the  
17 conclusion on pages 34 and 35, and Activity No. 7 is  
18 based on Government Code section 6255, and that activity  
19 is, "If a request is denied in whole or in part, respond  
20 in writing to a written request for inspection or copies  
21 of public records that includes a determination that the  
22 request is denied."

23 So in order to comply with that activity,  
24 Mr. Kaye wants to discuss during the parameters-and-  
25 guidelines phase, maybe getting the Commission to

1 consider whether legal assistance in writing that letter  
2 would be a reimbursable state-mandated activity -- or,  
3 rather, that it would be reimbursable.

4 MS. FEREBEE: Oh, I see.

5 MS. SHELTON: As reasonably necessary.

6 And that would be one separate issue. And I  
7 think that would be allowable under this present  
8 proposal.

9 Mr. Petersen is asking for litigation under  
10 6259 and 6258, I think. And the analysis that is  
11 presented is recommending a denial on that because it's  
12 not a mandated new duty imposed on local government.

13 MS. FEREBEE: Okay.

14 MR. KAYE: Okay, and thank you.

15 And my point in all of this, if there is  
16 confusion here now today with the concept of what we are  
17 requesting or what LA -- what I'm suggesting here, is  
18 I think it's super important, too, for those that aren't  
19 privy to this discussion, or don't have the opportunity  
20 to read the transcript in a timely fashion, to try and  
21 figure out what is what.

22 I really, strongly recommend that we insert  
23 some phrase or sentence or thought, that the scope of  
24 legal services reasonably necessary in drafting  
25 written responses and determinations when a Public



1 Records Act request is denied can be addressed in the  
2 parameters-and-guidelines phase, to alert everyone that  
3 this is something that at this point we think is possibly  
4 allowable in the P's & G's; and we're not cutting it off  
5 at the Statement of Decision level.

6 CHAIR REYES: Let me go to Ms. Olsen and to  
7 Mr. Kaye's point before it goes to Mr. Petersen.

8 MEMBER OLSEN: Mr. Chair, it seems to me that  
9 this is an issue that comes up, if not routinely, then  
10 fairly regularly here about what folks would like  
11 addressed in the P's & G's that might not be specifically  
12 included in the decision.

13 And I think what Mr. Kaye is suggesting is sort  
14 of a P's & G's Post-It note be inserted in this decision.  
15 And I just would like staff's response on the sort of  
16 general issue of that versus just having it reflected in  
17 the record in minutes.

18 How does that -- if it's reflected just in the  
19 record in minutes of this meeting, does that then go into  
20 your thinking as you're going forward on the P's & G's?  
21 Or do you really -- do we really need to start inserting  
22 Post-It notes?

23 MS. SHELTON: No, you don't need it, because  
24 when we do parameters and guidelines, we have the full  
25 test-claim record available, and we do review that in

1 order to draft P's & G's.

2 When you're doing a test claim, you're basing  
3 it on the language used in the statutes and regs, and  
4 you're not considering how something is implemented,  
5 necessarily. So you're just basing it as a question of  
6 law, what is mandated by the State.

7 My hesitation with the language that Mr. Kaye  
8 wants to insert into this analysis, is that I'm not sure,  
9 sitting here today, if it's too broad or if it's narrow  
10 enough to encompass only section 6255. And I don't feel  
11 comfortable, necessarily, adding your language.

12 When, by law, you're allowed to -- when you  
13 propose your P's & G's, allowed to include any activity  
14 that you're asserting is reasonably necessary; and you  
15 have to put the evidence in to show why it is.

16 MR. BOHAN: You also run the risk of having  
17 decisions with lots of Post-It notes all over them.

18 CHAIR REYES: I'm more inclined to support the  
19 notion that this is in the minutes, memorialized by the  
20 transcript. It's memorialized by the minutes. It will  
21 be incorporated into the discussion.

22 And then at the time that the P's & G's,  
23 Mr. Kaye will participate in that and bring back a copy  
24 of the minutes and the transcript, saying we talked about  
25 it, we didn't quite put it into the box that you wanted,

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1 because we're not there yet. We haven't done the  
2 analysis. And we can sit here for the next ten hours and  
3 try to come with the verbiage that everybody's going to  
4 be happy with. And I'm not inclined to go there. I  
5 would rather keep it at the higher level.

