

COMMISSION ON STATE MANDATES

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September 24, 2015

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

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
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

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **October 15, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Thursday, December 3, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about November 19, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

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

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Education Code Section 48260.5

Statutes 1983, Chapter 498

Notification of Truancy

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

10-904133-I-09

San Juan Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) addresses reductions of \$132,847 made by the State Controller's Office (Controller) to reimbursement claims filed by San Juan Unified School District (claimant) for fiscal years 2002-2003 through 2005-2006, for the *Notification of Truancy* program. The Controller reviewed a sample of 883 notices issued by the elementary and secondary schools within the district, out of the 64,641 notices claimed. The Controller found that, of the notices sampled, 162 were not reimbursable.

The following issues are in dispute:

- Reductions based on lack of documentation in support of truancy notifications claimed;
- Reductions based on notifications of truancy issued for pupils who had accumulated fewer than three unexcused absences or occurrences or tardiness;
- Reductions based on notifications of truancy issued for pupils who accumulated three but not four unexcused absences or occurrences of tardiness; and
- Reductions based on notifications of truancy issued for pupils who were under the age of six and over the age of eighteen.
- The use of the statistical sampling to support the reduction.

As explained herein, staff recommends that the Commission on State Mandates (Commission) partially approve this IRC.

The *Notification of Truancy* Program

Under California's compulsory education laws, children between the ages of six and 18 are required to attend school full-time, with a limited number of specified exceptions.¹ A pupil who

¹ Education Code section 48200.

accumulates a certain number or absences or instances of tardiness is deemed to be in violation of the compulsory education requirement, and is a truant.² Statutes 1983, chapter 498 added Education Code Section 48260.5 which specified as follows:

- (a) Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:
 - (1) That the pupil is truant.
 - (2) That the parent or guardian is obligated to compel the attendance of the pupil at school.
 - (3) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.
- (b) The district also shall inform parents or guardians of the following:
 - (1) Alternative educational programs available in the district.
 - (2) The right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

On November 29, 1984, the Board of Control, the predecessor to the Commission, determined that Education Code Section 48260.5, as added by Statutes 1983, chapter 498, imposed a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy.³

Accordingly, the Board of Control's test claim decision and the parameters and guidelines adopted by the Commission found that section 48260.5 imposed a state-mandated program requiring that upon a student's classification as a truant, the school must notify the pupil's parent or guardian. At the time of the test claim decision and adoption of the parameters and guidelines, section 48260, as enacted in 1976, which was found not to impose any mandated activities, provided that a truancy occurs when a student is "absent from school without valid excuse *more than three days* or tardy in excess of 30 minutes on each of *more than three days* in one school year..."⁴

The original parameters and guidelines were adopted by the Commission on August 27, 1987, and authorized reimbursement for the one-time activities of planning implementation, revising school district policies and procedures, and designing and printing the notification forms. Reimbursement was also authorized for ongoing activities to identify pupils to receive the initial notification and prepare and distribute the notification by first class mail or other reasonable means.

² Education Code section 48260.

³ Exhibit X, Brief Written Statement for Adopted Mandate issued by the Board of Control on the Notification of Truancy test claim (SB 90-4133).

⁴ Education Code section 48260 (Stats. 1976, ch. 1010).

The Commission amended the parameters and guidelines on July 22, 1993, effective beginning July 1, 1992, to add a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed in lieu of requiring the claimant to provide documentation of actual costs to the Controller. The parameters and guidelines further provide that “school districts incurring unique costs within the scope of the reimbursable mandated activities may submit a request to amend the parameters and guidelines to the Commission for the unique costs to be approved for reimbursement.”⁵ These are the parameters and guidelines applicable to this claim.⁶

As later amended by Statutes 1994, chapter 1023 (SB 1728) and Statutes 1995, chapter 19 (SB 102), section 48260 provided that a pupil would be classified a truant “who is absent from school without valid excuse *three full days* in one school year, or tardy or absent for more than any 30-minute period during the school day without a valid excuse on *three occasions* in one school year, or any combination thereof...”⁷ At the same time, the Legislature amended section 48260.5 to require the school to also notify parents that a pupil may be subject to prosecution under section 48264; that a pupil may be subject to suspension or restriction of driving privileges under section 13202.7 of the Vehicle Code; and that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.⁸ Those amendments were incorporated into the parameters and guidelines on January 31, 2008, effective July 1, 2006, at the Legislature’s direction, however, reimbursement for the program under the amended parameters and guidelines remained fixed at a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator (\$19.63 for fiscal year 2013-14).⁹

Procedural History

On September 4, 2009, the Controller issued the final audit report.¹⁰ On October 6, 2010, claimant filed this IRC.¹¹ On October 3, 2014, the Controller filed written comments on the IRC.¹²

On September 24, 2015, Commission staff issued the draft proposed decision.¹³

⁵ Exhibit A, Incorrect Reduction Claim, page 47.

⁶ The parameters and guidelines as amended in 2008 are not applicable to this IRC.

⁷ Education Code section 48260, as amended by Statutes 1994, chapter 1023 and Statutes 1995, chapter 19.

⁸ Education Code section 48260.5, as amended by Statutes 1994, chapter 1023.

⁹ Statutes 2007, chapter 69 (AB 1698).

¹⁰ Exhibit A, Incorrect Reduction Claim, page 60.

¹¹ Exhibit A, Incorrect Reduction Claim, page 1.

¹² Exhibit B, Controller’s comments on IRC, page 1.

¹³ Exhibit C, Draft Proposed Decision.

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁴ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁵

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁶

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.¹⁷ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹⁸

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁵ *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁸ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Reduction of claimed costs for four sampled truancy notices based on lack of documentation.	The Controller found that four notices out of the 883 notices sampled were not supported by documentation.	<i>Correct</i> - The parameters and guidelines require documentation to support the costs claimed; therefore at least some documentation is required to support the validity of the notifications issued. Here, the claimant did not provide any evidence of documentation in support of four notices claimed. Thus, the reduction of costs for the four sampled notices is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.
Reduction of claimed costs for 18 sampled truancy notices sent to parents or guardians of pupils with fewer than three unexcused absences or tardiness occurrences.	The mandated program, as described in the parameters and guidelines applicable from July 22, 1993 until July 1, 2006, is to issue a notice of truancy upon the pupil's initial classification as a truant, as defined in Education Code section 48260. Education Code section 48260, during the fiscal years here at issue, stated: "Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse three full days in one school year or tardy or absent for more than any 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district."	<i>Correct</i> - The claimant's request for reimbursement to provide truancy notices for pupils with fewer than three unexcused absences or tardies goes beyond the scope of the mandate and is not reimbursable. The Controller's reduction of the 18 sampled notices is correct as a matter of law.
Reduction of claimed costs for notices	The parameters and guidelines provide for a uniform cost allowance "based on the number of initial notifications of truancy	<i>Incorrect</i> –The amendment to section 48260 affected only the definition of truancy, and

<p>provided for pupils who accumulated three, but not four unexcused absences or tardies (89 sampled notices, plus the unallowable notices extrapolated on this basis).</p>	<p>distributed pursuant to Education Code Section 48260.5, as added by Chapter 498, Statutes of 1983.” As analyzed by the Board of Control in its November 29, 1984 decision, Education Code section 48260 stated that a pupil who is absent or tardy from school without valid excuse for <i>more than three days</i> in one school year is a truant. The parameters and guidelines as originally adopted, and as amended July 22, 1993, included the then-current definition of a “truant” under Section I., Summary of Mandate.</p> <p>Subsequent to the adoption and 1993 amendment of parameters and guidelines for this program, section 48260, defining truancy, was amended by Statutes 1994, chapter 1023 (SB 1728) and Statutes 1995, chapter 19 (SB 102) to lower the threshold for classifying a pupil as a truant, to a pupil who has an unexcused absence or instance of tardiness on three full days in one school year.</p> <p>The Controller reduced claimed costs for notices sent for pupils with three unexcused absences or tardies, but not four.</p>	<p>not the mandated program required to be performed by school districts. Thus, neither a new test claim nor parameters and guidelines amendment was necessary for the districts to continue to be reimbursed for complying with section 48260.5; that “upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian...” Therefore, the Controller’s reduction based on notices provided for pupils who accumulated three, but not four, unexcused instances of tardiness or absence is incorrect as a matter of law. All costs reduced on this basis (both sampled and extrapolated) should be reinstated to the claimant.</p>
<p>Reduction of claimed costs for the 51 sampled notices issued for pupils who were under the age of six and over the age of eighteen and, thus, were not subject to the compulsory education laws.</p>	<p>Section 48260 defines a truant as a pupil subject to compulsory education who is absent or tardy on three or more occasions within one school year. Section 48200 provides that only pupils between the ages of six and 18 are subject to compulsory full-time education.</p> <p>The Controller reduced costs claimed for initial notifications of truancy for pupils under age six and over age 18, because the Controller determined that such pupils could not be, by definition, truant.</p>	<p><i>Correct</i> -The mandate applies to “any pupil subject to compulsory full-time education.” (Ed. Code, § 48260.) Pupils subject to compulsory full-time education are pupils between the ages of six and eighteen. (Ed. Code, § 48200.) Therefore, the reduction of costs for the 51 sampled notices is correct as a matter of law.</p>
<p>Reduction of costs made by statistical sampling and</p>	<p>In its audit, the Controller examined a random sample of notices issued by the claimant, for each fiscal year, to determine the proportion of notifications that were</p>	<p><i>Partially Correct</i> – There is no evidence to support claimant’s argument that the statistical sampling and</p>

<p>extrapolation.</p>	<p>unallowable. The number of unallowable notifications within the sample for each fiscal year was then calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant, to project a total number of unallowable notifications, which was then multiplied by the unit cost for that year to estimate the reduction. The methodology results in an estimate of the amount of claimed costs that the Controller has determined to be excessive or unreasonable.</p> <p>The claimant argues that the Controller’s statistical sampling and extrapolation method is an underground regulation, is not legally supported, and the sample findings are not qualitatively or quantitatively representative of the all notices claimed. The claimant contends that the reductions should be limited to only the notices sampled and actually reviewed by the Controller.</p>	<p>extrapolation method used in the audit constitutes an underground regulation. The Commission is required to uphold the Controller’s audit conclusions, absent evidence that the Controller’s reductions are arbitrary, capricious, or entirely lacking in evidentiary support.</p> <p>In this respect, there is no evidence that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed. In fact, the record shows that the claimant provided documentation for all notices claimed, except the four. Thus, an extrapolation on that basis is entirely lacking in evidentiary support.</p> <p>However, the Controller’s sampling and extrapolation methodology used for notices sent to pupils who were not truant under the law or were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant has presented no evidence that schools within the claimant’s district complied with the mandate in different ways, which may provide evidence that the results from the sample are not qualitatively representative of all notices claimed. Moreover, all notices were randomly</p>
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		sampled and have an equal opportunity for inclusion in the sample and, thus, the result is statistically objective and unbiased. Therefore, these extrapolated reductions are correct.
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Staff Analysis

A. The Controller’s Reasons for Reducing Costs for Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, Are Partially Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

1. The Controller’s reduction of costs for the four truancy notifications that were not supported by documentation is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller determined that a total of four truancy notifications claimed for fiscal years 2002-2003, 2003-2004, and 2004-2005 were not supported by documentation. The claimant asserts the reduction is incorrect, and that for all fiscal years at issue, it complied with the parameters and guidelines by “reporting the number of notices distributed on the forms provided by the Controller’s claiming instructions for this purpose.”¹⁹

Staff finds that the Controller’s reduction of costs for the four truancy notifications that were not supported by documentation is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The parameters and guidelines require claimants to provide documentation to support the number of truancy notifications distributed, and not simply identify the number of notifications distributed in the claim forms as asserted by claimant.

