



**BETTY T. YEE**  
California State Controller

**RECEIVED**  
October 28, 2015  
**Commission on  
State Mandates**

**LATE FILING**

October 27, 2015

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Re: Draft Proposed Decision**

Incorrect Reduction Claim

*Notification of Truancy*, 10-904133-I-09

Education Code Section 48260.5

Statutes 1983, Chapter 498

Fiscal Years 2002-03, 2003-2004, 2004-05, and 2005-06

San Juan Unified School District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) has reviewed the Commission on State Mandates' (Commission) Draft Staff Analysis (DSA) dated September 24, 2015, for the above incorrect reduction claim (IRC) filed by Riverside Unified School District. This letter constitutes the SCO's response to the DSA.

We support the Commission staff decision related to the following:

- Reductions based on insufficient documentation to support the number of initial truanancies claimed are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.
- Reductions based on notifications of truancy issued for pupils who were under the age of six and over the age of 18 are correct as a matter of law.
- Reductions based on notifications issued for pupils with fewer than three absences or tardiness occurrences are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The statistical sampling methodology used by the SCO to determine the amounts to be reduced is not arbitrary, capricious, or entirely lacking in evidentiary support.

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The Commission did not support the SCO adjustments for the following:

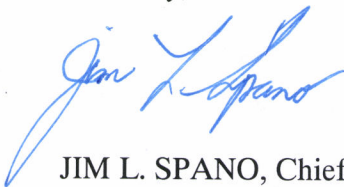
- Reductions based on initial truancy notifications for pupils who accumulated fewer than four unexcused absences are inconsistent with the Education Code and are incorrect as a matter of law.

**Reductions for Students Who Accumulated Fewer Than Four Unexcused Absences**

The DSA states that the disallowance of notifications issued for pupils who accumulated three but not four or more absences is incorrect as a matter of law because it relies on the former definition of a truant. We disagree with this conclusion. The SCO previously addressed this issue in a letter dated August 21, 2015, when responding to the DSA issued for an IRC filed by San Juan Unified School District (IRC 07-994133-I-05 and 10-904133-I-07). SCO Senior Staff Counsel Shawn D. Silva prepared the response, which was received by the Commission on August 24, 2015 (**Tab 1**). Our comments for this IRC, as they relate to this issue, have not changed from what was included in our August 21, 2015 response, as written by Mr. Silva. As the issue is identical, we are resubmitting our August 21, 2015 letter containing the specifics of our disagreement with the DSA.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,



JIM L. SPANO, Chief  
Mandated Cost Audits Bureau  
Division of Audits

**TAB 1**





**RECEIVED**  
August 24, 2015  
*Commission on  
State Mandates*

**BETTY T. YEE**  
California State Controller

August 21, 2015

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

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

Re: **Controller's Comments on Draft Proposed Decision**  
*Notification of Truancy*, 07-904133-I-05 and 10-904133-I-07  
Education Code Section 48260.5  
Statutes 1983, Chapter 498  
Fiscal Years 1999-2000 through 2001-02  
San Juan Unified School District, Claimant

Dear Ms. Halsey and Mr. Petersen:

This letter constitutes this office's response to the Draft Proposed Decision (DPD) in this matter. Although we agree with the conclusion that the audit was conducted in a timely manner, we disagree with the conclusion that the notification sent upon the third absence is reimbursable. Such a conclusion is contrary to the clear language in the relevant parameters and guidelines, and the mandatory language of AB 1698 (Stats. 2007, Ch. 69). It also violates the standard process for the determination of a mandate and the amendment of parameters and guidelines. For these reasons we oppose the reinstatement of the costs associated with the notification sent upon the third absence.

The primary problem with the conclusion that the third notification is reimbursable is that this result is contrary to the plain language of AB 1698. In part that bill provides that:

[T]he Commission on State Mandates shall amend the parameters and guidelines regarding the notification of truancy ... and modify the definition of a truant ... [c]hanges made by the commission to the parameters and guidelines shall be deemed effective on July 1, 2006.



The bill unambiguously provides that changes to the definition of a truant, for the purposes of the parameters and guidelines, will not become effective until July 1, 2006. Despite this clear language the DPD proceeds to retroactively amend the definition of truant to some date prior to the fiscal years audited, presumably 1995. Had the legislature desired to make the changes retroactive to 1995, they could have easily done so, but they chose not to. The DPD does not set forth any reasons for ignoring the plain language of AB 1698. In doing so it renders portions of AB 1698 surplusage, a result that is to be disfavored.<sup>1</sup> One possible reason is that staff believes that AB 1698 compels a result that is inconsistent with the provisions of Article XIII B, § 6. However, an administrative agency has no power to disregard a statute that they believe is unconstitutional<sup>2</sup>. Since AB 1698 clearly provides that the old definition of truant is applicable until July 1, 2006, the Commission should uphold the finding of the auditors with respect to the notification upon the third absence.