6 MEMBER ALEX: Let me observe, having spent many  
7 hours on Public Records Act requests, which also applies  
8 to state agencies, that the idea that you need some legal  
9 advice on how to proceed initially is pretty clear. And  
10 I don't think that this is going to be lost in  
11 translation. So I think you made your point. And I  
12 don't think anybody here would disagree with it.

13 MR. KAYE: Okay, except for the litigation  
14 phase.

15 MS. SHELTON: Right, that part is denied.

16 MR. BOHAN: It's different.

17 CHAIR REYES: And now I think we've addressed  
18 your issue.

19 Now, we can go back to Mr. Petersen.

20 MR. PETERSEN: Well, based on the comment from  
21 Finance, it appears there is still some confusion on the  
22 duty-to-litigate thing. I never asserted a duty to  
23 litigate.

24 She referenced a 1968 statute, and Commission  
25 staff said, "Even if litigation were implied, the 1968

1 statute was the source of it.”

2 I never asserted, and it’s clear from the plain  
3 language in the statute, that the public agency, under  
4 this statute, cannot commence litigation on its written  
5 justification to deny access; only the person who  
6 requested the documents.

7 So I’m not asserting that the public agency  
8 should be reimbursed for commencing litigation; only the  
9 reasonable and necessary fact that they have to defend  
10 themselves when the petition is filed against them.

11 The related concern is two sentences that start  
12 on the bottom of page 27. And this occurs frequently,  
13 but I would like to mention it one more time.

14 The last paragraph starts, “Thus, the K-14  
15 District claimant alleges that payment of court costs  
16 and fees is reimbursable.”

17 The next sentence, “However, the payment of  
18 court costs and fees is not a program or service.  
19 Instead, it is a consequence of failing to provide a  
20 legally required program or service, specifically the  
21 service of making disclosable public records open for  
22 inspection by the public or providing copies.”

23 I believe that’s the fundamental  
24 misunderstanding of the law.

25 Public agencies are required to either provide

1 the documents requested or provide a written  
2 justification of why they were not provided. The  
3 mandate, which the staff says is reimbursable, is to  
4 provide that written justification. That's the duty.  
5 There is no duty to be correct about that justification.  
6 It's a matter of opinion; and legal opinions vary. And  
7 the court will have the final say. By coming up with the  
8 wrong judgment is not a failure to implement the mandate;  
9 it's coming up with the wrong conclusion.

10 So the fact that it goes to court doesn't mean  
11 there was a failure in performing the mandate. And I  
12 believe that's the fundamental problem with this test  
13 claim and many other test claims, that reimbursement is  
14 based on outcomes rather than process.

15 CHAIR REYES: Thank you.

16 MS. FEREBEE: Can I? I'd like to --

17 CHAIR REYES: Yes.

18 MS. FEREBEE: Well, if I still do have a  
19 chance, I would just like to say that Finance concurs  
20 with the analysis as to the court costs and attorney  
21 fees.

22 However, I do want to say, as Mr. Louie  
23 pointed out in his opening remarks, that Finance has  
24 filed written comments objecting, sort of a big  
25 objection, that Government Code section 17556,

1 subdivision (f), applies to this claim. And because of  
2 that, the Commission should find that there are no costs  
3 mandated by the State because the test-claim statutes are  
4 necessary to implement Proposition 59. We outlined our  
5 argument in our written comments of January 14<sup>th</sup>, 2011,  
6 and continue to maintain that as so.

7 But I wanted to make sure that I got that in  
8 the record. But as to the points that have just been  
9 made about the court costs, attorney fees, we concur with  
10 the staff analysis.

11 Thank you.

12 CHAIR REYES: Thank you.

13 Okay, any additional questions from any  
14 members?

15 MEMBER WORTHLEY: Just a comment.

16 CHAIR REYES: Mr. Worthley?

17 MEMBER WORTHLEY: I think it's a little  
18 unfortunate that the analysis indicated -- the portion  
19 that was read by Mr. Petersen -- I think it should have  
20 simply ended with saying that -- going back to the last  
21 paragraph on page 27, "However, the payment of court  
22 costs or reasonable attorneys fees is not a program or  
23 service provided to the public." I think it should have  
24 ended there. The statement that, "Instead, it is a  
25 consequence of failing to provide a legally required

1 program or service" is an assumption which is not  
2 necessarily true. I mean, because you could be sued --  
3 you could be absolutely right in your determination that  
4 this should not be disclosed, and still be sued by the  
5 person requesting it.