2. Reimbursement is not required to provide truancy notices for pupils with fewer than three unexcused absences or tardiness occurrences and, thus, the Controller’s reduction of costs for those notices is correct as a matter of law.

The Controller found that the claimant sent 18 truancy notices to pupils who had fewer than three truancy absences or tardiness occurrences in fiscal years 2003-2004 and 2005-2006. Staff finds that the reduction of costs for notices provided to students with fewer than three truancy absences or tardiness occurrences is correct as a matter of law.

Section 48260.5, as approved by the Board of Control’s test claim decision, and as described in the Commission’s 1993 parameters and guidelines, requires a school district to issue a notification of truancy “by first-class mail or other reasonable means” to the pupil’s parent or guardian “upon a pupil’s initial classification as a truant...”²⁰ The mandated program as approved by the Board of Control, and as articulated in the parameters and guidelines, is to issue a notification of truancy to a pupil’s parent or guardian upon the pupil’s initial

¹⁹ Exhibit A, Incorrect Reduction Claim, page 19.

²⁰ See, former Education Code section 48260.5 (Stats. 1983, ch. 498) [“Upon a pupil’s initial classification as a truant, the school district shall notify...”].

classification as a truant. If a pupil cannot be classified as a truant, as defined in section 48260, a notification is not required, and any notification sent to that pupil's parent or guardian, whether or not intentional, is not reimbursable. Thus, the claimant's request for reimbursement to provide truancy notices for pupils with fewer than three truancy absences or tardies goes beyond the scope of the mandate and is not eligible for reimbursement.

3. The Controller's reduction based on notices provided for pupils who accumulated three but not four, unexcused absences or instances of tardiness is incorrect as a matter of law.

The Controller identifies 89 notifications within the sample issued for pupils who accumulated three but not four unexcused absences or tardies. Staff finds that the Controller's reduction of costs on this basis is incorrect as a matter of law.

The parameters and guidelines provide for a uniform cost allowance "based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, as added by Chapter 498, Statutes of 1983." As analyzed by the Board of Control in its November 29, 1984 decision, Education Code section 48260 stated that a pupil who is absent or tardy from school without valid excuse for *more than three days* in one school year is a truant. The parameters and guidelines as originally adopted, and as amended July 22, 1993, included the then-current definition of a "truant" under Section I., Summary of Mandate.

The amendment to section 48260 affected only the definition of truancy, and not the mandated program required to be performed by school districts. Thus, neither a new test claim nor parameters and guidelines amendment was necessary for the districts to continue to be reimbursed for complying with section 48260.5; that "upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian..." Therefore, the Controller's reduction based on notices provided for pupils who accumulated three, but not four, unexcused instances of tardiness or absence is incorrect as a matter of law. All costs reduced on this basis (both sampled and extrapolated) should be reinstated to the claimant.

4. Reimbursement is not required to provide truancy notices to pupils who are under the age of six and over the age of eighteen since they are not subject to compulsory education and, thus, the Controller's reduction of costs for those notices is correct as a matter of law.

The Controller reduced costs claimed for 51 sampled notices sent for pupils under age six or over age eighteen at the time of the unexcused absences or tardiness. The claimant asserts that notifications of truancy sent to students under age six and over age eighteen should be reimbursable because the Education Code provides that those students are statutorily entitled to attend school. Claimant further contends that school districts are required by Education Code section 46000 to record, keep attendance, and report absences of all pupils.

Staff finds that providing truancy notices to pupils under the age of six and over the age of eighteen goes beyond the scope of the mandate and, thus, the reduction is correct as a matter of law. Education Code section 48260(a) defines a truant as a pupil subject to compulsory full-time education. "Compulsory full-time education" is defined in Education Code section 48200 as "each person between the ages of six and eighteen years." Even though schools are required by state law to report the attendance of all enrolled pupils, the truancy laws, including the first notice of initial truancy required by this mandated program, apply only to pupils between the ages of six and eighteen.

B. The Reductions Based on Statistical Sampling and Extrapolation of Correct Reductions Is Partially Correct.

In its audit, the Controller examined a random sample of notices issued by the claimant, for each fiscal year, to determine the proportion of notifications that were unallowable. The number of unallowable notifications within the sample for each fiscal year was then calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant, to project a total number of unallowable notifications, which was then multiplied by the unit cost for that year to estimate the reduction. The methodology results in an estimate of the amount of claimed costs that the Controller has determined to be excessive or unreasonable.

The claimant argues that the Controller's statistical sampling and extrapolation method is an underground regulation, is not legally supported, and the sample findings are not qualitatively or quantitatively representative of the all notices claimed. The claimant contends that the reductions should be limited to only the notices sampled and actually reviewed by the Controller.

Staff finds that the reductions based on statistical sampling and extrapolation of correctly reduced costs from the audit sample is partially correct.

1. There is no evidence to support claimant's argument that the statistical sampling and extrapolation method used in the audit constitutes an underground regulation.

The claimant challenges the statistical sampling and extrapolation methodology used by the Controller as an underground regulation not adopted pursuant to the Administrative Procedure Act (APA), and argues that any findings and cost reductions extrapolated from the sample reviewed by the Controller should therefore be void.²¹

Government Code section 11340.5 provides that no state agency shall enforce or attempt to enforce a rule or criterion which is a regulation, as defined in section 11342.600, unless it has been adopted pursuant to the APA.²² Therefore, if the Controller's challenged audit methods constitute a regulation not adopted pursuant to the APA, the Commission cannot uphold the reductions. Interpreting section 11342.600, the California Supreme Court in *Tidewater Marine Western v. Bradshaw* found that a regulation has two principal characteristics:

First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a *certain class of cases* will be decided. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure."²³

²¹ Exhibit B, Controller's comments on IRC, page 17.

²² Government Code section 11340.5 (Stats. 2000, ch. 1060).

²³ *Tidewater Marine Western v. Bradshaw* (1996) 14 Cal.4th 557, 571 (emphasis added) [Citing *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630; Gov. Code § 11342(g)].

The necessary inquiry, then, is whether the challenged audit policy or practice is applied “generally,” and used to decide a class of cases; and whether the rule “implement[s], interpret[s], or make[s] specific” the law administered by the Controller.

Here, there is not substantial evidence in the record that the audit methodology as applied in this case rises to the level of a rule of general application, and no clear “class of cases” to which it applied has been defined. The sampling and extrapolation method is not published in the claiming instructions for this mandate; nor is it alleged that auditors were *required* to utilize such methods. Indeed, of the 42 completed audit reports for this mandated program currently available on the Controller’s website, some do not apply a statistical sampling and extrapolation methodology to calculate a reduction;²⁴ others apply a sampling and extrapolation method to determine whether the notifications issued complied with the eight required elements under section 48260.5;²⁵ and still others use sampling and extrapolation methods to determine the proportion of notifications issued that were supported by documentation, including attendance records, rather than the proportion unallowable based on absences, as here.²⁶

Therefore, based on the case law discussed herein, and the evidence in the record, staff finds that the Controller’s sampling and extrapolation method, as applied in this case, is not a regulation within the meaning of the APA.

2. The Controller’s audit conclusions must be upheld absent evidence that the Controller’s reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant argues that there is no statutory or regulatory authority for the Controller to reduce claimed costs based on extrapolation from a statistical sample.²⁷ The Controller counters that Government Code section 17561(d)(2)(B) provides authority for statistical sampling in that this section allows the Controller to reduce “excessive or unreasonable” claims.²⁸ The Controller continues that a claim that exceeds what is proper is excessive and that the district’s claims were improper because they included non-reimbursable notifications.²⁹ In addition, the Controller relies on “Government Auditing Standards, as issued by the Comptroller General of the United States” to argue that sampling and extrapolation techniques are within accepted practice for auditors.³⁰ The Controller asserts that the Generally Accepted Government Auditing Standards

²⁴ See, e.g., Audit of Sweetwater Union High School District, *Notification of Truancy*, fiscal years 2006-2007 through 2009-2010 [In this audit report the Controller reduced based on the claimant’s failure to comply with the notification requirements of section 48260.5, rather than performing a sampling and estimation audit to determine whether notifications were issued in compliance with section 48260.]

²⁵ See, e.g., Audit of Colton Joint Unified School District, *Notification of Truancy*, fiscal years 1999-2000 through 2001-2002, issued November 26, 2003.

²⁶ See, e.g., Audit of Bakersfield City School District, *Notification of Truancy*, fiscal years 2007-2008 through 2009-2010, issued October 25, 2012.

²⁷ Exhibit A, Incorrect Reduction Claim, page 11.

²⁸ Exhibit B, Controller’s comments on IRC, page 12.

²⁹ *Id.*

³⁰ *Id.*

(GAGAS) provide: “[w]hen a representative sample is needed, the use of statistical sampling approaches general results in stronger evidence...”³¹ Furthermore, the Controller relies on Government Code section 17561, which permits the Controller generally to reduce any claim that is determined to be excessive or unreasonable: “[t]he SCO conducted appropriate statistical samples that identified a *reasonable* estimate of the non-reimbursable initial truancy notifications, thus properly reducing the claims for the *unreasonable* claimed costs.”³²

In accordance with the Controller’s audit authority and duties under the Government Code, the Commission’s consideration of this issue is limited to whether the Controller’s reduction of costs based on audit decisions (as opposed to questions of law) is arbitrary, capricious, or entirely lacking in evidentiary support.³³ Based on the standards and texts cited by the Controller, statistical methods are an appropriate and commonly-used tool in auditing. The claimant, too, concedes that “[a] statistically valid sample methodology is a recognized audit tool for some purposes.”³⁴

In fact, statistical sampling methods such as those employed here are used in a number of other contexts, including Medi-Cal reimbursement to health care providers, and have not been held, in themselves, to be arbitrary and capricious, or incorrect as a matter of law.