The conclusion in the DPD is also contrary to the explicit language of the parameters and guidelines. The parameters and guidelines provide that “[a] truancy occurs when a student is absent from school without valid excuse more than three (3) days”.<sup>3</sup> The DPD dismissively notes that the cited language is in the “summary,” but fails to provide any legal authority for treating it differently than other portions of the parameters and guidelines. If the summary is of no import, then the Legislature’s direction to amend it would be without any practical effect, and we cannot presume that the Legislature engages in idle acts.<sup>4</sup> The DPD also goes to great lengths to label the definition of truant as “definitional” as opposed to the identified reimbursable activities, which it labels as “mandatory”. Again though, the DPD fails to cite any legal or logical authority for treating the two types of language differently. Although they contain different provisions, Education Code<sup>5</sup> sections 48260 and 48260.5 are inextricably linked, without the existence of Section 48260, Section 48260.5 has no force or effect. Although not explicitly stated, the DPD essentially recommends that the Commission approve a sua sponte, retroactive amendment of the parameters and guidelines, without providing any legal authority for such an action. Not only is there no legal authority for such an amendment, but it would also be contrary to the express language of AB 1698, as noted above.

The final problem with the DPD’s approach is that it ignores the basic concepts and procedures of the mandate process. Although a statute, or executive order or regulation, creates a mandate, it is the test claim process that creates reimbursability. The legislature, in passing Government Code sections 17500 et seq., chose to place the burden on local governmental entities to establish reimbursability. Because of this process there may often be discrepancies between what a local is legally obligated to do, and what they are reimbursed for doing. The DPD asserts, without any real analysis, that the 1994

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<sup>1</sup> *McCarthy v. Pacific Telesis Group* (2010) 48 Cal.4th 104, 110.

<sup>2</sup> California Constitution, Article III, § 3.5.

<sup>3</sup> Parameters and guidelines, amended July 22, 1993, page 1.

<sup>4</sup> *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.

<sup>5</sup> All further references shall be to the Education Code, unless otherwise indicated.



August 21, 2015

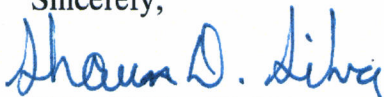
Page 3

amendment to Section 48260 [S.B. 1728 (Stats. 1994, Ch. 1023)] does not constitute a mandate as it does not require a new program or higher level of service. However, the DPD fails to state the rules for determining if it is a new program or higher level of service, and never applies the facts to those rules. In the Statement of Decision for the *Domestic Violence Background Checks* program (dated July 26, 2007), at pages 8-9, the Commission stated that:

To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation<sup>6</sup>. A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>7</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>8</sup>

Applying these rules we can clearly see that the 1994 amendment to Section 48260 created a mandate, as it imposed a higher level of service upon school districts. Before the amendment the districts only had to send the truancy notification if a pupil had four absences, but after the amendment the district had to send the notification upon the third absence. The new requirements were clearly intended to provide an enhanced service to the public as it provided for earlier notice to parents of the attendance issues of their child, allowing them to intervene earlier, and hopefully reduce the potential for future attendance problems. The increased costs are at the core of this IRC. Applying the Commission's own rules we see that the 1994 amendment to Section 48260 created a state mandate, and the only way for the claimant's to receive reimbursement therefore, would have been for them to file a test claim, which no school district ever did. Based on the above factors the Controller's Office believes that the Commission should find that the 1993 version of the parameters and guidelines applies, and therefore the reductions made were proper and in accordance with law.

Sincerely,



SHAWN D. SILVA  
Senior Staff Counsel

SDS

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<sup>6</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>7</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>8</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 28, 2015, I served the:

**SCO Comments**

*Notification of Truancy*, 10-904133-I-09

Education Code Section 48260.5

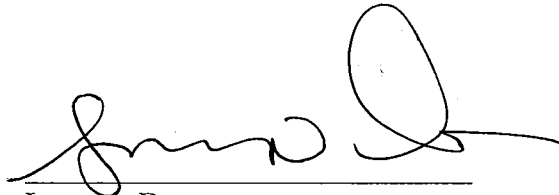
Statutes 1983, Chapter 498

Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

San Juan Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 28, 2015 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 10/19/15

**Claim Number:** 10-904133-I-09

**Matter:** Notification of Truancy

**Claimant:** San Juan Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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