6 This would indicate that that -- that on the  
7 basis of the fact that the only reason that you're being  
8 sued is because you failed to provide something, well,  
9 that is true. But if you have a legal obligation not  
10 to provide it, then this is assuming that every time  
11 you're sued, it's because of the failure you've made.  
12 And oftentimes, you may not have failed at all, but  
13 you're being sued because you have an unhappy litigant,  
14 and so they're going to sue you.

15 CHAIR REYES: Mr. Louie?

16 MR. LOUIE: That statement was more towards the  
17 payment of attorneys' fees which only occurs when a court  
18 has found that you should have provided the document.

19 MEMBER WORTHLEY: Oh, okay, in that instance?  
20 Okay.

21 MR. BOHAN: Mr. Chairman, would it be helpful  
22 to go into this a little deeper? I mean, we've thought  
23 through some of the issues that are being raised. We  
24 haven't really responded. We'd be pleased to, or not.

25 MEMBER WORTHLEY: Personally, I don't have a

1 problem going forward today.

2 I understand Mr. Petersen's objection, and I  
3 understand it. But I know we were under this wall of  
4 what the law allows us to do. And I think when you look,  
5 Mr. Petersen's argument is one of: Isn't it reasonably  
6 expected that if you're going to be sued, you're going to  
7 respond to it? Absolutely, you're going to respond to  
8 it. But then you get to the very strict constraints  
9 under which we operate, and that becomes our constraint.

10 It's not about whether it makes sense,  
11 oftentimes, unfortunately; it's about what we're allowed  
12 to do legally.

13 CHAIR REYES: Our parameters, right.

14 MEMBER WORTHLEY: And I think that's kind of  
15 where we are.

16 CHAIR REYES: Mr. Louie?

17 MS. SHELTON: Well, we can go around and around  
18 about this.

19 I think that there were couple of things. One,  
20 who is making the decision to respond? Is that the State  
21 or is that the local agency? And that's one of the  
22 issues.

23 The other issue is that they have been  
24 litigating these issues since 1968. So it's not a new  
25 duty.



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1 MR. BOHAN: That's really the major point.  
2 This has been around. They've been sued, and they have  
3 had that since the beginning of the Act. The same  
4 statutes didn't add to that.

5 So it's true that when you get sued, you may  
6 need to respond. You may be right, but that's been there  
7 forever.

8 CHAIR REYES: And Mr. Petersen's point is that  
9 back in '68, there were ten causes for you to be sued,  
10 now we have 120.

11 MS. SHELTON: Right.

12 CHAIR REYES: You still have cause to react.  
13 But now, the number of opportunities to have to react  
14 have increased.

15 MS. SHELTON: Right.

16 MR. PETERSEN: Plus, there's never been an  
17 affirmative duty for the public agency to litigate.

18 The way you phrased your response seems to  
19 indicate you still think there was a duty to litigate.  
20 The public agency never had a duty to commence  
21 litigation, and they have no legal standing to use this  
22 code section.

23 CHAIR REYES: Okay. So in the absence of  
24 additional comments from Board members, is there a  
25 motion?

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1 MEMBER LUJANO: Move approval.

2 CHAIR REYES: Move approval of staff's  
3 recommendation.

4 Is there a second?

5 MEMBER OLSEN: Second.

6 CHAIR REYES: It's been moved and seconded.

7 Any additional comments from the public?

8 *(No response)*

9 CHAIR REYES: Any additional comments from  
10 Board members?

11 *(No response)*

12 CHAIR REYES: Please call the roll.

13 MR. BOHAN: Mr. Alex?

14 MEMBER ALEX: Yes.

15 MR. BOHAN: Mr. Chivaro?

16 MEMBER CHIVARO: Yes.

17 MR. BOHAN: Mr. Lujano?

18 MEMBER LUJANO: Aye.

19 MR. BOHAN: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MR. BOHAN: Mr. Worthley?

22 MEMBER WORTHLEY: Yes.

23 MR. BOHAN: And Mr. Reyes?

24 CHAIR REYES: Aye.

25 MR. BOHAN: The motion carries, 6-0.

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1 CHAIR REYES: Thank you.