On that basis, and giving due consideration to the discretion of the Controller to audit the fiscal affairs of the state, staff finds that the Commission must uphold the Controller’s auditing decisions absent evidence that the audit reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

3. The extrapolation of unallowable costs from the audit sample is partially correct.

Staff finds that the reduction of costs extrapolated from the unallowable notices sampled is partially correct.

- a) *There is no evidence that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed and, thus, an extrapolation on that basis is entirely lacking in evidentiary support.*

As explained above, the Controller correctly reduced the costs for four sampled truancy notices claimed in fiscal years 2002-2003, 2003-2004, and 2004-2005 on the ground that these notices were not supported by documentation, as required by the parameters and guidelines. The Controller then calculated the error percentage, and included this reduction in the percentage, and extrapolated the result to all notices claimed during the audit period.

However, the record shows that the claimant provided documentation for all notices claimed in fiscal years 2002-2003 and 2005-2006. The audit report specifies that “[f]or fiscal year 2002-03, the district claimed 10,001 initial truancy notification [and] [t]he district provided

³¹ *Id.*, page 13.

³² *Id.*, page 17 [emphasis in original].

³³ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California*, 162 Cal.App.4th 534, 547-548.

³⁴ Exhibit A, Incorrect Reduction Claim, page 14.

documentation that identified 9,999 truant students...the difference is immaterial.” And for fiscal year “2005-06 the district claimed 19,654 truancy notifications” and ultimately provided the documentation for all the notifications claimed.³⁵ Thus, the record does not support the conclusion that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed.

Accordingly, staff finds that the Controller’s calculation of the error percentage, which includes this reduction in the percentage, and the extrapolation of the result to all notices claimed during the audit period is entirely lacking in evidentiary support. All extrapolated costs reduced on this basis should be reinstated to the claimant.

b) The Controller’s sampling and extrapolation methodology used for notices sent to pupils who were not truant under the law or were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller also correctly reduced the costs of notices within the sample for the following reasons:

- Eighteen notices were sent to pupils that had fewer than three absences.
- Fifty-one notices were sent to pupils under the age of six and over the age of eighteen who were not subject to the compulsory education requirements of the Education Code.

The Controller then calculated the error percentage, which included these reductions in the percentage, and extrapolated the result to all notices claimed during the audit period.³⁶ Staff finds, based on this record, that the extrapolation of these findings is not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff finds that the Controller’s sampling and extrapolation methodology used in this audit for notices sent to pupils who were not truant under the law (fewer than three absences or tardies) or were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant has presented no evidence that schools within the claimant’s district complied with the mandate in different ways, which may provide evidence that the results from the sample are not qualitatively representative of all notices claimed. The Commission, and the Controller, must presume that the claimant uniformly complied with the mandate, absent evidence to the contrary.

Moreover, there is no dispute that the samples were randomly obtained and reviewed by the Controller. According to the Handbook of Sampling for Auditing and Accounting (Arkin), all notices randomly sampled have an equal opportunity for inclusion in the sample and, thus, the result is statistically objective and unbiased.

³⁵ Exhibit A, Incorrect Reduction Claim, page 67.

³⁶ Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller’s comments on IRC, pages 18-19.

Conclusion

Staff recommends that the Commission partially approve this IRC. Staff concludes that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reduction for four sampled truancy notifications that were not supported by documentation.
- Reductions for sampled notifications issued for pupils who accumulated fewer than three unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions for sampled notifications issued for pupils under age six or over age eighteen, and the extrapolation of those reductions to all notices claimed.

The following reductions, however, are incorrect as a matter of law, or are entirely lacking in evidentiary support, and should be reinstated to the claimant:

- Reductions based on notifications issued for pupils who accumulated three, but not four unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions based on the extrapolation of the four sampled truancy notifications that were not supported by documentation.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve the IRC, and, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, reinstate all costs incorrectly reduced to the claimant, consistent with these findings. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

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

Case No.: 10-904133-I-09

Notification of Truancy

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

(Adopted: December 3, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 3, 2015. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] this IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This IRC addresses reductions of \$132,847 made by the State Controller's Office (Controller) to reimbursement claims filed by San Juan Unified School District (claimant) for fiscal years 2002-2003 through 2005-2006, for the *Notification of Truancy* program. The Controller reviewed a sample of 883 notices issued by the elementary and secondary schools within the district, out of the 64,641 notices claimed. The Controller found that 162 notices included in the sample were not reimbursable for the following reasons:

- There was no documentation to support four notices within the sample and, thus, the Controller concluded that those pupils did not have the required number of unexcused absences and, thus, costs were claimed beyond the scope of the mandate.
- 18 notices were sent to pupils that had fewer than three absences.
- 89 notices were sent to pupils that had three, but not four absences.

- 51 notices were sent to pupils under the age of six and over the age of eighteen who were not subject to the compulsory education requirements of the Education Code.³⁷

The Controller reached the total dollar amount reduced (\$132,847) by using an audit methodology known as “statistical sampling.” The total number of unallowable notifications within the sample for each fiscal year was calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant in those fiscal years, to approximate the total number of unallowable notifications claimed. The number of unallowable notices was then multiplied by the unit cost for each fiscal year to calculate the total reduction for the audit period.

Pursuant to Government Code section 17551(d), the Commission partially approves this IRC. The Commission finds that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reduction for four sampled truancy notifications that were not supported by documentation.
- Reductions for sampled notifications issued for pupils who accumulated fewer than three unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions for sampled notifications issued for pupils under age six or over age eighteen, and the extrapolation of those reductions to all notices claimed.

The following reductions, however, are incorrect as a matter of law, or are entirely lacking in evidentiary support, and should be reinstated to the claimant:

- Reductions based on notifications issued for pupils who accumulated three, but not four unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions based on the extrapolation of the four sampled truancy notifications that were not supported by documentation.

Pursuant to Government Code section 1185.9 of the Commission’s regulations, the Commission requests costs incorrectly reduced be reinstated by the Controller in accordance with this decision.

COMMISSION FINDINGS

I. Chronology

- 09/04/2009 The Controller issued the final audit report.³⁸
- 10/06/2010 Claimant filed this IRC.³⁹

³⁷ Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller’s comments on IRC, page 18-19.

³⁸ Exhibit A, Incorrect Reduction Claim, page 60.

³⁹ Exhibit A, Incorrect Reduction Claim, page 1.

10/03/2014 The Controller filed comments on the IRC.⁴⁰

09/24/2015 Commission staff issued the draft proposed decision.⁴¹

II. Background

The Notification of Truancy Program

Under California's compulsory education laws, children between the ages of six and 18 are required to attend school full-time, with a limited number of specified exceptions.⁴² Once a pupil is designated a truant, as defined, state law requires schools, districts, counties, and the courts to take progressive intervention measures to ensure that parents and pupils receive services to assist them in complying with the compulsory attendance laws.

The first intervention is required by Education Code section 48260.5, as added by the test claim statute.⁴³ As originally enacted, section 48260.5 specified:

(a) Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:

(1) That the pupil is truant.

(2) That the parent or guardian is obligated to compel the attendance of the pupil at school.

(3) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.

(b) The district also shall inform parents or guardians of the following:

(1) Alternative educational programs available in the district.

(2) The right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

On November 29, 1984, the Board of Control determined that Education Code section 48260.5, as added by Statutes 1983, chapter 498, imposed a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy. The decision was summarized as follows:

The Board determined that the statute imposes costs by requiring school districts to develop a notification form, and provide written notice to the parents or guardians of students identified as truants of this fact. It requires that notification contain other specified information and, also, to advise the parent or guardian of their right to meet with school personnel regarding the truant pupil. The Board

⁴⁰ Exhibit B, Controller's comments on IRC, page 1.

⁴¹ Exhibit C, Draft Proposed Decision.

⁴² Education Code section 48200.

⁴³ Education Code section 48260.5, Statutes 1983, chapter 498.

found these requirements to be new and not previously required of the claimant.⁴⁴

The original parameters and guidelines were adopted on August 27, 1987, and authorized reimbursement for the one-time activities of planning implementation, revising school district policies and procedures, and designing and printing the notification forms. Reimbursement was also authorized for ongoing activities to identify pupils to receive the initial notification and prepare and distribute the notification by first class mail or other reasonable means.

The Commission amended the parameters and guidelines on July 22, 1993, effective July 1, 1992, to add a unit cost of \$10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed in lieu of requiring the claimant to provide documentation of actual costs to the Controller. The parameters and guidelines further provide that “school districts incurring unique costs within the scope of the reimbursable mandated activities may submit a request to amend the parameters and guidelines to the Commission for the unique costs to be approved for reimbursement.”⁴⁵ These are the parameters and guidelines applicable to this claim.⁴⁶

The Legislature enacted Statutes 2007, chapter 69, effective January 1, 2008, which was sponsored by the Controller’s Office to require the Commission to amend the parameters and guidelines, effective July 1, 2006, to modify the definition of a truant and the required elements to be included in the initial truancy notifications in accordance with Statutes 1994, chapter 1023, and Statutes 1995, chapter 19.⁴⁷ These statutes required school districts to add the following information to the truancy notification: that the pupil may be subject to prosecution under Section 48264, that the pupil may be subject to suspension, restriction, or delay of the pupil’s driving privilege pursuant to Section 13202.7 of the Vehicle Code, and that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. The definition of truant was also changed from a pupil absent for “more than three days” to a pupil absent for “three days.” In 2008, the Commission amended the parameters and guidelines, for costs incurred beginning July 1, 2006, as directed by the Legislature.

The Controller’s Audit and Summary of the Issues

The September 4, 2009 audit report determined that \$791,710 in claimed costs for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006 was allowable and \$132,847 was unallowable.⁴⁸ The Controller reviewed a sample of 883 notices issued by the elementary and secondary schools within the district, out of the 64,641 notices claimed. The Controller found that 162 notices included in the sample were not reimbursable for the following reasons:

⁴⁴ Exhibit X, Brief Written Statement for Adopted Mandate issued by the Board of Control on the *Notification of Truancy* test claim (SB 90-4133).

⁴⁵ Exhibit X, Parameters and Guidelines, amended July 22, 1993.

⁴⁶ The parameters and guidelines as amended in 2008 are not applicable to this IRC.

⁴⁷ Exhibit X, Controller’s Letter dated July 17, 2007 on AB 1698.

⁴⁸ Exhibit A, Incorrect Reduction Claim, page 63.