2 And consistent with what I have done before,  
3 if we can substitute the roll call on Item 6 without  
4 objection?

5 MR. BOHAN: Yes.

6 CHAIR REYES: Thank you. That will be the  
7 order.

8 Item 7, *School Bus Safety*.

9 MR. LOUIE: Item 7 is the *School Bus Safety III*  
10 test claim. It addresses various activities imposed  
11 on school districts in regards to providing school bus  
12 transportation. This includes providing safety notices  
13 to students, purchasing school buses that are equipped  
14 with seat belts, things of that nature.

15 Consistent with a prior court case and prior  
16 Commission findings, we found that school bus  
17 transportation is not a required activity; and all of  
18 the activities imposed by the statutes are triggered  
19 by that provision of school bus transportation. As a  
20 result, we've denied -- we're recommending denial of the  
21 whole test claim.

22 CHAIR REYES: Thank you.

23 Go ahead.

24 MR. LOUIE: Will the parties state their names  
25 for the record?

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1 MR. PALKOWITZ: Good morning. Art Palkowitz on  
2 behalf of San Diego Unified School District.

3 MS. FEREBEE: Donna Ferebee, Department of  
4 Finance.

5 CHAIR REYES: And I understand Finance is  
6 opposed to your recommendation at this time?

7 MS. FEREBEE: No.

8 CHAIR REYES: I want to make sure people are  
9 awake.

10 Go ahead, please.

11 MR. PALKOWITZ: Good morning. My name is Art  
12 Palkowitz.

13 I've filed this on behalf of San Diego Unified  
14 back several years ago. At that time, the *School Bus II*  
15 test claim, in the wisdom of the Commission, was approved  
16 as a state mandate. A subsequent court ruling overruled  
17 that. This test claim was filed prior to that court  
18 ruling.

19 What is not mentioned in this discussion is the  
20 *City of Merced* case that did deal with an issue that was  
21 a voluntary issue, and then the downstream activities  
22 from the voluntary issue were reimbursed.

23 In this case, what distinguished this from  
24 *School Bus II*, is that there are equipment issues that  
25 I don't believe were present in *School Bus II*.

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1           So here, it can be distinguished the case from  
2     *School Bus II*. So we would urge that the Commission find  
3     this to be a reimbursable state mandate.

4           MS. FEREBEE: The Department of Finance concurs  
5     with the staff analysis.

6           Thank you.

7           CHAIR REYES: Any comment from Board members?  
8     Yes?

9           MEMBER WORTHLEY: Mr. Chairman, I'm going to  
10    speak. I'm, again, going back to my last comments that  
11    oftentimes, we are constrained by what we're allowed to  
12    do.

13           The problem that I have with this is, it's sort  
14    of an ivory-tower type of a decision. You know, even the  
15    concept of having to provide bus service -- I mean, I  
16    live in a rural county, and at one time you had little  
17    county schools all over the county, and everybody could  
18    walk to their schools.

19           We don't have that anymore. And so if you  
20    don't have bus service, you don't have kids at school.  
21    You're going to have people that violate the law, the  
22    parents who don't get their kids to school because they  
23    don't have the ability to get them to school.

24           And it's an unfortunate situation. That's not  
25    before us today. We can't -- you know, I concur with the

1 analysis. But the other side of it is this idea of a  
2 downstream requirement.

3 So we say to the people, "You don't have to  
4 provide a transportation system; but if you do -- if you  
5 want to provide a transportation system, we'll provide  
6 some funding for you. But, oh, by the way, we're going  
7 to pile on all these new, additional requirements."

8 So on the one hand, we say, you don't have to  
9 do it. We hold out this opportunity to receive this  
10 funding; and then we continue to, you know, put more and  
11 more and more constraints and expenses.

12 I know, for instance, this idea of having  
13 straps on buses, I know that had an immediate impact on  
14 transportation because buses that could carry 60 kids  
15 could now carry 45 kids. So now you've got to have more  
16 buses, you've got more bus drivers, you've got more  
17 expenses.

18 And so you have a state mandate which comes  
19 along, yes, we don't have to provide transportation, we  
20 don't have to have transportation at all. But if you're  
21 going to, then the State continues to pile more and more  
22 and more mandates on you for receiving these funds. And,  
23 then, you know, you get to the place where we say, "We're  
24 not going to provide transportation." And it gets back  
25 to my initial problem, you've got kids who aren't going

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1 to be educated, you've got school systems that aren't  
2 going to be able to operate. And this is such an  
3 ivory-tower kind of a thing. It's just very troublesome  
4 to me.

5 It seems to me there ought to be some way of  
6 addressing this matter of downstream issues. If you  
7 can't mandate something -- if it's not a mandate, then  
8 stop mandating. In other words, you know, don't hold out  
9 the carrot and then just continue to add and add and add  
10 to it, where it becomes unworkable. And that seems to  
11 be kind of what we see happening so often in these cases,  
12 where we find that there is no mandate; but we have a  
13 practical compulsion, if you will.

14 I do not know how rural schools can operate  
15 without a bus system, period.

16 CHAIR REYES: Your years of county supervisor's  
17 service come through on those comments, sir.

18 MEMBER WORTHLEY: I used to be on the school  
19 board, too.

20 CHAIR REYES: I've dealt with many, many county  
21 issues in many areas; and, yes, point taken. But as you  
22 point out, that's outside of our jurisdiction.

23 Is there a motion?

24 MEMBER CHIVARO: I'll move staff  
25 recommendation.

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1 CHAIR REYES: Staff recommendation?  
2 MEMBER OLSEN: Second.  
3 CHAIR REYES: It's been seconded.  
4 MR. BOHAN: Mr. Alex?  
5 MEMBER ALEX: Yes.  
6 MR. BOHAN: Mr. Chivaro?  
7 MEMBER CHIVARO: Yes.  
8 MR. BOHAN: Mr. Lujano?  
9 MEMBER LUJANO: Aye.  
10 MR. BOHAN: Ms. Olsen?  
11 MEMBER OLSEN: Aye.  
12 MR. BOHAN: Mr. Worthley?  
13 MEMBER WORTHLEY: I'll just say, no. A  
14 principle's thing.  
15 MR. BOHAN: And Mr. Reyes?  
16 CHAIR REYES: Aye.  
17 MR. BOHAN: The vote is 5-1. The motion  
18 carries.  
19 CHAIR REYES: Okay, then we go to the Statement  
20 of Decision.  
21 Do you want to replace the roll call?  
22 MEMBER WORTHLEY: Just substitute the same  
23 response.  
24 CHAIR REYES: Do you want to substitute and  
25 still be "no" on that?



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1 MEMBER WORTHLEY: That's fine.

2 CHAIR REYES: Okay. That will be the order,  
3 substitute the roll call.

4 Thank you.

5 Okay, so bear with me. We've dispensed with  
6 12, 13, 14.

7 We're on to 15; is that correct?

8 MR. BOHAN: 15, which there are no applications  
9 for.

10 CHAIR REYES: There's nothing to report? Thank  
11 you.

12 However, we have received a couple of  
13 inquiries, is my understanding?

14 MR. BOHAN: Yes.

15 CHAIR REYES: So something may be coming soon?

16 MR. BOHAN: That's right.

17 CHAIR REYES: Tab 16?

18 MEMBER WORTHLEY: Mr. Chairman?

19 CHAIR REYES: Yes?

20 MEMBER WORTHLEY: My suggestion would be, since  
21 most of us have never sat on one of these matters because  
22 it's always just been here as a placeholder for the last  
23 20 years that I've been on here, that it might be good to  
24 remind us of the procedures, because they're quite  
25 onerous if we do get to this point in terms of hearings

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1 and where they're held and timeframes and so forth, just  
2 as --

3 MR. BOHAN: Budget issues.

4 MEMBER WORTHLEY: -- just as kind of a primer  
5 for us and a reminder of what may be forthcoming.

6 MR. BOHAN: Nancy, do you want to do that?

7 MS. PATTON: Okay, so under this process, once  
8 a county applies for a finding of significant financial  
9 distress, we have 90 days to complete the application.