- There was no documentation to support four notices within the sample and, thus, the Controller concluded that those pupils did not have the required number of unexcused absences and, thus, costs were claimed beyond the scope of the mandate.⁴⁹
- 18 notices were sent to pupils that had fewer than three absences.
- 89 notices were sent to pupils that had three, but not four absences as stated in the parameters and guidelines.
- 51 notices were sent to pupils under the age of six and over the age of 18 who were not subject to the compulsory education requirements of the Education Code.⁵⁰

The Controller reached the total dollar amount reduced (\$132,847) by using an audit methodology known as “statistical sampling.” The Controller examined a random sample of initial truancy notices distributed by the claimant,⁵¹ with the calculation of the “sample size based on a 95% confidence level,” and determined that 162 of those notices claimed were beyond the scope of the mandate, as described above.⁵² The total number of unallowable notifications within the sample for each fiscal year was then calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant in those fiscal years, to approximate the total number of unallowable notifications claimed. The number of unallowable notices was then multiplied by the unit cost for each fiscal year to calculate the total reduction for the audit period.

III. Positions of the Parties

San Juan Unified School District

The claimant challenges the disallowance of notifications for insufficient documentation, arguing that while not specifically identified in the audit report, the audit disallowed four of the notices in the audit sample for lack of supporting documentation. The claimant asserts that the documentation criterion was not discussed in the audit report and there is no stated basis for the finding. The claimant states that it complied with Part VI. A., of the parameters and guidelines by reporting the number of notices distributed, and that there is no requirement that claimants maintain a copy of the each notification or provide attendance records to support the number of notifications distributed. The claimant asserts that the Controller’s apparent selection of attendance records as the only source of support for documentation and statutory compliance for purposes of the audit, is an unenforceable policy preference of the Controller.⁵³

⁴⁹ Exhibit B, Controller’s comments on the IRC, page 19.

⁵⁰ Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller’s comments on IRC, page 18.

⁵¹ The sample sizes for elementary schools and the sample sizes for secondary schools that were reviewed by the Controller each fiscal year ranged from 143 to 149. (Exhibit A, Incorrect Reduction Claim, page 68 (final audit report); Exhibit B, Controller’s Comments on IRC, page 26).

⁵² Exhibit B, Controller’s comments on IRC, pages 18, 26.

⁵³ Exhibit A, Incorrect Reduction Claim, pages 19-20.

The claimant also asserts that “16 notices in the audit sample for elementary school ...and 2 notices in the audit sample for secondary schools” were reduced because “the District documented fewer than three accumulated unexcused absences or tardies.”⁵⁴ However, the claimant does not raise any arguments as to why this is an incorrect basis for reduction.

The claimant also challenges the disallowance of notifications for fewer than four unexcused absences or tardies. The claimant notes the inconsistency between the definition of truant included in the parameters and guidelines (four or more absences) and the Education Code, as amended in 1994 and 1995 (three or more unexcused absence or instances of tardiness, or any combination thereof). The claimant argues:

The parameters and guidelines specifically reference that the source of the definition of a truant is Section 48260. Therefore, any amendment of Section 48260 would independently and unilaterally change the essential requirements for the initial notice of truancy without the need for an amendment by the Commission on State Mandates. The Controller has decided to enforce the definition of a truant as it was stated in the parameters and guidelines prior to that amendment, even though it contradicts a statute in effect during the audit period. The District properly complied with state law when it issued truancy notifications upon three absences....The parameters and guidelines reimburse the mandated costs based on the number of initial notifications issued, not when the notices are issued. The Controller’s disallowance of those notices with three unexcused absences or tardies is without legal authority.⁵⁵

The claimant additionally challenges the Controller’s disallowance of notifications sent to pupils under age six and over age eighteen arguing that these should be allowed because the Education Code allows these students to attend school and requires school districts to provide educational services to these pupils.⁵⁶

The claimant also asserts that the use of statistical sampling should be rejected, that the extrapolation of findings is void, and that the audit findings can only pertain to documentation actually reviewed.⁵⁷ The claimant argues that there is no “statutory or regulatory authority to allow the Controller to reduce claimed reimbursement based on extrapolation of a statistical sample.”⁵⁸ The claimant attacks the statistical reliability and accuracy of the Controller’s methodology, arguing that “[t]esting to detect the rate of error within tolerances is the purpose of sampling, but it is not a tool to assign an exact dollar amount to the amount of the error, which the Controller has inappropriately done so here.”⁵⁹ The claimant further states that the risk of extrapolating findings from a sample is that the conclusions obtained from the sample

⁵⁴ *Id.*, page 21.

⁵⁵ *Id.*, pages 22-23.

⁵⁶ *Id.*, pages 23-28.

⁵⁷ *Id.*, page 11.

⁵⁸ *Id.*

⁵⁹ *Id.*, page 15.

may not be representative of the universe.⁶⁰ The claimant contends that the sampling technique used by the Controller is also quantitatively non-representative because less than two percent of the total number of notices were audited and that “[t]he expected error rate is stated to be 50%, which means the total amount adjusted \$132,847 is really just a number exactly between \$66,424 (50%) and \$100,27 [sic] (\$150%)” and that there is no legal or factual basis cited by the Controller “that would allow the midrange of an interval to be used as a finding of absolute actual cost.”⁶¹ Claimant asserts that the Controller should comply with the Administrative Procedure Act, should it wish to enforce audit standards other than “excessive or unreasonable.”⁶²

Finally, claimant asserts that the audit changed the amount paid for the 2002-2003, 2003-2004, and 2004-2005 fiscal years without a finding in the report;⁶³ however this allegation will not be addressed because it does not result in a reduction to the district’s claim.

State Controller’s Office

The Controller disagrees with the need to separately identify the four unallowable notifications based on lack of documentation.⁶⁴ The Controller asserts that they “requested that the district provide attendance records showing that the students accumulated the minimum number of unexcused absences or tardiness occurrences...[and that] if the district provided no records, then the audit conclusion is that the student did not have the required unexcused absences.” The Controller argues that since the district provided attendance record documentation for 879 of the 883 sampled students, they are well versed on the required documentation. The Controller asserts that the district’s attendance records are the “obvious source documentation to validate that the students did in fact qualify as truant.” The Controller further asserts that the claimant has not provided, offered, or identified any alternative documentation to support the four unallowable initial truancy notifications claimed.⁶⁵

With respect to the reduction based on the number of absences and tardies, the Controller argues that the parameters and guidelines identify the reimbursable costs and state that “a student shall be initially classified as truant upon the fourth unexcused absence....” The Controller asserts that the claimant “confuses the difference between its statutory responsibility versus mandate-related reimbursable costs identified by the parameters and guidelines.” The Controller argues that the “parameters and guidelines clearly state that initial truancy notifications are reimbursable under the mandated program for students who accumulated four or more unexcused absences or tardiness occurrences.” Further the Controller notes that the claimant did not comment regarding students who accumulated fewer than three unexcused absences or tardiness occurrences, except as discussed above.⁶⁶

⁶⁰ *Id.*, page 15.

⁶¹ *Id.*, page 17.

⁶² *Id.*, pages 17-18.

⁶³ *Id.*, pages 28-29.

⁶⁴ Exhibit B, Controller’s comments on IRC, page 19.

⁶⁵ *Id.*, page 19.

⁶⁶ Exhibit B, Controller’s comments on IRC, page 21.

The Controller also asserts that claimant is not entitled to claim reimbursement for notices sent to students under age six or over age eighteen as these students are not subject to compulsory full time education, as defined in Education Code section 48200, and are thus not part of the mandated program.⁶⁷

In response to the claimant's challenge to the statistical sampling methodology, the Controller asserts that the Government code supports the use of statistical sampling. The Controller argues that Government Code section 17561(d)(2)(B) provide authority for statistical sampling in that this section allows the Controller to reduce "excessive" claims. The Controller continues that a claim that exceeds what is proper is excessive, that the district's claims were improper because they included non-reimbursable notifications, and that "the statistical samples...identified a reasonable estimate of the non-reimbursable initial truancy notifications, thus properly reducing the claims for the unreasonable costs claimed."⁶⁸ The Controller further asserts that the audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), and the GAGAS specifically provide that "[w]hen a representative sample is needed, the use of statistical sampling approaches generally results in stronger evidence...."⁶⁹ The Controller also asserts that there is no statutory requirement that they publish an audit manual or audit program for mandated costs program audits and that the Administrative Procedure Act is not applicable.⁷⁰

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the SCO has incorrectly reduced payments to a local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the SCO and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁷¹ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable

⁶⁷ *Id.*, page 22.

⁶⁸ *Id.*, pages 12, 17.

⁶⁹ *Id.*, page 13.

⁷⁰ *Id.*, pages 13, 17.

⁷¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

1. The Controller's reduction of costs for the four truancy notifications that were not supported by documentation is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller determined that four truancy notifications claimed for secondary school notifications for fiscal years 2002-2003, 2003-2004, and 2004-2005 were unallowable for lack of documentation. The Controller did not make a specific finding in the audit report that there was a lack of documentation, but instead concluded that those notices were sent to pupils that did not have the required number of unexcused absences.⁷⁷ In the Controller's response to the IRC, the Controller does not dispute claimant's assertion that "the audit disallowed four of the notices in the audit sample for secondary schools for lack of supporting documentation."⁷⁸ The Controller states that the district provided attendance records for most of the notices sampled, but has not provided any documentation to support the four unallowable initial truancy notifications claimed as follows:

The SCO requested that the district provide attendance records showing that the students accumulated the minimum number of unexcused absences and tardiness occurrences between ages 6 and 18. Clearly, if the district provided no records, then the audit conclusion is that the student did not have the required unexcused absences. Because the district provided attendance record documentation for 879 of the 883 sampled students, we believe that the district is well-versed on the "documentation criterion."

... The district's attendance records are the obvious source documentation to validate that the students did in fact qualify as truants. The district has not provided, offered, or identified any alternative documentation to support the unallowable initial truancy notifications claimed.⁷⁹

The claimant asserts, that for all fiscal years at issue, it complied with the parameters and guidelines by "reporting the number of notices distributed on the forms provided by the Controller's claiming instructions for this purpose."⁸⁰

The Commission finds that the Controller's reduction of costs for the four sampled notices is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The parameters and guidelines require claimants to provide documentation to support the number of truancy notifications distributed, and not simply complete the reimbursement claim forms required by the claiming instructions as asserted by the claimant. Section VI of the parameters and guidelines, which addresses Claim Preparation, states that each claim for reimbursement must "provide documentation in support of the reimbursement claimed for this mandated program." Section VII of the parameters and guidelines, which addresses Supporting

⁷⁷ Exhibit A, Incorrect Reduction Claim, pages 18-19; Exhibit B, Controller's comments on IRC, page 19.

⁷⁸ Exhibit A, Incorrect Reduction Claim, page 19; Exhibit B, Controller's comments on IRC, page 19.

⁷⁹ Exhibit B, Controller's comments on IRC, page 19.

⁸⁰ Exhibit A, Incorrect Reduction Claim, page 19.

Data, states that for auditing purposes, “documents must be kept on file for a period of 3 years from the date of final payment by the State Controller ... and be made available at the request of the State Controller or his agent.” That section further requires claimants to provide “[d]ocumentation which indicates the total number of initial notifications of truancy distributed.”⁸¹ The parameters and guidelines do not limit the type of supporting documentation required and, thus, under the parameters and guidelines, attendance records or other types of documentation maintained by a district may be sufficient documentation to support the costs claimed if the records show that the claimant complied with the mandate to provide written notice to the parent or guardian of the information required by the test claim statute and the documentation verifies the number of notifications provided in a fiscal year. However, the claimant has not filed any evidence of documentation supporting the costs claimed for the four notices at issue in this case.

Accordingly, the Commission finds that the Controller’s reduction of costs for the four truancy notifications that were not supported by documentation is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

2. Reimbursement is not required to provide truancy notices for pupils with fewer than three unexcused absences or tardiness occurrences and, thus, the Controller’s reduction of costs for those notices is correct as a matter of law.

Education Code section 48260, during the fiscal years here at issue, provided:

Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse *three* full days in one school year or tardy or absent for more than any 30-minute period during the school day without a valid excuse on *three* occasions in one school year, or any combination thereof, is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.⁸²

Section 48260.5, as approved by the Board of Control’s test claim decision, and as described in the Commission’s 1993 parameters and guidelines, requires a school district to issue a notification of truancy “by first-class mail or other reasonable means” to the pupil’s parent or guardian “upon a pupil’s initial classification as a truant...”⁸³

Therefore, the mandated program as approved by the Board of Control, and as articulated in the parameters and guidelines, is to issue a notification of truancy to a pupil’s parent or guardian upon the pupil’s initial classification as a truant. If a pupil cannot be classified as a truant, as defined in section 48260, a notification is not required, and any notification sent to that pupil’s parent or guardian, whether or not intentional, is not reimbursable.

⁸¹ Exhibit A, Incorrect Reduction Claim, page 49.

⁸² Former Education Code section 48260 (as amended, Stats. 1995, ch. 19 (SB 102), emphasis added).

⁸³ See, e.g., Exhibit B, Controller’s comments on IRC, page 8 [quoting the Commission’s 1993 parameters and guidelines]. See also, former Education Code section 48260.5 (Stats. 1983, ch. 498) [“Upon a pupil’s initial classification as a truant, the school district shall notify...”].

In this case, the Controller found that the claimant sent 18 truancy notices to pupils who had fewer than three truancy absences or tardiness occurrences in fiscal years 2003-2004 and 2005-2006. The claimant's request for reimbursement to provide truancy notices for pupils with fewer than three truancy absences or tardies goes beyond the scope of the mandate and is not eligible for reimbursement.

Accordingly, the Controller's reduction of costs for notices provided to students with fewer than three truancy absences or tardiness occurrences is correct as a matter of law.

3. The Controller's reduction based on notices provided for pupils who accumulated three, but not four, unexcused instances of tardiness or absence is incorrect as a matter of law.

The Controller identified 89 notifications within the sample, issued for pupils who accumulated three, but not four or more unexcused absences. Based on the analysis herein, the Commission finds that the Controller's disallowance of notifications issued for pupils who accumulated three but not four or more unexcused absences or instances of tardiness is incorrect as a matter of law, because it relies on the former definition of a truant.

The parameters and guidelines provide for a uniform cost allowance "based on the number of initial notifications of truancy distributed pursuant to Education Code Section 48260.5, as added by Chapter 498, Statutes of 1983."⁸⁴ As enacted in 1976, and as analyzed by the Board of Control in its November 29, 1984 decision, Education Code section 48260 stated that a pupil who is absent or tardy from school without valid excuse for *more than three days* in one school year is a truant, as follows:

Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse *more than three days* or tardy in excess of 30 minutes on each of *more than three days* in one school year is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.⁸⁵

Accordingly, the parameters and guidelines as originally adopted, and as amended July 22, 1993, included the then-current definition of a "truant" under Section I., Summary of Mandate:

A truancy occurs when a student is absent from school without valid excuse *more than three* (3) days or is tardy in excess of thirty (30) minutes on each of more than three (3) days in one school year. (Definition from Education Code Section 48260).⁸⁶

Subsequent to the adoption and 1993 amendment of parameters and guidelines for this program, section 48260, defining truancy, was amended by Statutes 1994, chapter 1023 (SB 1728) and Statutes 1995, chapter 19 (SB 102) to lower the threshold for classifying a pupil as a truant, as follows:

⁸⁴ Exhibit A, Incorrect Reduction Claim, page 47 (Parameters and Guidelines, amended July 22, 1993).

⁸⁵ Education Code section 48260 (Stats. 1976, ch. 1010) [Emphasis added].

⁸⁶ Exhibit X, Parameters and Guidelines, amended July 22, 1993.

Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse *three full days* in one school year or *tardy or absent* for more than any 30-minute period during the schoolday without a valid excuse *on three occasions* in one school year, or *any combination thereof*, is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.^{87,88}

No test claim or request to amend parameters and guidelines was ever submitted by a school district on the 1994 and 1995 statutes. However, section 48260 is definitional and was never found to impose any mandated activities on school districts in the Board of Control's decision, or in the adoption of parameters and guidelines. Accordingly, the section 48260 definition of truancy was not included as a reimbursable activity under the "Reimbursable Costs" section of the parameters and guidelines, but rather in the Summary of Mandate section, as noted above. Moreover, the 1994 and 1995 statutes do not require school districts to perform any new activities; the same activity of distributing initial truancy notifications is still required. In addition, the unit cost for reimbursing the mandated activities to send notices to parents or guardians was not increased when the parameters and guidelines were eventually amended to reflect the changes made by the 1994 and 1995 statutes, on January 31, 2008, pursuant to legislative direction enacted in Statutes 2007, chapter 69.⁸⁹

As explained, the 1994 and 1995 amendments to Education Code section 48260 created a discrepancy between what triggered the mandated activities under law and what the parameters and guidelines in effect during that period stated was the triggering event under the Summary of Mandate. The inconsistency was corrected by an amendment to the parameters and guidelines adopted January 31, 2008 (an amendment made retroactive to July 1, 2006), but for over a decade the requirements of the Education Code and the language included in the Summary of Mandate section of the parameters and guidelines were at odds. In 2007, the Legislature acted to correct the discrepancy at the request of the State Controller's Office, recognizing that: "The school districts must adhere to the state statute, nevertheless, the State Controller uses the commission's parameters and guidelines to conduct the audits." The discrepancy, the

⁸⁷ Education Code section 48260 (as amended, Stats. 1995, ch. 19 (SB 102)) [Emphasis added].

⁸⁸ The 1994 statute also changed the content of the notice required by the test claim statute to require school districts to also notify the pupil's parent or guardian that the pupil may be subject to prosecution; or may be subject to suspension or restriction of driving privileges; and that "it is recommended that the parent or guardian accompany the pupil to school...for one day." (Ed. Code § 48260.5 (as amended, Stats. 1994, ch. 1023 (SB 1728).)

⁸⁹ Statutes 2007, chapter 69 (AB 1698) states:

Notwithstanding any other provision of law, by January 31, 2008, the Commission on State Mandates shall amend the parameters and guidelines regarding the notification of truancy, test claim number SB-90-4133, and modify the definition of a truant and the required elements to be included in the initial truancy notifications to conform reimbursable activities to Chapter 1023 of the Statutes of 1994 and Chapter 19 of the Statutes of 1995...Changes made by the commission to the parameters and guidelines shall be deemed effective on July 1, 2006.

Legislature found, “forces the State Controller’s Office to request school districts to return the reimbursements even though the districts have been following the law.”⁹⁰ As a result, the Legislature directed the Commission to amend the parameters and guidelines, the committee analysis noting that “[t]he commission is no longer able to update the definition of truancy due to one-year statute of limitations on revisions following amending statute.”⁹¹

When an amendment to a code section or regulation imposes a new program or higher level of service that increases the costs of a local government, a test claim must be filed within one year of the effective date of the amendment or subsequent statute in order for the local government to exercise its right to reimbursement under the Constitution, as alluded to by the committee analysis comments on AB 1698. But here, the amendment to section 48260 did not impose a new activity, let alone a new program or higher level of service that increased costs and required the adoption of a higher uniform cost allowance; the amendment affected only the *definition* of truancy.

Education Code section 48260 does not impose a mandated activity; it merely defines the event that triggers the mandated activity. The plain language is expressly definitional, not mandatory.⁹² Therefore, section 48260 was amended without altering the scope of the mandated activities, and reimbursement under the terms of the approved code section (48260.5) for sending a notice “upon a pupil’s initial classification as a truant,” does not require a new test claim finding, or even an amendment to the parameters and guidelines based on changes to section 48260. This interpretation is consistent with the Board of Control’s original test claim decision, which found that section 48260.5, and not section 48260, imposed the mandate. This reasoning is also consistent with the prior parameters and guidelines, in which the definition of truancy was not included as a reimbursable activity under the “Reimbursable Costs” section.

The Controller’s auditors in this case relied on the outdated definition of truancy included in the “Summary of Mandate” section of the 1993 parameters and guidelines (*i.e., more than three* absences or instances of tardiness). The Controller correctly asserts that “[t]he parameters and identify reimbursable mandated costs.”⁹³ And here, the parameters and guidelines, which “helpfully” included the text of a definition (which was *not* the subject of the mandate finding) in the Summary of Mandate, rather than citing to the code section where the definition could be found, were understandably a source of confusion for the auditors.

However, the Commission finds that because the amendment to section 48260 affected only the definition of truancy, and not the mandated program required to be performed by school districts, neither a new test claim nor parameters and guidelines amendment was necessary for the districts to continue to be reimbursed for complying with section 48260.5; that “upon a pupil’s initial classification as a truant, the school district shall notify the pupil’s parent or guardian...”

⁹⁰ Exhibit X, Assembly Bill 1698 (2007), Education Committee Analysis.

⁹¹ Exhibit X, Assembly Bill 1698 (2007), Education Committee Analysis.

⁹² An amendment to the definition of truancy may have also necessitated altering the text or content of the notice, but section 48260 made no such express requirement.

⁹³ Exhibit B, Controller’s comments on IRC, page 21.

Therefore, the Controller's reduction based on notices provided for pupils who accumulated three, but not four, unexcused instances of tardiness or absence is incorrect as a matter of law. All costs reduced on this basis should be reinstated to the claimant.

4. Reimbursement is not required to provide truancy notices to pupils who are under the age of six and over the age of eighteen, who have unexcused absences or tardiness occurrences and, thus, the Controller's reduction of costs for those notices is correct as a matter of law.