10 Let me first say, though, that we have no money  
11 in our budget to fund this process. So that time is  
12 tolled until we get money from the Legislature.

13 The last time this happened, it took about, I  
14 think, 40, 45 days to get the funding, and then you have  
15 the 90-day process. You have to hold one hearing in the  
16 county.

17 And they file a truckload of paper that looks  
18 over their past-year budgets. They are trying to show  
19 you where they have unmet financial need in each county  
20 department.

21 The members can choose to hire a hearing  
22 officer to do it for them, or to have a smaller  
23 subcommittee of the members. But in the past 14  
24 applications that we've had, the Commission has always  
25 decided to go as a whole, the whole commission to

1 participate and to make the decision.

2 We would go to the county. We have an all-day  
3 hearing where each department comes and presents their  
4 unmet need to you, and then we provide a draft analysis  
5 and a final analysis within that 90-day period. And then  
6 we have a hearing here in Sacramento to vote on it.

7 Typically, staff has hired -- contracted with  
8 the Department of Finance's audit unit to provide the  
9 fiscal analysis of the county budget. Our staff provides  
10 the legal analysis.

11 MS. SHELTON: And then if a finding of  
12 significant financial distress is made, it allows the  
13 county to reduce their GA benefits for that time period.

14 MS. PATTON: But that's still up to their vote  
15 of the supervisors.

16 MEMBER WORTHLEY: Thank you.

17 MS. PATTON: And we haven't had an application  
18 since 2005.

19 MEMBER WORTHLEY: Right.

20 CHAIR REYES: Thank you.

21 Legislation, staff? I think we just have your  
22 listing of the bills affecting us.

23 MS. PATTON: Right.

24 MR. BOHAN: I'll take questions, if you have  
25 any.

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1 CHAIR REYES: 17?

2 MS. SHELTON: Just real quickly, just to note  
3 that those two Water Board permit cases have been set for  
4 hearing: One in LA and one in Sacramento, for August and  
5 September. So we should have a trial court decision by  
6 the fall.

7 Also, just one other change. That first case  
8 of interest, the *California School Boards Association v*  
9 *the State of California* on the issue of the practice of  
10 deferring mandate reimbursement, that was a petition for  
11 review that was filed, and the Supreme Court has denied  
12 that petition.

13 So the ruling stands that the State -- it is  
14 unconstitutional to defer; but the local government has  
15 to comply with 17612, and file a dec. relief request with  
16 the court to suspend that operation of the mandate and  
17 not be -- to make it a voluntary program.

18 CHAIR REYES: Mr. Burdick, do you have a  
19 comment on that?

20 MR. BURDICK: No, thank you.

21 CHAIR REYES: Okay, the sound in this room  
22 carries this way; it doesn't carry that way. So I hear  
23 your conversations.

24 MR. PETERSEN: You don't want to know.

25 CHAIR REYES: I heard your conversation, too,

1 sir. Trust me, I did. I didn't ask you to repeat it,  
2 though. Okay.

3 The next item? 18.

4 MR. BOHAN: The final item, Chairman, in the  
5 open session, is the ED report, which was presented to  
6 you. I won't go through it.

7 I just want to highlight two issues.

8 The first is what we're calling the backlog  
9 reduction plan. This was put together by staff. It's a  
10 staff plan. We're not asking you to adopt it. There are  
11 copies we've brought for you. There are copies in the  
12 back. And we were planning, absent some serious  
13 objections, to post this on the Web. But we did want to  
14 present it to you, at least, and give you an opportunity  
15 to provide some feedback.

16 And very briefly, it just sets forth our  
17 goals -- they're somewhat aspirational and ambitious --  
18 but to reduce this backlog.

19 And very briefly, in this next calendar year  
20 that's coming up, 2011-12, we're planning to get rid of  
21 all the big claims, the 2002, 2003 claims before the  
22 statute of limitations change, and made for much smaller  
23 claims. And then in outyears, we're looking to reduce  
24 the whole backlog in the next several years, and think  
25 we're going to be able to do that.

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1           So if there's any comments or questions, we'd  
2 entertain them; but I just wanted to point that out.

3           CHAIR REYES: Thank you.

4           MR. BOHAN: And then finally, there's other  
5 things in the report; but I just wanted to note the cost-  
6 benefit piece we put together. And at the last meeting,  
7 you had asked about the possibility of going fully  
8 electronic versus putting these binders together; and to  
9 staff's surprise, it looks like the payback period for  
10 moving to even the most expensive electronic option, with  
11 assumptions that are probably not real -- they're on the  
12 very conservative side -- you'd have a payback period  
13 from the savings we would enjoy from not producing  
14 binders and spending the money on the paper and so forth,  
15 of about one year.

16           So staff is agnostic as to the will of the  
17 Commission; but we would present the --

18           MEMBER WORTHLEY: I've never heard that term  
19 used as a verb.

20           CHAIR REYES: What are the wishes of the  
21 Commission?

22           To be perfectly honest, it took me probably  
23 about a month to be comfortable with the iPad. And  
24 there's an application that the Commission would provide;  
25 and I'm not advertising for it, but GoodReader. It's a

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1 provision -- it's an application, you can actually go in  
2 there; and even in a PDF document, make comments,  
3 highlight, underline stuff --

4 MEMBER OLSEN: As long as we can do that.

5 CHAIR REYES: -- and do edits.

6 The one provision that I have not discovered  
7 yet is, we have tons of paper. And so when I go through  
8 some and I have questions, I put this (*indicating*).

9 Under the GoodReader, you can write the notes,  
10 but I haven't quite figured out how you go back and  
11 figure out if you have a note on page 367.

12 MEMBER OLSEN: Oh, you can mark it.

13 CHAIR REYES: You can mark it? Okay.

14 I know that you can put the Post-It in there  
15 and write your notes, and you can -- you used to be able  
16 to do freehand comments, and now you can actually type on  
17 the side, which makes life a little bit easier.

18 MEMBER OLSEN: I believe it will actually  
19 create a table of contents for you, or index of your  
20 notes --

21 CHAIR REYES: Oh, okay. Perfect.

22 MEMBER OLSEN: -- so you can actually go back  
23 to your notes.

24 CHAIR REYES: So I'm a big proponent.

25 What I would not want us to do, though -- there

1 are two options, if we were to go this route: One route,  
2 is that we're just WiFi. And the other route is that we  
3 would have cellular data. The cellular data would then  
4 require a monthly expense. And I think under that  
5 scenario, our cost-even analysis goes out the window  
6 because it is per gigabytes of downloading and so forth.

7 So my recommendation would be, that if we were  
8 to provide this to the Board, that we do not provide the  
9 cellular. That we would download the documents at a  
10 WiFi. There's plenty of WiFi's around the state, in most  
11 communities, if not our own home. And then we would need  
12 to do some stuff with staff because on the Tab 3, the  
13 community colleges, the document was over a thousand  
14 pages, and I couldn't download it. So we would need to  
15 break those things, and we talked about that, and  
16 different ways of approaching that on the technical side.

17 But I, for one, am a big proponent of this just  
18 because, you know --

19 MEMBER WORTHLEY: Mr. Chairman, I was thinking  
20 one way of approaching it is not the all-or-nothing  
21 proposition, if people don't have access to the WiFi. I  
22 mean, if you're talking about -- what I'm anticipating,  
23 and why I brought this up, is that I'm on an air board,  
24 and we're moving forward. And it's my expectation that  
25 they're going to provide us with the device and with the



1 service that you're referring to.

2 CHAIR REYES: Uh-huh.

3 MEMBER WORTHLEY: And so there may be others,  
4 though, who would need to have both that product and the  
5 service.

6 But I don't think that the Commission's going  
7 to be necessarily responsible, on the hook, to buy the  
8 whole thing for everybody because I believe it will be  
9 available to many people on their existing systems.

10 So the cost has been reduced thereby, because  
11 if you only have to buy three machines or one machine, or  
12 whatever the case may be, and only one or two of the  
13 actual services contracts, then, you know, then it's not  
14 necessarily that we all need that.