The Controller found that the claimant sent 51 notices within the audit sample, to pupils under age six or over age eighteen who were not subject to the compulsory education requirements of the Education Code. The claimant asserts that notifications of truancy sent to students under age six and over age eighteen should be reimbursable because the Education Code provides that those students are statutorily entitled to attend school. Claimant further contends that school districts are required by Education Code section 46000 to record, keep attendance, and report absences of all pupils according to the CDE regulations. These regulations provide that records of attendance of every pupil shall be kept for apportionment of state funds and to ensure general compliance with the compulsory education law.⁹⁴

The Commission finds that providing truancy notices to pupils under the age of six and over the age of eighteen, who by definition are not subject to the compulsory education law, goes beyond the scope of the mandate and is not eligible for reimbursement.

The claimant is correct that at the time these reimbursement claims were filed, school districts were required by state law to admit a child to kindergarten if the child would have his or her fifth birthday on or before December 2 of that school year.⁹⁵ School districts are also required by state and federal law to provide special education services to "individuals with exceptional needs" until the age of 21 if required by a pupil's individualized education plan (IEP).⁹⁶ And schools are required by state law to record the attendance of every pupil enrolled in school for apportionment of state funds and "to ensure the *general* compliance with the compulsory education law, and performance by a pupil of his duty to attend school regularly as provided in [California Code of Regulations, title 5] section 300."⁹⁷

However, the truancy laws apply only to those pupils who are subject to compulsory full-time education. Education Code section 48260(a) defines a truant as:

Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse three full days in one school year or tardy or absent for more than any 30-minute period during the schoolday without a valid excuse on three occasions in one school

⁹⁴ Exhibit A, Incorrect Reduction Claim, pages 24-27.

⁹⁵ Education Code section 48000(a), as last amended by Statutes 1991, chapter 381.

⁹⁶ Title 20, United States Code, section 1401; Education Code section 56026.

⁹⁷ Education Code section 46000; California Code of Regulations, title 5, section 400. Section 300 of the regulations state in relevant part that "every pupil shall attend school punctually and regularly."

year, or any combination thereof, is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.

“Compulsory full-time education” is defined in Education Code section 48200 as “each person between the ages of six and eighteen years” as follows:

Each person *between the ages of 6 and 18 years* not exempted from the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory full-time education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time designated as the length of the schoolday [sic] by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday [sic] by the governing board of the school district in which the residence of either the parent or the legal guardian is located.

Education Code 48260(b) further states that “[n]otwithstanding subdivision (a) [which defines a truant as a pupil subject to compulsory full-time education], it is the intent of the Legislature that school districts shall not change the method of attendance accounting provided for in existing law.” Therefore, even though schools are required by state law to report the attendance of all enrolled pupils, the truancy laws, including the first notice of initial truancy required by this mandated program, apply only to pupils between the ages of six and eighteen.

Therefore, the Controller’s reduction of costs for the 51 sampled truancy notices provided to students younger than six and older than eighteen, who are not subject to compulsory full-time education, is correct as a matter of law.

B. The Reductions Based on Statistical Sampling and Extrapolation of Correct Reductions Is Partially Correct.

In its audit, the Controller examined a random sample of notices issued by the claimant, for each fiscal year, to determine the proportion of notifications that were unallowable for the Controller’s asserted legal reasons. The number of unallowable notifications within the sample for each fiscal year was then calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant, to project a total number of unallowable notifications, which was then multiplied by the unit cost for that year to estimate the reduction.

The methodology results in an estimate of the amount of claimed costs that the Controller has determined to be excessive or unreasonable. The Controller states that “the point estimate provides the best, and thus reasonable, single estimate of the population’s error rate.”⁹⁸ In the final audit that estimate totals \$132,847 for all fiscal years.⁹⁹ The Controller asserts that

⁹⁸ Exhibit B, Controller’s comments on IRC, page 17.

⁹⁹ Exhibit A, Incorrect Reduction Claim, page 9.

sampling and extrapolation is an audit tool commonly used to identify error rates; that there is no law or regulation prohibiting that method; and, that the claimant misstates and misunderstands the meaning of an expected error rate and confidence interval. The Controller argues that its method is reasonable, and “the Administrative Procedures Act [sic] is not applicable.”¹⁰⁰

The claimant argues that the Controller’s statistical sampling and extrapolation method is not legally supported, not correctly applied to state-mandated reimbursement, and is inappropriately error-prone and inaccurate. The claimant further argues that “[t]he propriety of a mandate audit adjustment based on the statistical sampling technique is a threshold issue in that if the methodology used is rejected, as it should be, the extrapolation is void and the audit findings can only pertain to documentation actually reviewed, that is, the 883 notifications used in the audit report.”¹⁰¹ The claimant further attacks the statistical reliability and accuracy of the Controller’s methodology, arguing that “[t]esting to detect the rate of error within tolerances is the purpose of sampling, but it is not a tool to assign an exact dollar amount to the amount of the error, which the Controller has inappropriately done so here.”¹⁰² The claimant argues that “[l]ess than two percent of the total number of notices were audited (1.77%).” and that “[t]he expected error rate is stated to be 50%, which means the total amount adjusted of \$132,847 is really just a number exactly between \$66,424 (50%) and \$100,270 [sic] (150%).”¹⁰³ The claimant also challenges the Controller’s failure to adopt the methodology as a regulation pursuant to the Administrative Procedure Act (APA).¹⁰⁴

As described below, the Commission finds that there is no evidence to support claimant’s argument that the statistical sampling and extrapolation method used in the audit constitutes an underground regulation. Moreover, the Commission is required to uphold the Controller’s audit conclusions, absent evidence that the Controller’s reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

In this respect, the Commission finds that there is no evidence that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed and, thus, an extrapolation on that basis is entirely lacking in evidentiary support. However, the Controller’s sampling and extrapolation methodology used for notices sent to pupils who were not truant under the law (fewer than three unexcused absences or tardies) or were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support. Accordingly, the Commission finds that the extrapolation of unallowable costs from the audit sample is partially correct.

1. There is no evidence to support claimant’s argument that the statistical sampling and extrapolation method used in the audit constitutes an underground regulation.

¹⁰⁰ Exhibit B, Controller’s comments on IRC, page 17.

¹⁰¹ Exhibit A, Incorrect Reduction Claim, pages 10-11.

¹⁰² *Id.*, page 15.

¹⁰³ *Id.*, page 17.

¹⁰⁴ Exhibit A, Incorrect Reduction Claim, pages 17-18.

The claimant challenges the statistical sampling and extrapolation methodology used by the Controller as an underground regulation not adopted pursuant to the APA, and argues that any findings and cost reductions extrapolated from the sample reviewed by the Controller should therefore be void.¹⁰⁵ The claimant does not cite the provision of the APA upon which it relies to challenge the methodology, but generally alleges that the Controller's use of statistical sampling, violates the APA.¹⁰⁶

The relevant portions of the APA include, primarily, Government Code sections 11340.5 and 11342.600. Section 11340.5 provides, in pertinent part:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [the rule] has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.¹⁰⁷

Therefore, if the Controller's challenged audit methods constitute a regulation not adopted pursuant to the APA, the Commission cannot uphold the reductions. Section 11342.600, in turn, defines a regulation to mean "...every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."¹⁰⁸ Interpreting this section, the California Supreme Court in *Tidewater Marine Western v. Bradshaw* found that a regulation has two principal characteristics:

First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a *certain class of cases* will be decided. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure."¹⁰⁹

The necessary inquiry, then, is whether the challenged audit policy or practice is applied "generally," and used to decide a class of cases; and whether the rule "implement[s], interpret[s], or make[s] specific" the law administered by the Controller. Here, that presents a close question, which turns on the issue of general applicability: if it is the Controller's policy that *all audits* of the *Notification of Truancy* program be conducted using the statistical sampling and extrapolation methods here challenged, then perhaps that meets the standard of a rule applied "generally, rather than in a specific case."¹¹⁰ On the other hand, if statistical

¹⁰⁵ Exhibit B, Controller's comments on IRC, page 17.

¹⁰⁶ Exhibit A, Incorrect Reduction Claim, pages 17-18.

¹⁰⁷ Government Code section 11340.5 (Stats. 2000, ch. 1060).

¹⁰⁸ Government Code section 11342.600 (Stats. 2000, ch. 1060).

¹⁰⁹ *Tidewater Marine Western v. Bradshaw* (1996) 14 Cal.4th 557, 571 (emphasis added) [Citing *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630; Gov. Code § 11342(g)].

¹¹⁰ *Tidewater Marine Western v. Bradshaw* (1996) 14 Cal.4th 557, 571.

sampling and extrapolation is only one of an auditor’s tools, and it is within the discretion of each auditor to use the challenged methods, then the APA does not bar the exercise of that discretion.¹¹¹

In *Clovis Unified*, the court held that the Controller’s contemporaneous source document rule (CSDR), which was contained solely in the Controller’s claiming instructions and not adopted in the regulatory parameters and guidelines, was applied *generally* to audits of all reimbursement claims for certain programs, in that individual auditors had no discretion to judge on a case-by-case basis whether to apply the rule.¹¹² As to the second criterion, the court found that the CSDR was more specific, and in some ways inconsistent with the parameters and guidelines for the subject mandated programs. Specifically, the court found that the CSDR defined “source documents” differently and more specifically than the parameters and guidelines, including relegating employee declarations to “corroborating documents, not source documents...,” and failing to recognize the appropriate use of a time study.¹¹³ The court therefore held, “[g]iven these substantive differences...we conclude that the CSDR implemented, interpreted, or made specific...” the parameters and guidelines and the Controller’s audit authority and was, therefore, an underground regulation.¹¹⁴

In the Medi-Cal audit context, the courts held the Department of Health Services’ statistical sampling and extrapolation methods to determine the amount of over- or under-payment in reimbursement to health care providers to be an underground regulation, absent compliance with the APA. In *Grier v. Kizer*¹¹⁵ and *Union of American Physicians and Dentists v. Kizer (UAPD)*,¹¹⁶ “the Department conducted audits of Medi-Cal providers by taking a small random sample [to determine the frequency and extent of over- or under-claiming for services provided], then extrapolating that error rate over the total amount received by the provider during the period covered by the audit.”¹¹⁷ The courts found the sampling and extrapolation methodology in that case invalid, solely because of the failure of the Department of Health Services to adopt its methodology in accordance with the APA. The court in *Grier, supra*, concurred with an Office of Administrative Law (OAL) determination, made in a parallel administrative proceeding, that the challenged method constituted a regulation, and should have been duly adopted. The court observed that “the definition of a regulation is broad, as contrasted with the scope of the internal management exception, which is narrow.”¹¹⁸ And, the court rejected the Department’s argument that sampling and extrapolation was the only legally

¹¹¹ See *Taye v. Coye* (1994) 29 Cal.App.4th 1339, 1345 [Finding that an auditor’s decision was not an underground regulation where it was “designed to fit the particular conditions that were encountered upon arrival at the audit site.”].

¹¹² *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 803.

¹¹³ *Id.*, pages 803-805.

¹¹⁴ *Id.*, page 805.