15 But I appreciate the staff's analysis. And  
16 I certainly think -- I'm more excited, actually, about --  
17 I'm glad there's savings -- but also when I think about  
18 the time that our folks have to spend doing this, that  
19 they can now spend doing more significant things, like  
20 moving our proposals forward; that's really, probably,  
21 the more exciting part for me. If it saves money at the  
22 same time, that's just icing on the cake.

23 MR. BOHAN: It's a very stressful place around  
24 our office, the days before getting these binders out.

25 CHAIR REYES: When you're putting the binders

1 together? Yes.

2 MR. BOHAN: So it would be substantially  
3 reduced.

4 CHAIR REYES: Ms. Olsen?

5 MEMBER OLSEN: I also think, on behalf of -- I  
6 know you drive up, usually; but Mr. Glaab and I fly up.  
7 And, honestly, this has been a huge improvement with the  
8 little flash drive over the three binders that would  
9 somehow have to get up here with us -- usually two, I'm  
10 exaggerating.

11 But, you know, actually being able to get rid  
12 of this (*pointing*) is the ability to come up with one bag  
13 and not have to check anything. So that would be great.

14 CHAIR REYES: Is the Board generally supportive  
15 then to start moving forward and providing -- I have my  
16 own iPad, and so I would not be requesting anything. But  
17 it's just a comfort level to Board members to rely on  
18 this.

19 I think we still need a hard copy of the  
20 agenda, because that's easier than -- and this other  
21 stuff that you give us on who is talking that day and so  
22 forth.

23 Any comments?

24 MEMBER LUJANO: I would not be requesting any  
25 kind of new device. I would actually have the Department

1 pay for whatever equipment we'd need.

2 And just be aware of the information security  
3 issues that come with the iPad or the PlayBook; because  
4 if you do have confidential information on there, there  
5 are issues that you'd have to look at.

6 MR. BOHAN: That's a good point. We may handle  
7 the confidential part separately.

8 MEMBER OLSEN: Right.

9 CHAIR REYES: Yes, okay.

10 MEMBER OLSEN: And as long as it's a WiFi  
11 situation, I already have an iPad. I don't have one that  
12 has the ability to have the 3G, but...

13 MR. BOHAN: I don't want to burn you with too  
14 many details.

15 We've looked into the WiFi option. There may  
16 be a constraint, given how large our files are. We're  
17 going to look at what others do, because we may be able  
18 to get around this. But it may be that you need to  
19 actually hook to a computer, plug your thumb drive in,  
20 since there's no port on the iPad, and port it over that  
21 way. But it's just a small wrinkle. We'll determine  
22 that soon.

23 CHAIR REYES: Or split the documents so that  
24 they are smaller files.

25 Okay, well, it looks like the Board is

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1 generally supportive. So I think if there are no  
2 objections, to move forward and we'll start looking to  
3 providing that and the GoodReader and so forth.

4 Public comments?

5 *(No response)*

6 CHAIR REYES: Anybody?

7 *(No response)*

8 CHAIR REYES: Okay, then we're adjourned.

9 Thank you, everybody.

10 MS. SHELTON: No. Closed session.

11 CHAIR REYES: Oh, we have closed session? I'm  
12 sorry, we have a closed session.

13 Thank you.

14 For legal matters: The Commission will meet in  
15 closed executive session pursuant to Government Code  
16 section 11126, subdivision (e), to confer and receive  
17 advice from legal counsel for consideration and action,  
18 as necessary and appropriate, upon the pending litigation  
19 listed on the published notice and agenda; and to confer  
20 with and receive advice from legal counsel regarding  
21 potential litigation.

22 We will reconvene in open session in  
23 approximately 15 minutes.

24 Thank you.

25 //

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*(The Commission met in executive closed session from 10:51 a.m. to 10:59 a.m.)*

CHAIR REYES: Thanks for coming back.

The Commission met in closed session pursuant to Government Code section 11126, subdivision (e), to confer and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation.

With no further business to discuss, I will entertain a motion to adjourn.

MEMBER WORTHLEY: So moved.

CHAIR REYES: Second?

MEMBER OLSEN: Second.

CHAIR REYES: All right, hearing no objections, we will adjourn.

Thank you.

*(The meeting concluded at 11:00 a.m.)*



**REPORTER'S CERTIFICATE**

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 14<sup>th</sup> of June 2011.

*Daniel P. Feldhaus*

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