¹¹⁵ *Grier v. Kizer* (1990) 219 Cal.App.3d 422.

¹¹⁶ *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490.

¹¹⁷ *Id.*, page 495.

¹¹⁸ *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 435.

tenable interpretation of its audit authority: “While sampling and extrapolation may be more feasible or cost-effective,...[a] line by line audit is an alternative tenable interpretation of the statutes.”¹¹⁹ The court also noted that the Department “acquiesced” in that determination and soon after adopted a regulation providing expressly for statistical sampling and extrapolation in the conduct of Medi-Cal audits.¹²⁰ Accordingly, the court in *Union of American Physicians and Dentists* assumed, without deciding, that having satisfied the APA, the statistical methodology could be validly applied to pending audits, or remanded audits.¹²¹ Now, with respect to Medi-Cal audits, a statistical sampling methodology is provided for in *both* the Welfare and Institutions Code and in the Department’s implementing regulations.¹²²

Here, the Controller argues that the auditor “conducted appropriate statistical samples that identified a reasonable estimate of the non-reimbursable initial truancy notifications, thus properly reducing the claims for the unreasonable claimed costs,” and that therefore “the Administrative Procedures Act [sic] is not applicable.”¹²³ But that argument essentially rests on the theory that the auditors acted appropriately, and therefore the APA could not have been violated. This conclusion does not follow. Looking no further than *Clovis Unified*, and especially in light of *Grier* and *UAPD*, it is clear that an audit practice may be reasonable and otherwise permissible, yet still constitute an illegal underground regulation.

However, the Commission does not have substantial evidence in the record that the audit methodology as applied in this case rises to the level of a rule of general application, and no clear “class of cases” to which it applied has been defined. In *Tidewater*, the Court held that a “rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided.”¹²⁴ And in *Clovis Unified*, the court explained that in the context of the Controller’s audits of mandate reimbursement claims:

As to the first criterion—whether the rule is intended to apply generally—substantial evidence supports the trial court’s finding that the CSDR was “applie[d] generally to the auditing of reimbursement claims ...; the Controller’s auditors ha[d] no discretion to judge on a case[-]by[-]case basis whether to apply the rule.”¹²⁵

Here, the sampling and extrapolation method is not published in the claiming instructions for this mandate; nor is it alleged that auditors were *required* to utilize such methods. Indeed, of

¹¹⁹ *Id.*, pages 438-439.

¹²⁰ *Id.*, pages 438-439.

¹²¹ *Union of American Physicians and Dentists*, *supra*, 223 Cal.App.3d 490, pages 504-505 [finding that the statistical audit methodology did not have retroactive effect because it did not alter the legal significance of past events (i.e., the amount of compensation to which a Medi-Cal provider was entitled)].

¹²² See, e.g., Welfare and Institutions Code section 14170(b) (added, Stats. 1992, ch. 722 (SB 485); Code of Regulations, title 22, section 51458.2 (Register 1988, No. 17).

¹²³ Exhibit B, Controller’s comments on IRC, page 17.

¹²⁴ *Tidewater*, *supra*, 14 Cal.4th 557, 571.

¹²⁵ *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 803.

the 42 completed audit reports for this mandated program currently available on the Controller's website, some do not apply a statistical sampling and extrapolation methodology to calculate a reduction;¹²⁶ others apply a sampling and extrapolation method to determine whether the notifications issued complied with the eight required elements under section 48260.5;¹²⁷ and still others use sampling and extrapolation methods to determine the proportion of notifications issued that were supported by documentation, including attendance records, rather than the proportion unallowable based on absences, as here.¹²⁸

Therefore, based on the case law discussed above, and the evidence in the record, the Commission finds that the Controller's sampling and extrapolation method, as applied in this case, is not a regulation within the meaning of the APA.

2. The Controller's audit conclusions must be upheld absent evidence that the Controller's reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant argues that there is no statutory or regulatory authority for the Controller to reduce claimed costs based on extrapolation from a statistical sample.¹²⁹ The Controller counters that Government Code section 17561, subdivision (d)(2)(B) provides authority for statistical sampling in that this section allows the Controller to reduce "excessive or unreasonable" claims.¹³⁰

The Commission finds that the Controller's audit conclusions must be upheld absent evidence that the Controller's reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller correctly states that there is no express prohibition in law or regulation of statistical sampling and extrapolation methods being used in an audit. The Controller's authority to audit is commonly described in the broadest terms: article XVI, section 7 states that "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."¹³¹ Government Code section 12410 provides that the Controller "shall superintend the fiscal concerns of the state..." and "shall audit all claims

¹²⁶ See, e.g., Audit of Sweetwater Union High School District, *Notification of Truancy*, fiscal years 2006-2007 through 2009-2010 [In this audit report the Controller reduced based on the claimant's failure to comply with the notification requirements of section 48260.5, rather than performing a sampling and estimation audit to determine whether notifications were issued in compliance with section 48260.]

¹²⁷ See, e.g., Audit of Colton Joint Unified School District, *Notification of Truancy*, fiscal years 1999-2000 through 2001-2002, issued November 26, 2003.

¹²⁸ See, e.g., Audit of Bakersfield City School District, *Notification of Truancy*, fiscal years 2007-2008 through 2009-2010, issued October 25, 2012.

¹²⁹ Exhibit A, *Incorrect Reduction Claim*, page 11.

¹³⁰ Exhibit B, *Controller's comments on IRC*, page 12.

¹³¹ California Constitution, article XVI, section 7 (added November 5, 1974, by Proposition 8).

against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.”¹³²

With respect to mandate reimbursement, the Controller’s audit authority is more specifically articulated. Article XIII B, section 6 provides that “the State shall provide a subvention of funds to reimburse...local government for the costs of the program or increased level of service...” whenever the Legislature or a state agency mandates a new program or higher level of service.¹³³ Government Code section 17561, accordingly, provides that the state “shall reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514...” Section 17561 also provided, at the time the audit of the subject claims began (i.e., 2003-2004), the following:

In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefor, provided that the Controller (A) may audit the records of any local agency or school district *to verify the actual amount of the mandated costs*, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years.¹³⁴

The parameters and guidelines for the *Notification of Truancy* mandate predate the statutory authorization for a “reasonable reimbursement methodology,” as defined in sections 17518.5 and 17557; however, a unit cost, which was adopted for this program, is included within the definition of a “reasonable reimbursement methodology.”¹³⁵ Thus the Controller’s audit authority pursuant to section 17561 expressly authorizes an audit of a claim based on a unit cost reimbursement scheme. The statutes, however, do not address how the Controller is to audit and verify the costs mandated by the state.

Accordingly, the Controller cites to “Government Auditing Standards, as issued by the Comptroller General of the United States.” The Controller cites section 7.55 of the Generally Accepted Government Auditing Standards (GAGAS), “[a]uditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions,” in support of the use of statistical sampling.¹³⁶ Further the Controller cites section 7.56 of the GAGAS: “[a]ppropriateness is the measure of the quality of evidence...” and section 7.62 “[w]hen a representative sample is needed, the use of statistical sampling approaches generally results in stronger evidence...”¹³⁷ Furthermore, the Controller relies on Government Code section 17561, which permits the Controller generally to reduce any claim that is determined to

¹³² Statutes 1968, chapter 449.

¹³³ California Constitution, article XIII B, section 6 (Stats. 2004, ch. 133 (SCA 4; Proposition 1A, November 2, 2004)).

¹³⁴ Former Government Code section 17561 (Stats. 2002, ch. 1124), emphasis added.

¹³⁵ Government Code section 17518.5 (added, Stats. 2004, ch. 890); Government Code section 17557 (as amended, Stats. 2004, ch. 890; Stats. 2007, ch. 329).

¹³⁶ Exhibit B, Controller’s comments on IRC, page 13.

¹³⁷ *Id.*

be excessive or unreasonable: “[t]he SCO conducted appropriate statistical samples that identified a *reasonable* estimate of the non-reimbursable initial truancy notifications, thus properly reducing the claims for the *unreasonable* claimed costs.”¹³⁸ While the standards cited do not provide for statistical sampling and extrapolation to be applied to mandate reimbursement, they do provide for statistical methods to be used to establish the sufficiency, or validity of evidence.¹³⁹ The Controller also cites the “Handbook of Sampling for Auditing and Accounting,” by Herbert Arkin, for the proposition that a sampling methodology to determine the frequency of errors in the population (i.e., notifications that were not reimbursable for an asserted legal reason) is a widely used approach to auditing.¹⁴⁰

In accordance with the Controller’s audit authority and duties under the Government Code, it is not the Commission’s purview to direct the Controller to employ a specific audit method, including when the audit pertains to the application of a unit cost, as here. The Commission’s consideration is limited to whether the Controller’s reduction of costs based on audit decisions is arbitrary, capricious, or entirely lacking in evidentiary support.¹⁴¹ Based on the standards and texts cited by the Controller, statistical methods are an appropriate and commonly-used tool in auditing. The claimant, too, concedes that “[a] statistically valid sample methodology is a recognized audit tool for some purposes.”¹⁴²

In fact, statistical sampling methods such as those employed here are used in a number of other contexts and have not been held, in themselves, to be arbitrary and capricious, or incorrect as a matter of law. As discussed above, when the Department of Health Services used statistical sampling and extrapolation to determine the amount of over- or under-payment in the context of Medi-Cal reimbursement to health care providers in *Grier v. Kizer*¹⁴³ and *Union of American Physicians and Dentists v. Kizer (UAPD)*,¹⁴⁴ those methods were disapproved by the courts only on the ground that they constituted a regulation not adopted in accordance with the APA, rather than on the substantive question whether statistical sampling and extrapolation was a permissible methodology for auditing.¹⁴⁵ Once the Department adopted a regulation in accordance with the APA – a reaction to the proceedings in *Grier* – the court in *UAPD* had no objection to the methodology on its merits.¹⁴⁶ Thus, after *Grier*, the Department has both regulatory and statutory authority for its sampling and extrapolation audit process.¹⁴⁷

¹³⁸ *Id.*, page 17 [emphasis in original].

¹³⁹ Exhibit X, Excerpt from Government Auditing Standards, 2003, page 13.

¹⁴⁰ Exhibit B, Controller’s comments on IRC, page 14.

¹⁴¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California*, 162 Cal.App.4th 534, 547-548.

¹⁴² Exhibit A, Incorrect Reduction Claim, page 14.

¹⁴³ *Grier v. Kizer* (1990) 219 Cal.App.3d 422.

¹⁴⁴ *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490.

¹⁴⁵ E.g., *Grier, supra*, 219 Cal.App.3d 422, 439-440.

¹⁴⁶ *Union of American Physicians and Dentists, supra*, 223 Cal.App.3d 490, 504-505 [finding that the statistical audit methodology did not have retroactive effect because it did not alter the

In addition to the Medi-Cal reimbursement context, the courts have declined to reject the use of statistical sampling and extrapolation to calculate damages due to plaintiffs in a class action or other mass tort action.¹⁴⁸ And, in a case addressing audits of county welfare agencies, the court declined to consider whether the sampling and extrapolation procedures were legally proper, instead finding that counties were not required to be solely responsible for errors “which seem to be inherent in public welfare administration.”¹⁴⁹

On that basis, and giving due consideration to the discretion of the Controller to audit the fiscal affairs of the state,¹⁵⁰ the Commission finds that it must uphold the Controller’s auditing decisions absent evidence that the audit reductions are arbitrary, capricious, or entirely lacking in evidentiary support.

3. The reductions based on extrapolation of correct reductions are partially correct.

In addition to challenging the legal sufficiency of the Controller’s sampling and extrapolation methodology, the claimant also challenges the qualitative and quantitative reliability and fairness of using statistical sampling and extrapolation to evaluate reimbursement. The claimant argues that “[t]esting to detect the rate of error within tolerances is the purpose of sampling, but it is not a tool to assign an exact dollar amount to the amount of the error, which the Controller has inappropriately done so here.”¹⁵¹ In addition, the claimant argues that “[t]he ultimate risk for extrapolating findings from a sample is that the conclusions obtained from the sample may not be representative of the universe.”¹⁵² The claimant asserts that there are “errors perceived from the sample [that] do not occur at the same rate in the universe.”¹⁵³ For example, the claimant alleges that there are “kindergarten students present in the sample are more likely to be excluded because of the underage issue, which makes these samples nonrepresentative of the universe.” In addition to the qualitative concerns, the claimant argues that “[e]xtrapolation does not ascertain actual costs. It ascertains probable costs within an interval. The sampling technique used by the Controller is quantitatively non-representative.”¹⁵⁴ Further, the claimant also asserts that “[l]ess than two percent of the total number of notices were audited...” and that “[t]he expected error rate is stated to be 50%, which means the total amount adjusted of \$132,847 is really just a number exactly between \$66,424 (50%) and \$100,270 [sic] (150%).”¹⁵⁵

legal significance of past events (i.e., the amount of compensation to which a Medi-Cal provider was entitled)].

¹⁴⁷ See, e.g., Welfare and Institutions Code section 14170(b) (added, Stats. 1992, ch. 722 (SB 485); Code of Regulations, title 22, section 51458.2 (Register 1988, No. 17).

¹⁴⁸ See, e.g., *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715.

¹⁴⁹ *County of Marin v. Martin* (1974) 43 Cal.App.3d 1, page 7.

¹⁵⁰ Government Code section 12410 (Stats. 1968, ch. 449).

¹⁵¹ Exhibit A, Incorrect Reduction Claim, page 15.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*, page 16.

¹⁵⁵ *Id.*, page 17.

The Controller disagrees that statistical methods are inappropriate, stating: “[w]e properly used estimation sampling to establish the frequency of occurrence of non-reimbursable initial truancy notifications.”¹⁵⁶ With regard to the claimant’s assertion that the samples are non-representative of the population the Controller argues: “[t]he fact that a particular student’s initial truancy notification might more likely be identified as non-reimbursable is irrelevant to the composition of the audit sample itself. It has no bearing on evaluating whether the sample selection is representative of the population.”¹⁵⁷ Furthermore, in its comments on the IRCs, the Controller states that the claimant’s understanding and description of “expected error rate” and the appropriate size of a sample is also erroneous.

As described below, the Commission finds that the reduction of costs extrapolated from the unallowable notices sampled is partially correct.

- a) *There is no evidence that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed and, thus, an extrapolation on that basis is entirely lacking in evidentiary support.*

As explained above under issue A.1., the Controller correctly reduced the costs for four sampled truancy notices claimed in fiscal years 2002-2003 (two notices), 2003-2004 (one notice), and 2004-2005 (one notice) on the ground that these notices were not supported by documentation, as required by the parameters and guidelines. The Controller then calculated the error percentage, and included this reduction in the percentage, and extrapolated the result to all notices claimed during the audit period.¹⁵⁸

However, the record shows that the claimant provided documentation for all notices claimed in fiscal years 2002-2003 and 2005-2006. The audit report specifies that “[f]or fiscal year 2002-03, the district claimed 10,001 initial truancy notification [and] [t]he district provided documentation that identified 9,999 truant students...the difference is immaterial.” And for fiscal year “2005-06 the district claimed 19,654 truancy notification” and ultimately provided the documentation for all the notifications claimed.¹⁵⁹ Thus, the record does not support the conclusion that the extrapolation of the reduction based on a lack of supporting documentation for the four notices within the sample is representative of all notices claimed.

Accordingly, the Commission finds that the Controller’s calculation of the error percentage, which includes this reduction in the percentage, and the extrapolation of the result to all notices claimed during the audit period is entirely lacking in evidentiary support. All extrapolated costs reduced on this basis should be reinstated to the claimant.

- b) *The Controller’s sampling and extrapolation methodology used for notices sent to pupils who were not truant under the law (fewer than three unexcused absences or tardies) or*

¹⁵⁶ Exhibit B, Controller’s comments on IRC, page 14.

¹⁵⁷ *Id.*, page 15.

¹⁵⁸ Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller’s comments on IRC, pages 18-19.

¹⁵⁹ Exhibit A, Incorrect Reduction Claim, page 67.

were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support.

As discussed above, the Controller correctly reduced the costs of notices within the sample for the following reasons:

- 18 notices were sent to pupils that had fewer than three absences.
- 51 notices were sent to pupils under the age of six and over the age of eighteen who were not subject to the compulsory education requirements of the Education Code.

The Controller then calculated the error percentage, which included these reductions in the percentage, and extrapolated the result to all notices claimed during the audit period.¹⁶⁰ The Commission finds, based on this record, that the extrapolation of these findings is not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant has presented no evidence that schools within the claimant’s district complied with the mandate in different ways, which may provide evidence that the results from the sample are not qualitatively representative of all notices claimed. The Commission, and the Controller, must presume that the claimant uniformly complied with the mandate, absent evidence to the contrary.

Moreover, the claimant’s concerns about the proportional size of the sample are unfounded, and the claimant’s conclusions about the “expected error rate” are entirely mistaken. The Controller demonstrates that the absolute size of the sample, not the relative size, is more important. The Controller explains that an “expected error rate” in this context is an assumption used to determine the appropriate sample size, rather than a measure of the ultimate accuracy of the result. In other words, when “the auditor has no idea whatsoever of what to expect as the maximum rate of occurrence or does not care to make an estimate...” an expected error rate of 50 percent as the beginning assumption will provide “the most conservative possible sample size estimate” in order to achieve the precision desired.¹⁶¹ In addition, the desired accuracy of the result, which might be called a “margin of error,” is determined by the auditor before calculating the sample size (shown below as “SE = desired sample precision”). Therefore, the “margin of error” of the Controller’s resulting percentage is a known value. The Controller provides the following formula:

$$n = \frac{p(1 - p)}{\left(\frac{SE}{t}\right)^2 + \left(\frac{p(1 - p)}{N}\right)}$$

n = sample size

p = percent of occurrence in population (expected error rate)

SE = desired sample precision

¹⁶⁰ Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller’s comments on IRC, pages 18-19.

¹⁶¹ Exhibit B, Controller’s comments on IRC, page 17 [Citing Herbert Arkin, *Handbook of Sampling for Auditing and Accounting*, Third Edition, Prentice Hall, New Jersey, 1984, p. 89].

t = confidence level factor

N = population size¹⁶²

The formula above, when applied with a 50 percent expected error rate (the assumption when an error rate is not known), and a desired eight percent margin of error, as stated in the audit report,¹⁶³ shows that an appropriate sample size is between 144 and 148 pupils for populations ranging from 3,176 notifications (middle and high school pupils for fiscal year 2002-2003, the smallest number of notifications) to 10,267 notifications (middle and high school pupils for fiscal year 2005-2006, the highest number of notifications).¹⁶⁴ If “two percent” were a relevant proportion with respect to the selection of sample size, we would expect sample sizes to vary widely from one population to the next (two percent of 3,176 would yield a sample of 64, while two percent of 10,267 would yield a sample of 206). Applying the formula shown above illustrates that an appropriate sample size is not so closely correlated to the size of the population. The Controller explains:

Basic statistical sampling principles dismiss the district’s contention. To that point, Arkin states: ‘It is apparent that it is the absolute size of the sample that is of primary consideration and not its relative size.’¹⁶⁵

Therefore, the claimant’s concern that the Controller’s sampling technique is “quantitatively non-representative” because fewer than two percent of the total notices issued were examined in the sample,¹⁶⁶ is unfounded.

There is no dispute that the samples were randomly obtained and reviewed by the Controller. According to the Handbook of Sampling for Auditing and Accounting (Arkin), all notices randomly sampled have an equal opportunity for inclusion in the sample and, thus, the result is statistically objective and unbiased.

Based on the foregoing, the Commission finds that the Controller’s sampling and extrapolation methodology used in this audit for notices sent to pupils who were not truant under the law or were not subject to compulsory education, is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission partially approves this IRC. The Commission finds that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reduction for four sampled truancy notifications that were not supported by documentation.

¹⁶² *Id.*, [Citing Arkin, p. 56].

¹⁶³ See, e.g., Exhibit A, Incorrect Reduction Claim, page 67.

¹⁶⁴ Exhibit A, Incorrect Reduction Claim, pages 16, 18; Exhibit B, Controller’s comments on IRC, page 16.

¹⁶⁵ Exhibit B, Controller’s comments on IRC, page 17.

¹⁶⁶ Exhibit A, Incorrect Reduction Claim, page 16.

- Reductions for sampled notifications issued for pupils who accumulated fewer than three unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions for sampled notifications issued for pupils under age six or over age eighteen, and the extrapolation of those reductions to all notices claimed.

The following reductions, however, are incorrect as a matter of law, or are entirely lacking in evidentiary support:

- Reductions based on notifications issued for pupils who accumulated three, but not four unexcused absences or instances of tardiness, and the extrapolation of those reductions to all notices claimed.
- Reductions based on the extrapolation of the four sampled truancy notifications that were not supported by documentation.

The Commission requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate all costs incorrectly reduced to the claimant, consistent with these findings.

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 September 24, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Notification of Truancy, 10-904133-I-09

Education Code Section 48260.5

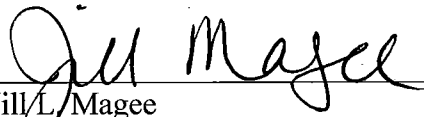
Statutes 1983, Chapter 498

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 September 24, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/10/15

Claim Number: 10-904133-I-09

Matter: Notification of Truancy

Claimant: San Juan Unified School District

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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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